



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

January 4, 2017

Secretary Rosemary Chiavetta
Pennsylvania Public Utility Commission
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Petition of UGI Penn Natural Gas, Inc. for a Waiver of the Distribution System Improvement Charge Cap of 5% of Billed Distribution Revenues and Approval to Increase the Maximum Allowable DSIC to 10% of Billed Distribution Revenues Docket No. P-2016-2537594

Petition of UGI Central Penn Gas, Inc. for a Waiver of the Distribution System Improvement Charge Cap of 5% of Billed Distribution Revenues and Approval to Increase the Maximum Allowable DSIC to 10% of Billed Distribution Revenues Docket No. P-2016-2537609

Dear Secretary Chiavetta:

Please be advised that the Bureau of Investigation and Enforcement (I&E) **Exceptions** in this proceeding.

Copies are being served on parties as identified in the attached certificate of service. If you have any questions, please contact me at (717) 783-6156.

Sincerely,

Carrie B. Wright
Prosecutor
Bureau of Investigation and Enforcement
PA Attorney I.D. #208185

CBW/sea
Enclosure

cc: Certificate of Service
ALJ Angela T. Jones
Cheryl Walker-Davis

RECEIVED
2017 JAN -4 AM 9:41
PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Petition of Penn Natural Gas, Inc. for a :
Waiver of the Distribution System :
Improvement Charge Cap of 5% of : Docket No. P-2016-2537594
Billed Distribution Revenues and :
Approval to Increase the Maximum :
Allowable DSIC to 10% of Billed :
Distribution Revenues :
:**

**EXCEPTIONS
OF THE
BUREAU OF INVESTIGATION & ENFORCEMENT**

Carrie B. Wright
Prosecutor
PA Attorney I.D. #208185

Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Dated: January 4, 2017

RECEIVED
2017 JAN -4 AM 9:41
PA PUC
SECRETARY'S BUREAU

I. INTRODUCTION

On March 31, 2016, UGI Penn Natural Gas, Inc. ("PNG" and "Company"), filed pursuant to Section 1358(a) of the Public Utility Code, a Petition requesting (1) waivers of the Distribution System Improvement Charge ("DSIC") cap of 5% of billed distribution revenues, and (2) approval to increase the maximum allowable DSIC to 10% of billed distribution revenues.

Pursuant to a Prehearing Conference Order, Administrative Law Judge Angela Jones ("ALJ"), was assigned to develop an evidentiary record and Recommended Decision in this proceeding, and the ALJ conducted a Prehearing Conference on June 17, 2016. Counsel for I&E attended the Prehearing Conference, and other active participants, included the Office of Consumer Advocate ("OCA") and the Office of Small Business Advocate ("OSBA"). At the hearing, a procedural schedule and the procedures applicable to this proceeding were set forth and subsequently memorialized in a Prehearing Order. After the Prehearing Conference, I&E, OCA, and OSBA engaged in a substantial amount of discovery.

In accordance with the procedural schedule outlined in the Prehearing Order dated June 21, 2016, the parties exchanged direct, rebuttal, and surrebuttal testimony. I&E introduced the following statements of testimony:

- I&E Statement No. 1, the Direct Testimony of Sunil R. Patel, in both Proprietary and Non-Proprietary format.
- I&E Exhibit No. 1, the Exhibit to Accompany the Direct Testimony of Sunil R. Patel in both Proprietary and Non-Proprietary format; and

- I&E Statement No. 1-SR, the Surrebuttal Testimony of Sunil R. Patel.

During the course of litigation the parties were unable to resolve the issues presented in PNG's Petition. On August 7, 2016, at the time and place set for the evidentiary hearing, the parties appeared before ALJ Jones and cross-examination and entered testimony into evidence. At that time, I&E moved into evidence the pieces of I&E testimony and exhibits identified above.

On December 1, 2016, the ALJ issued a Recommended Decision ("RD") approving PNG's Petition in part, and with modification. I&E now files these timely Exceptions in response to the ALJ's Recommended Decision.

II. EXCEPTIONS

1. The ALJ's calculation of a 6.89% DSIC cap is not supported by substantial evidence.

In this proceeding, the Company asked for a 10% maximum DSIC cap. I&E recommended the DSIC cap maximum be set at 7.5%. While the ALJ found that a waiver of the maximum DSIC cap was warranted for the Company, she disagreed with the Company and I&E's recommended level. Based upon her own calculation, the ALJ recommended a maximum DSIC cap of 6.89%. I&E disagrees with the calculation used by the ALJ and continues to recommend a maximum DSIC cap of 7.5%.

In the RD, the ALJ correctly concluded that:

[t]he record contains substantial evidence to increase the capped DSIC rate of UGI-PNG above 5%. Based on the record the Company has satisfied its burden of proof to waive the existing DSIC capped rate because the record has failed to show the expenditures approved by the DSIC are flawed, duplicative, or otherwise unwarranted and do not cause the

Company to eclipse the existing capped DSIC rate. The next issue is what percentage of distribution revenues should the DSIC rate be capped in compliance with 66. Pa.C.S. § 1358(d)(3).¹

The ALJ then recommended, based on the Company's Long-Term Infrastructure Improvement Plan (LTIIIP), that the DSIC cap be set at 6.89% stating:

UGI-PNG proposed a 10% increase although it projected an increase to 14.02% through the remaining three-years of the term of the modified LTIIIP. It is noted that this 14.02% corresponds to the modified LTIIIP that was approved by the Commission in *UGI-PNG Modified LTIIIP*. The percentage increase to spending levels of the modified LTIIIP as compared with the original LTIIIP is 21%. An increase from 5% to 14.02% is 9 percentage points of an increase. 21% of a 9 percentage point increase is a 1.89 percentage point increase yielding an increase from 5% up 1.89 percentage points to 6.89%.²

While I&E agrees with the ALJ's conclusion that the record contains substantial evidence that a DSIC cap increase is warranted, I&E does not agree with the ALJ's calculation of the recommended 6.89% DSIC cap.

I&E is unaware of any proceeding in which the DSIC cap has been based on a calculation as outlined in the RD. Furthermore, there is no support for why this calculation produces the correct maximum DSIC calculation. Although I&E did not advocate for a 10% DSIC cap maximum, it could easily be argued that if one is to accept the 14.02% increase projected in the LTIIIP as necessary to fully recover through the DSIC what was contained in the LTIIIP, which the ALJ has, it would be more appropriate to set the maximum DSIC cap at 10% rather than calculating an arbitrary percentage as

¹ RD, pp. 24-25.

² RD, pp. 28-29.

the ALJ has done. The ALJ determined that the recommended 6.89% is appropriate because it is "...a tad less than half of the 14.02% that the Company has projected...."³ This begs the question of what exactly makes the tad less than half of the Company's LTIP projection the appropriate target for the DSIC maximum cap. Although the ALJ criticizes I&E for recommending 7.5% and states that I&E did not provide a reason why it should be 7.5% and not some other percentage below 10%,⁴ the ALJ essentially does the same thing. The ALJ provides a calculation, but provides no rationale for why this calculation arrives at the correct result in this proceeding.

In the Philadelphia Gas Works (PGW) DSIC proceeding, the Commission provided no calculation for how it arrived at the determination that a 7.5% DSIC cap for PGW was appropriate.⁵ In fact, in the instant RD, the ALJ correctly noted that in the PGW DSIC proceeding, the Commission simply stated that approval of an increased DSIC cap level must be balanced by considering the impact on customer bills.⁶ The same should be done in the instant proceeding. There is no magical formula to calculate the appropriate maximum DSIC cap and there never has been. The determination must be made by looking at the totality of the circumstances. Pipeline replacement is a fluid, dynamic process that is dependent on earnings, revenues, borrowing, rate of borrowing, pipe being available, workers being available, and permits being approved. A company's LTIP merely provides a plan by which the company will replace aging infrastructure. Setting the maximum DSIC cap based on an odd formula derived from the LTIP has

³ RD, p. 29.

⁴ RD, p. 29.

⁵ *Pennsylvania Pub. Util. Comm'n v. PGW*, P-2015-2501500 (Order entered January 26, 2016).

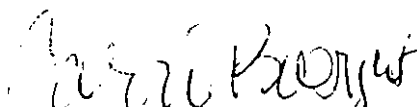
⁶ RD, p. 28

never been accepted in prior Commission proceedings and should not be done in the instant proceeding. Further, it may serve to incentivize a company to inflate its LTIP in order to be granted a higher maximum DSIC cap.

III. CONCLUSION

For the reasons stated herein, the Bureau of Investigation & Enforcement respectfully requests that the Commission reject the ALJ's recommended 6.89% maximum DSIC cap and approve I&E's recommended 7.5% maximum cap for UGI Penn Natural Gas, Inc.

Respectfully submitted,



Carrie B. Wright

Prosecutor

PA Attorney I.D. #208185

Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265
(717) 783-6156

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of UGI Penn Natural Gas, Inc. for a :
Waiver of the Distribution System :
Improvement Charge Cap of 5% of Billed : Docket No. P-2016-2537594
Distribution Revenues and Approval to :
Increase the Maximum Allowable DSIC to :
10% of Billed Distribution Revenues :

Petition of UGI Central Penn Gas, Inc. for a :
Waiver of the Distribution System :
Improvement Charge Cap of 5% of Billed : Docket No. P-2016-2537609
Distribution Revenues and Approval to :
Increase the Maximum Allowable DSIC to :
10% of Billed Distribution Revenues :

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Exceptions** dated January 4, 2017, in the manner and upon the persons listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party):

Served via First Class and Electronic Mail

Jessica R. Rogers, Esquire
David B. MacGregor, Esquire
Post & Schell PC
17 North Second Street
12th Floor
Harrisburg, PA 17101-1601

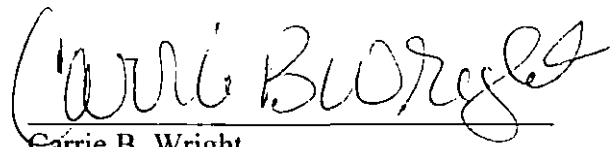
Darryl A. Lawrence, Esquire
Erin L Gannon, Esquire
Office of Consumer Advocate
555 Walnut Street
5th Floor Forum Place
Harrisburg, PA 17101-1923

Alessandra L. Hylander, Esquire
McNees Wallace & Nurick, LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166

Steven C. Gray, Esquire
Office of Small Business Advocate
300 North Second Street
Suite 202
Harrisburg, PA 17101

Mark C. Morrow, Esquire
Danielle Jouenne, Esquire
UGI Corporation
460 North Gulph Road
King of Prussia, PA 19406

RECEIVED
2017 JAN -4 AM 9:42
PA PUBLIC
SECRETARY'S BUREAU



Carrie B. Wright
Prosecutor
Bureau of Investigation and Enforcement
PA Attorney I.D. #208185