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January 4, 2017

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor  
Harrisburg, PA 17120

**VIA ELECTRONIC FILING**

**RE: Petition of UGI Central Penn Gas, Inc. for Waiver of the Distribution System Improvement Charge ("DSIC") 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**

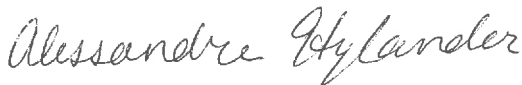
Dear Secretary Chiavetta:

Enclosed for filing please find the Exceptions of the Central Penn Gas Large Users Group ("CPGLUG") in the above-referenced proceeding. CPGLUG reserves the right to file Reply Exceptions to respond to issues raised in other parties' Exceptions, if any.

As evidenced by the attached Certificate of Service, all parties to this proceeding are being duly served.

Sincerely,

McNEES WALLACE & NURICK LLC

By   
Alessandra L. Hylander

Counsel to the Central Penn Gas Large Users Group

Enclosure

c: Administrative Law Judge Angela T. Jones  
Certificate of Service  
Office of Special Assistants (via email: ra-OSA@pa.gov)

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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the foregoing document upon the participants listed below in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

**VIA FIRST CLASS MAIL AND E-MAIL**

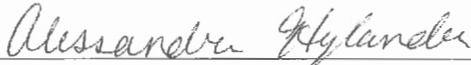
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Dated this 4<sup>th</sup> day of January, 2017, at Harrisburg, Pennsylvania.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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**EXCEPTIONS OF THE  
CENTRAL PENN GAS LARGE USERS GROUP ("CPGLUG")**

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SAPA Extrusions, Inc. ("Cressona")

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Dated: January 4, 2017

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## I. INTRODUCTION

On March 31, 2016, UGI Central Penn Gas, Inc. ("CPG" or "Company") filed a Petition for Waiver of the Distribution System Improvement Charge ("DSIC") Cap of 5% of Billed Distribution Revenues and Approval to Increase the Maximum Allowable DSIC to 10% of Billed Distribution Revenues ("Petition"). At issue in this proceeding is whether CPG met its burden to demonstrate that its requested waiver of the statutory 5% DSIC cap is required "in order to ensure and maintain adequate, efficient, safe, reliable and reasonable service" under Section 1358(a)(1) of the Public Utility Code. 66 Pa. C.S. § 1358(a)(1). On December 5, 2016, Administrative Law Judge ("ALJ") Angela T. Jones issued a Recommended Decision ("R.D.") which determined that CPG "has met its burden of proof with respect to waiver of the 5% cap on its Distribution System Improvement Charge" but failed to meet "its burden of proof through substantial evidence to raise the cap to 10%." R.D. at p. 1. As a result, the R.D. recommends increasing CPG's DSIC cap to 8.65%. *Id.* In response, the Central Penn Gas Large Users Group ("CPGLUG") hereby files these Exceptions to the R.D.

First, CPGLUG takes exception to the R.D.'s proposed standard for waiver of the 5% DSIC cap. The R.D. erroneously held that the standard for waiver of the 5% DSIC cap is identical to the standard for modifying a Long-Term Infrastructure Improvement Plan ("LTIIIP"). *Id.* at p. 26.

According to the R.D.:

By approving the modified LTIIIP the Commission acknowledged that an increased amount of DSIC-eligible plant needed to be addressed. Thus, the Company has provided substantial evidence for the 5% cap on distribution revenues for the DSIC rate to be waived, because the modified LTIIIP is approved "for the manner in which the replacement of aging infrastructure will be accelerated and how the repair, improvement or replacement will ensure and maintain adequate, efficient, safe, reliable and reasonable service." 66 Pa. C.S. § 1352(a)(6).

*Id.* at p. 23. Further, the R.D. provided that "the standards advocated by the OCA, OSBA, and CPGLUG that make it necessary for service and invoke the waiver only under extraordinary circumstances fail to consider the Commission regulations for the LTIP and its modification in concert with the statutory language for the DSIC and the waiver of the capped DSIC-rate. The regulations for modification of the LTIP do not require that there be extraordinary circumstances or no other alternative means to ensure and maintain adequate, efficient, safe, reliable and reasonable service." R.D. at p. 22.

The PUC is a creature of statute and its actions cannot depart from what is prescribed in statutory language. If a statute does not clearly provide a standard by which to grant or deny a utility's request, or provides some other basis for interpretation, then the PUC must consider legislative intent pursuant to 1 Pa. C.S. § 1921. Here, the R.D.'s proposed standard fails to reflect the legislative intent underlying Act 11 of 2012. When read in light of applicable legislative history, the statutory language indicates that waiver of the 5% DSIC cap is reserved for struggling utilities facing extraordinary infrastructural issues who will not be able to fund essential improvements to DSIC-eligible property pursuant to their LTIPs. In other words, legislators intended that any utility petitioning for waiver of the DSIC cap must meet a higher standard than what was required in order to implement a DSIC in the first place. Here, the R.D. renders the distinction between implementing a DSIC with a 5% cap, and waiving that 5% cap, meaningless; any utility that files an LTIP and successfully petitions for implementation of a DSIC could automatically qualify for a DSIC cap increase in the event that the utility receives PUC approval to modify its LTIP.

Moreover, the PUC recently issued an Opinion and Order in *Petition of Columbia Gas of Pennsylvania, Inc. for a Waiver of the Distribution System Improvement Charge (DSIC) Cap of*

*5% of Billed Distribution Revenues and Approval to Increase the Maximum Allowable DSIC to 10% of Billed Distribution Revenues ("Columbia")*, Docket No. P-2016-2521993, which held that the standard for waiver of the 5% DSIC cap is whether "waiver of the 5% DSIC cap is *necessary* to ensure and maintain adequate, efficient, safe, reliable and reasonable service . . . ." Opinion and Order, *Columbia*, pp. 26 & 48, (Dec. 22, 2016) (emphasis added). The R.D. overlooked the fact that the requesting utility has revenues from its base rates as well as revenues from the 5% DSIC to make necessary improvements and replacements on its system. As a result, here the Commission should reverse the R.D.'s recommendation and clarify the appropriate standard for DSIC waiver, consistent with its recent decision in the *Columbia* proceeding. Accordingly, CPGLUG respectfully submits that the appropriate standard is that the 5% DSIC cap should only be waived if a utility demonstrates that waiver of the DSIC cap is necessary in order to "ensure and maintain adequate, efficient, safe, reliable and reasonable service" because the replacements cannot be funded by a combination of the existing base rate revenues and the standard 5% DSIC. 66 Pa. C.S. § 1358(a)(1).

Furthermore, CPGLUG contends that the R.D. erred when it granted CPG a DSIC waiver and increase without making any findings regarding the sufficiency of the Company's customer safeguards. Assuming, *arguendo*, the Commission finds that the Company has met its burden of proof regarding the DSIC waiver, it is important to consider whether the Company's existing customer safeguards will provide sufficient protection against the impact of such an increase to the Company's DSIC.

Finally, CPGLUG requests that the Commission clarify the record regarding CPGLUG's status as a party of record to this proceeding. The R.D. failed to explicitly recognize CPGLUG as

a party of record and clarification will benefit the PUC and the parties by eliminating potential uncertainty regarding CPGLUG's status in this proceeding.

## II. EXCEPTIONS

### A. Exception 1: The R.D. Erred In Determining That The Standard For Waiving The 5% DSIC Cap Is Identical To The Standard For Modifying A Commission-Approved LTIP.

The R.D. erred when it held that the standard for waiver of the statutory 5% DSIC cap is identical to the standard for modifying an LTIP. R.D. at p. 26. Based on this erroneous premise, the R.D. determined that the 5% DSIC cap may be waived when a utility demonstrates that a 5% DSIC cap is insufficient to support planned levels of plant replacement and DSIC-eligible spending in correlation with the utility's modified LTIP. *See id.* at 23 & 26. The R.D.'s proposed standard for waiver of the DSIC cap ignores legislative intent underlying Act 11 of 2012 and would render Section 1358(a)(1)'s customer safeguard objective meaningless and duplicative. 66 Pa C.S. § 1358(a)(1). Furthermore, the R.D.'s proposed standard for waiver of the DSIC cap contradicts PUC precedent. Accordingly, as set forth below, the PUC should only grant a waiver of the 5% DSIC cap if the petitioning utility demonstrates waiver of the statutory 5% DSIC cap is necessary in order to ensure and maintain adequate, efficient, safe, reliable, and reasonable service. Based on the record in this proceeding, CPG has failed to meet this standard and, therefore, CPG's Petition should be denied.

The PUC is a creature of statute and its actions must comply with the standards set forth in the Public Utility Code and other applicable statutes. If statutory provision is unclear, then the PUC must consider legislative intent. Section 1921(a) of the Pennsylvania Consolidated Statutes provides that "[t]he object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly. Every statute shall be construed, if possible, to



give effect to all its provisions." 1 Pa. C.S. § 1921(a). Accordingly, where statutory language is unclear, the General Assembly's intent may be determined by considering, among other matters:

- (1) The occasion and necessity for the statute.
- (2) The circumstances under which it was enacted.
- (3) The mischief to be remedied.
- (4) The object to be attained.
- (5) The former law, if any, including other statutes upon the same or similar subjects.
- (6) The consequences of a particular interpretation.
- (7) The contemporaneous legislative history.
- (8) Legislative and administrative interpretations of such statute.

*Id.* at § 1921(c)(1)-(8).

Here, legislative history demonstrates that Pennsylvania law makers expected the 5% DSIC cap to serve as a key consumer protection. As such, waiver of the DSIC cap was to be reserved for circumstances where a utility demonstrated a *need* for additional funding via the DSIC charge to continue to meet its public utility obligations. During consideration of House Bill 1294 (which, once enacted, became Act 11 of 2012), legislators were concerned about protecting customers from excessive charges by utilities. Senators from both Republican and Democratic parties "emphasized the consumer protection function of the 5% DSIC cap." CPGLUG Main Brief, p. 6. Senator Boscola stressed that the 5% DSIC cap was to be strictly construed: "One of the key components of the bill is the consumer protection part that puts a 5-percent cap on the DSIC. Now, not only does this cap protect ratepayers from exorbitant utility bills, but it insures that the DSIC provided for in this legislation does not replace rate cases in Pennsylvania. It was never intended to do that." CPGLUG Main Brief, p. 7 (quoting *Commonwealth of Pennsylvania Legislative Journal – Senate*, 196th Gen. Assemb., 2012 Sess., p. 72 (statement of Sen. Boscola on House Bill 1294) (Jan. 25, 2012)). Even the title of Section 1358, "Consumer Protections," reflects legislators' objective of capping the DSIC, absent exceptional circumstances, in order to safeguard consumers against excessive rates. 66 Pa. C.S. § 1358.

In *Columbia*, the R.D. considered legislative history at length in deciding whether Columbia Gas of Pennsylvania, Inc. ("Columbia R.D.") met the standard for waiving its 5% DSIC cap and increasing it to 10%. Specifically, the Columbia R.D. noted that "the legislative history of Act 11, while not dispositive, sheds light on the legislature's intent to protect ratepayers from an energy utility's overreaching or overcharging" and proceeded to quote numerous legislators on the importance of consumer safeguards. *Columbia R.D.*, pp. 26-27 (Oct. 5, 2016). The Columbia R.D. also noted that in the Commission's Final Implementation Order executing Act 11 of 2012, the PUC specifically indicated that the waiver may be granted "*if necessary* to ensure and maintain safe and reliable service." *Id.* at p. 28 (citing *Final Implementation Order*, Docket M-2012-2293611, p. 40 (Aug. 2, 2012) (emphasis added)).

In contrast, when discussing the standard to establish a DSIC under Section 1353(a) of the Public Utility Code, 66 Pa. C.S. 1353(a), the Commission failed to preface "to ensure and maintain safe and reliable service" with the phrase "if necessary." *Id.* Furthermore, when the PUC issued a *Supplemental Implementation Order* to clarify various issues regarding implementing the DSIC, the Commission again suggested the "Commission may grant a waiver of the 5% limit *if necessary* to ensure and maintain safe and reliable service. 66 Pa. C.S. 1358(a)(1)." *Id.* at pp. 30-31 (citing *Supplemental Implementation Order*, Docket No. M-2012-2293611, p. 25 (Sept. 21, 2016)). As such, the *Columbia* R.D. held that in order to waive its 5% DSIC cap, "Columbia must establish a waiver of the 5% DSIC cap is necessary to ensure and maintain adequate, efficient, safe, reliable and reasonable service." *Id.* at p. 31. That standard is identical to the standard for waiver proposed by CPGLUG, OCA, and OSBA in CPG's present proceeding.

Ultimately, the PUC issued an Opinion and Order adopting the standard set forth in the *Columbia* R.D.:

We will deny Columbia's Exceptions and adopt the ALJ's recommendation that denies Columbia's request for a waiver of the 5% DSIC cap and request to increase the DSIC cap from 5% to 10% of billed distribution revenues . . . .

Opinion and Order, *Columbia*, p. 48.

We concur with the positions of the opposing Parties that if the legislature intended that we use the same standard of approval for both Sections 1353 and 1358, the plain language of Act 11 would have clearly indicated that an approval of the initial DSIC automatically approves the 5% DSIC cap waiver. We also agree with the ALJ's conclusion that more evidence is required for approval of a waiver of the 5% DSIC cap or limit in Section 1358, than is required in Section 1353.

*Id.* at p. 49.

Here, the R.D.'s proposed standard for waiver not only ignores legislative intent and the Pennsylvania Consolidated Statutes' standards for statutory interpretation, but also conflicts with the standard articulated in *Columbia*. The R.D.'s decision to make the standard for waiving a DSIC identical to the standard for granting a modified LTIP would negate the consumer protections afforded by the statutory 5% DSIC cap under Section 1358(a)(1) of the Public Utility Code; if adopted, the R.D.'s standard would permit any utility with a modified LTIP and 5% DSIC to automatically qualify for a DSIC capped at a value beyond 5%. The R.D. does not examine whether the proposed replacements and other system improvements can be funded through the existing base rate revenues (which include an assumed level of annual capital projects) and the 5% DSIC (which provides automatic recovery of certain qualifying replacements up to 5% in order to accelerate the replacement of aging facilities than would otherwise occur if the utility must wait until the completion of a rate case). *Commonwealth of Pennsylvania Legislative Journal – Senate*, 196th Gen. Assemb., 2012 Sess., pp. 71-74 (statements of Sen. Tomlinson, Sen. Boscola, and Sen. White on House Bill 1294) (Jan. 25, 2012).

Pennsylvania's lawmakers intended petitions for DSIC waivers to be a last resort for struggling utilities to assist them with meeting their obligations as public utilities under their existing base rates and standard 5% DSICs. The DSIC was never intended to provide dollar for dollar recovery to avoid rate cases, but rather to act as an incentive to carry out CPG's obligations to maintain its distribution infrastructure on an accelerated basis. *Id.* The PUC recognized this intent when it denied Columbia's petition to waive the 5% DSIC cap and increase its DSIC to 10%. As such, the PUC should reject the R.D.'s proposed standard for waiver of the 5% DSIC cap and indicate that such waiver may only occur when it is necessary to ensure and maintain adequate, efficient, safe, reliable and reasonable service. Furthermore, based on the record in this proceeding, the Commission should determine that CPG has failed to satisfy this standard and, therefore, CPG's Petition should be denied.

**B. Exception 2: The R.D. Erred When It Granted CPG A DSIC Increase Without Making Any Findings Regarding The Sufficiency Of The Company's Customer Safeguards.**

The R.D. failed to make any findings regarding whether CPG's tariff provides sufficient protection for customers against the impact of an increase to the Company's DSIC cap. CPGLUG expressed concerns about the quality of such safeguards in its Main Brief. CPGLUG Main Brief, pp. 8-10. To the extent that the Commission determines CPG has met the applicable standard for waiver of the 5% DSIC cap, the Commission should not exercise its discretion to grant the waiver. Based on the record, there is no reasonable basis to conclude that existing safeguards will sufficiently protect consumers against the impact of the requested DSIC cap increase.

**C. Exception 3: The R.D. Erred When It Declined To Specify CPGLUG's Status As A Party Of Record To This Proceeding.**

The R.D. explicitly designated the OCA, I&E, and OSBA as parties of record to this proceeding. R.D., p. 6. CPGLUG, however, was not identified as such. *Id.* For purposes of clarification, CPGLUG respectfully requests that the PUC's order clarify that CPGLUG is also a party of record in this instance. CPGLUG filed a Petition to Intervene and Answer in this proceeding on June 29, 2016. Although this intervention occurred out of time due to extenuating circumstances, the ALJ granted CPGLUG's intervention.<sup>1</sup> Therefore, CPGLUG respectfully requests that the PUC clarify that CPGLUG is a party of record in the above-referenced proceeding. This limited clarification will benefit the Commission and all parties by eliminating potential uncertainty regarding CPGLUG's status as a party of record in this case and ensuring a complete and accurate evidentiary record.

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<sup>1</sup> As set forth in CPGLUG's Petition to Intervene, it took substantial time to obtain the necessary corporate approvals from CPGLUG members before CPGLUG could intervene in this proceeding. *Petition to Intervene and Answer*, P-2016-2537609, p. 3 (June 29, 2016).

### III. CONCLUSION

WHEREFORE, the Central Penn Gas Large Users Group respectfully request that the Pennsylvania Public Utility Commission reverse and clarify the Recommended Decision by finding that: (1) the standard for waiving the 5% DSIC cap and increasing the DSIC is not identical to the standard for modifying a Commission-approved LTIP; (2) CPG failed to meet the applicable legal standard for waiver and therefore CPG's Petition should be denied; (3) the R.D. erred when it granted CPG a DSIC waiver and increase without making any findings regarding the sufficiency of the Company's customer protections against the impact of an increase to the DSIC cap; and (4) the R.D. erred when it failed to note CPGLUG is a party of record to this proceeding.

Respectfully submitted,

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Counsel to the Central Penn Gas Large Users Group

Dated: January 4, 2017