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January 11, 2017

VIA ELECTRONIC FILING

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

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

Dear Secretary Chiavetta:

Enclosed, for filing, are the Reply Exceptions of UGI Central Penn Gas, Inc., in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,

Jessica R. Rogers

JRR/jl
Enclosures

cc: Certificate of Service
Honorable Angela T. Jones

CERTIFICATE OF SERVICE

UGI Central Penn Gas, Inc.
(Docket No. P-2016-2537609)

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of § 1.54 (relating to service by a participant).

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Date: January 11, 2017

Jessica R. Rogers

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

REPLY EXCEPTIONS OF UGI CENTRAL PENN GAS, INC.

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Date: January 11, 2017

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I. INTRODUCTION

Administrative Law Judge Angela T. Jones issued a Recommended Decision ("RD") in this proceeding on December 5, 2016. All parties to the proceeding filed Exceptions on January 4, 2017.[1] UGI Central Penn Gas, Inc. ("UGI-CPG" or the "Company") files these reply exceptions to the following Exceptions filed by the Office of Consumer Advocate ("OCA"), Office of Small Business Advocate ("OSBA"), and the Central Penn Gas Large Users Group ("CPGLUG"):

- OCA Exception Nos. 1, 2 and 3;
- OSBA Exception Nos. 1, 2, 3, 4, and 5; and
- CPGLUG Exception Nos. 1 and 2.[2]

There is significant overlap among the above identified Exceptions, particularly those filed by the OCA and OSBA, and CPGLUG's Exception No. 1. Rather than repeat arguments, the Company has organized its replies by topic, and will identify which of the parties' Exceptions are addressed by its arguments.

For the reasons stated herein, as well as in the Company's Main Brief and Reply Brief, the identified Exceptions of the OCA, OSBA, and CPGLUG should be denied by the Pennsylvania Public Utility Commission ("Commission").

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1 In addition to the parties UGI-CPG is responding to, the Bureau of Investigation and Enforcement ("I&E") also filed Exceptions in this proceeding.

2 UGI-CPG does not oppose CPGLUG's Exception No. 3.

II. REPLIES TO EXCEPTIONS

A. THE STANDARDS ADVANCED BY OCA, OSBA, AND CPGLUG ARE INCONSISTENT WITH THE PLAIN LANGUAGE AND PURPOSE OF ACT 11 AND THEREFORE SHOULD BE REJECTED.[3]

The RD correctly applied a fact-based analysis, and considered three key factors in determining that UGI-CPG met the requirements of Section 1358(a)(1) for an increase in the DSIC rate cap: (1) UGI-CPG's experience using the distribution system improvement charge ("DSIC"), where it had already exceeded the 5% threshold with less than two years of experience using the DSIC, (RD at p. 25); (2) ongoing operational and safety improvements that the safety witnesses to this proceeding agreed must be addressed, (RD at pp. 24-25); and (3) the concurrent commitment made by UGI-CPG to significantly accelerate spending associated with DSIC-eligible infrastructure repair and replacement to address these safety improvements. (RD at p. 23). In their Exceptions, OCA, OSBA, and CPGLUG misconstrue and mischaracterize the RD. OSBA and CPGLUG propose an absolute necessity standard under which no utility, not even Philadelphia Gas Works ("PGW"), which was recently granted a DSIC cap waiver by the Commission, would be eligible for a waiver. OSBA and CPCLUG's standard would effectively strip the Commission of its discretion to waive the DSIC cap, contrary to the plain language of Act 11 and all relevant practice and precedent.

OCA appears to have modified its absolute necessity standard, and now contends that more evidence is required, beyond approval of "a supporting LTIIP".[4] However, the adoption of this new standard has not changed the OCA's position regarding DSIC cap waivers: OCA has yet to be presented with a set of facts that, in its view, merits a DSIC cap waiver. OCA's position in this, and every other DSIC-waiver proceeding in which it has participated, if adopted, would

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[3] The applicable standard is articulated in the following Exceptions: OCA Exception No. 1; OSBA Exception No. 2; and CPGLUG Exception No. 1.

[4] LTIIP stands for "long-term infrastructure improvement plan".

effectively strip the Commission of its discretion to grant a DSIC waiver. The standards of review proposed by OCA, OSBA, and CPGLUG should be rejected, and the standard adopted by the RD should be approved.

1. Waiver of the DSIC rate cap for UGI-CPG is Appropriate Under the Commission's Decision in *Columbia*.

In *Petition of Columbia Gas of Pa., 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-2016-2521993 (Order entered Dec. 22, 2016) ("*Columbia*") the Commission affirmed that approval of the 5% DSIC cap waiver is not conditioned solely on a utility's demonstration of "extraordinary circumstances". The Commission acknowledged that the goal of the DSIC is to facilitate acceleration of qualifying main replacement and other capital investments. *Columbia*, pp. 50-51. While a waiver of the 5% DSIC rate cap requires evidence beyond that required in Section 1353 for the approval of the initial DSIC, "extraordinary circumstances" is not the minimum threshold a utility must meet. *Columbia*, pp. 49; 54. Critically, the Commission held that where a utility does not demonstrate extraordinary circumstances – such as those demonstrated by PGW in its petition for a DSIC cap waiver – the Commission may exercise its discretion in considering a waiver if it will (a) aid in accelerating infrastructure replacements, or (b) reduce the frequency of base rate filings. *Columbia*, p. 54.

The Commission then explained why Columbia had not met that additional evidentiary showing. The Commission distinguished Columbia's facts from those in *Pa. P.U.C v. Aqua Pennsylvania, Inc.*, Docket Nos. R-2008-2079310, *et al.* (Order entered July 23, 2009) ("*Aqua PA Petition*"), by noting that Aqua PA filed a main replacement study in support of its request. *Columbia*, p. 55. The Commission also noted that Aqua PA had expended more than it

recovered through the DSIC cap in past years. *Columbia*, p. 55. Finally, the Commission emphasized the importance of accelerated spending, particularly with regard to PGW's commitment to spend an additional $11 million per year. *Columbia*, pp. 56-57. Application of the decision in *Columbia* to the RD in this proceeding shows that the ALJ properly used a fact-based approach consistent with the Commission's approach in *Columbia* and considered evidence beyond that required for Section 1353, including evidence of accelerated spending, safety considerations, and past use of the DSIC to recover revenue.[5]

In their Exceptions, OSBA and CPGLUG continue to advocate for the extraordinary circumstances standard rejected by the Commission in *Columbia*. (OSBA Exceptions, pp. 10-11; CPGLUG Exceptions, p. 4). Their proposed standard directly conflicts with the rules of statutory interpretation, which provide in relevant part that "the General Assembly does not intend a result that is absurd, impossible of execution, or unreasonable." *See* 1 Pa.C.S. § 1922.[6] As OSBA witness, Mr. Knecht, acknowledged, the "extraordinary circumstances" standard supported by OSBA and CPGLUG would make it extremely difficult, if not impossible, for the Commission to grant a petition to waive the DSIC cap. (Tr. 123; OSBA St. No. 1-S, p. 4.) OSBA's standard is so onerous that Mr. Knecht could not think of a single utility that would meet his standard, despite being a witness in more than one hundred utility proceedings. (Tr. 123; OSBA Ex. IEc-1, p. 1.) Further, Mr. Knecht did not believe that even PGW met his standard. (Tr. 124); *see also, Petition of Philadelphia Gas Works for Waiver of Provisions of Act 11 to Increase the Distribution System Improvement Charge CAP and to Permit Levelization of DSIC Charges,* Docket No. P-2015-2501500, pp. 19-20 (Order entered January 28, 2016)

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5 The evidence supporting the RD is discussed in greater detail in Section (II)(C).

6 In addition to being inconsistent with the language and intent of Act 11, OSBA and CPGLUG's standard would duplicate power already granted to the Commission under 66 Pa.C.S. § 1308(e) (extraordinary rate relief). (UGI-CPG St. No. 1-R, p. 8.) A full discussion regarding why the DSIC is ill-suited to provide extraordinary rate relief is contained in the Company's Reply Brief, pp. 5-7.

("*PGW Waiver Petition*"). A standard so onerous that it could never be utilized would violate 1 Pa.C.S. § 1922. The Commission should affirm its rejection of the "extraordinary circumstances" standard in this proceeding, just as it has done in prior DSIC waiver proceedings. *PGW Waiver Petition*, pp. 43-44; *Columbia, p.* 54; *Aqua PA Petition,* 11-15.

2. OCA's Newly Articulated "Additional Evidence" Standard, As Applied, Would Effectively Deny the Commission the Discretion Afforded Under Section 1358(a)(1) to Grant DSIC Cap Waivers.

OCA argues that the standard proposed by OCA and OSBA in this proceeding merely requires "evidence of need for the waiver, beyond the Commission's approval of a supporting LTIIP." (OCA Exceptions, p. 4). The Company agrees that the Commission's decision in *Columbia* appears to require additional evidence beyond the showings required for a DSIC under Section 1353 in order to obtain a waiver of the DSIC rate cap. However, as explained below, while OCA purports to adopt the additional evidence standard, it simply ignores the overwhelming additional evidence presented by UGI-CPG in this proceeding, and continues its unbroken track record of opposing DSIC rate cap waivers.

Contrary to its assertions, at no prior point in this proceeding did OCA argue for the standard it now identifies in its Exception No. 1. Rather, OCA consistently adopted the "extraordinary circumstances" standard until the Commission issued its decision in *Columbia.* (RD at p. 22; OCA Main Brief at pp. 6-9; OCA St. No. 1, p. 6). OCA's application of its newly articulated standard, however, primarily in OCA Exception No. 2, is identical in every way to the analysis it used when it argued that extraordinary circumstances must be shown. UGI-CPG discusses in further detail in Section II(C), *infra*, why this application of the standard is in error.

Further, OCA's newly proposed standard requires evidence of "need for the waiver, beyond the Commission's approval of a supporting LTIIP." (OCA Exceptions, p. 4). However, the Company's modified LTIIP, which was approved by the Commission in *Petition of UGI*

Central Penn Gas, Inc. for Approval of its Modified Long Term Infrastructure Improvement Plan, Docket No. P-2013-2398835 (Order entered June 30, 2016) ("*Modified LTIIP*"), is not a "supporting LTIIP" in the way the Section 1352 LTIIP is a necessary supporting document for the DSIC under Section 1353. Rather, the modified LTIIP filed by UGI-CPG is a stand-alone filing, evidencing a significant increase in expenditures on DSIC-eligible property exceeding the original LTIIP requirements. It is an additional commitment by the Company to address the underlying goals of Act 11, and the Commission's approval of it evidences the Commission's conclusion that this increase in expenditures is in the public interest. The OCA's dismissal or minimization of the modified LTIIP should be rejected.

In furtherance of its "additional evidence" standard, OCA argues that the Commission should not grant waiver of the DSIC until a base rate proceeding is undertaken. (OCA Exceptions, p. 12). However, it is apparent that even a base rate proceeding would not satisfy OCA, because it has not considered frequent or recent base rate proceedings relevant in other DSIC waiver proceedings. In *Aqua PA Petition* and *Columbia*, the utilities had filed recent base rate proceedings prior to their request for a DSIC cap waiver. Nevertheless, the OCA opposed a waiver of the DSIC rate cap in both of those proceedings.

The OCA's new "additional evidence" standard, as applied by the OCA, is identical to the "extraordinary circumstances" standard it advocated for previously, which would effectively thwart the Commission from exercising its discretion in any future DSIC waiver proceedings to use its statutorily granted authority to increase the DSIC rate cap in order to provide for more timely recovery on and of accelerated investments in DSIC-eligible property pursuant to a Commission-approved LTIIP, in lieu of more frequent base rate cases. The Commission should

not be persuaded by the softer language utilized by OCA in its Exceptions, and should reject the OCA's application of its purported new standard.

3. OSBA's Arguments Against the Standard in the RD Are Unsupported and Irrelevant.

OSBA presents four principle arguments in support of its extraordinary circumstances standard: (1) the standard advocated by the utility in *Columbia*, which the Commission rejected, is the same standard adopted in this proceeding (OSBA Exceptions, p. 7); (2) the standard adopted in the RD will result in automatic DSIC cap waivers once the Commission approves a modified LTIIP (OSBA Exceptions, pp. 6-7); (3) prior Commission precedent in DSIC waiver proceedings, aside from *Columbia*, is not relevant in this proceeding (OSBA Exceptions, pp. 7-8); and (4) the standard adopted by the RD violates statutory construction (OSBA Exceptions, p. 8). Each of these contentions is incorrect and should be rejected.

OSBA argues that the RD is predicated on the same statutory construction that the Commission rejected in the *Columbia* decision, namely Sections 1353 and 1358 have identical language, and the same evidentiary showing should be required. (OSBA Exceptions, p. 7.) That is not, in fact, the argument that the Company made in this proceeding, nor is it the standard adopted by the RD. Rather, the Company argued that identical statutory language should be interpreted consistently, and that nowhere in either Section 1353 or Section 1358 does the statutory language require imminent threats to the public or other "extraordinary circumstances" in order for relief to be granted. Further, in the Company's Reply Brief, it illustrated both the illogical and dangerous consequences of adopting such a standard. *See* UGI-CPG Reply Brief, pp. 5-7. OSBA's argument that the RD adopted the statutory interpretation argument rejected by the Commission in *Columbia* is incorrect.

OSBA next argues that the standard adopted by the RD creates a slippery slope that renders a DSIC waiver petition, and the Commission's review of that petition, "meaningless", and a grant of the waiver automatic. (OSBA Exceptions, pp. 6-7.) There is nothing in the RD, or evidence in this proceeding, to support this position. The Company has and continues to encourage the Commission to adopt a fact-based analysis that considers the totality of the Company's economic and operational circumstances and the RD clearly employed that analysis. Under this approach, the modified LTIIP is one piece of evidence to be considered, as it identifies the Company's DSIC-eligible commitment to infrastructure repair and replacement, and specifically the Commission-approved commitment of capital spending that is required to "ensure and maintain adequate, efficient, safe, reliable and reasonable service." *See* 66 Pa.C.S. § 1358(a)(1); *Modified LTIIP*. The modified LTIIP was not the only evidence weighed in the RD. OSBA's slippery slope argument therefore should be rejected.

OSBA, citing its own Reply Brief, insists that pre-Act 11 DSIC waiver determinations are of no relevance in deciding the current DSIC waiver proceeding. (OSBA Exceptions, pp. 7-8). In its recent *Columbia* and *PGW* decisions, however, the Commission clearly considered its past analyses in pre-Act 11 waiver determinations, and the facts it considered, to determine whether need for a waiver existed. *Columbia*, p. 54; *PGW Waiver Petition,* p. 43. Act 11's language does not suggest any intent to reject the Commission's development and implementation of the water DSIC under prior applicable statutory language, and instead builds and expands upon the prior success of the previous statutory provision authorizing water DSICs. There is no basis for excluding consideration of cases that are directly probative and informative to the Commission on the topic of what constitutes need for a waiver.

Finally, OSBA states that the proposed legal standard is "not only legally defective, it is a violation of 1 Pa.C.S. § 1922(2) (that the General Assembly intends the entire statute to be effective and certain) and the plain language of 66 Pa.C.S. § 1358(a)(1)." (OSBA Exceptions, p. 8). However, as the Company has shown in its Reply Brief and these Reply Exceptions, it is the OSBA's interpretation of the statute, and not the RD's, that would render a portion of the statute ineffective. (UGI-CPG Reply Brief, pp. 1-5). The OSBA's argument therefore should be rejected.

4. CPGLUG's Statutory Arguments Also Ignore the Established Rules of Statutory Construction.

CPGLUG argues that the Commission must rely on legislative history in interpreting the legal standard applicable to Section 1358(a)(1). (CPGLUG Exceptions, p. 5). The Commission should reject this argument. First, under the rules of statutory construction, an agency or other reviewing body must first look to the statutory language. If the statutory language at issue is clear and unambiguous, consideration of legislative history or other rules of construction and interpretation are not to be considered. *See* 1 Pa.C.S. § 1921(b) ("When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.") Here, Section 1358(a)(1) clearly grants the Commission broad authority to waive the initial five percent cap on DSICs without the limitations CPGLUG and the public parties would read into the statute.

Further, even if the Commission concludes the statute is ambiguous, the legislative history does not explicitly address Section 1358(a)(1). However, the intent of the legislature in enacting Act 11 is manifested repeatedly in the statute itself: the General Assembly entrusted the Commission to use its discretion and expertise to ensure that customers are protected, that the rates are just and reasonable, and that utilities will be able to use the DSIC to proactively address

safety and service reliability. 66 Pa.C.S. § 1358(c) ("[N]othing under this subchapter shall be construed as limiting the existing ratemaking authority of the commission, including the authority to permit recovery of operating expenses through an automatic adjustment clause, or as indicating that the existing authority of the commission over rate structure or design is limited.") Finally, and as argued previously in Section II(A)(1), adopting the standard CPGLUG endorses based on CPGLUG's misinterpretation of the legislative history violates the rules of statutory construction by making DSIC waiver unobtainable under any circumstance, resulting in a *de facto* repeal of this section of the statute. This is contrary to 1 Pa.C.S. § 1922(2), and CPGLUG's arguments should accordingly be rejected.

B. THE RELATIONSHIP BETWEEN THE MODIFIED LTIIP AND THE DSIC IS RELEVANT EVIDENCE OF THE NECESSITY OF THE WAIVER.[7]

OCA and OSBA mischaracterize the RD's findings regarding the importance of the modified LTIIP as evidence that an increase in the DSIC rate cap is appropriate. Contrary to the assertions of both parties, the RD did not find that the modified LTIIP alone necessitated waiver of the DSIC rate cap. Rather, the RD considered the Commission's approval of the modified LTIIP as one piece of relevant evidence supporting the need for waiver of a DSIC rate cap. (RD at pp. 7-10).

OSBA argues that the RD finds that the DSIC waiver is necessary because the Commission has approved the modified LTIIP. (OSBA Exceptions, pp. 8-10). This is clearly not the case. The RD correctly concluded that the Commission's standard under the modified LTIIP regulations is identical to the standard to be applied in its consideration of the waiver of the DSIC rate cap. (RD at p. 23). That standard is that the plant and costs to be included and

[7] The issue of the content of the modified LTIIP and its relationship to the Commission's analysis on the waiver of the DSIC rate cap is addressed in the following Exceptions: OCA Exception No. 1; and OSBA Exception No. 3.

recovered must "ensure and maintain adequate, efficient, safe, reliable and reasonable service." (RD at p. 23, citing 66 Pa.C.S. § 1352(a)(6) and (7)). Therefore, the RD concluded that the Commission's approval of the modified LTIIP, and the costs and replacement programs contained therein, was relevant evidence as to the level of investment being undertaken by the Company and its financial need to support programs the Commission had blessed as necessary in order to meet the standard articulated in both the regulations on major modifications, 52 Pa. Code § 121.5, and in Act 11 for approval of the LTIIP and waiver of the DSIC rate cap.

OCA makes an oblique reference suggesting that the Commission has distinguished the plant and programs in the LTIIP from the cost recovery component of the DSIC. (OCA Exceptions, p. 3). This argument is misleading and should be rejected. In its original combined LTIIP/DSIC orders, the Commission stated:

> While the Commission's Final Implementation Order stated, at page 18, that the LTIIP "need only address the specific property eligible for DSIC recovery," the inclusion of arguably non-DSIC-eligible property does not void the LTIIP application, nor is the inclusion of such property in the LTIIP dispositive of whether the cost of that project will be afforded DSIC recovery. **The issues of eligibility and cost recovery, for all property claimed as DSIC-eligible, are to be addressed and resolved in the subsequent DSIC petition and calculation.**

See, e.g., Petition of UGI Central Penn Gas, Inc. for Approval of its Long-Term Infrastructure Improvement Plan/Petition of UGI Central Penn Gas, Inc. for Approval of a Distribution System Improvement Charge, Docket No. P-2013-2398835, p. 24 (Orders entered September 11, 2014) (emphasis added). OCA's argument must fail because unlike the original LTIIP/DSIC proceedings, there has been no challenge by any party to this proceeding regarding: (1) the appropriateness of the particular programs or plant being included in the modified LTIIP and recovered through the waived DSIC rate cap; (2) the costs of the programs; or (3) the necessity

of undertaking the identified replacements.[8] Without evidence in either the *Modified LTIIP* proceeding or this DSIC waiver proceeding challenging the necessity and appropriateness of the costs identified in the modified LTIIP, the RD appropriately concluded that the Commission's approval of the modified LTIIP is evidence that supports the Company's need for waiver of the DSIC rate cap. As described in response to the OSBA's argument, the ALJ did not find that the DSIC waiver must be approved solely because the modified LTIIP was approved. Rather, the Commission's consideration and approval of the modified LTIIP is simply evidence that the Company is undertaking additional accelerated investment that is DSIC-eligible.

The OSBA and OCA both argue that the RD will lead to a slippery slope, where no Commission analysis is required in order for a DSIC waiver to be approved. (OSBA Exceptions, pp. 9-10; OCA Exceptions, p. 3). However, the Commission's fact-based approach to DSIC waiver has and will continue to take into consideration numerous factors relating to operational and economic concerns, safety considerations, customer impacts, and historical use of the DSIC. The Commission should reject the impossible standard advocated by OCA and OSBA, and instead adopt the sensible approach embraced by the RD that the modified LTIIP – decided under an identical statutory standard to the one applied in the DSIC waiver proceeding – is relevant and compelling, but not conclusive, evidence regarding the need for further economic relief.

The RD properly considered the modified LTIIP as a piece of relevant evidence that, in conjunction with other relevant evidence to be discussed in Section II(C), resulted in the conclusion that a DSIC waiver was appropriate. OCA Exception No. 1 and OSBA Exception No. 3 therefore should be denied.

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[8] The RD has a full discussion on the lack of challenge to the Company's Modified LTIIP either in the *Modified LTIIP* proceeding or in this proceeding. *See* RD at pp. 23-24.

C. UGI-CPG HAS MADE THE EVIDENTIARY SHOWING NECESSARY TO MEET THE STANDARD FOR WAIVER OF THE DSIC RATE CAP.[9]

The RD correctly found that UGI-CPG had produced ample evidence to show that waiver of the DSIC rate cap is necessary and appropriate in this proceeding. Specifically, the Company produced the following evidence:

1. UGI-CPG has accelerated its spending, on a per year basis, by approximately double what it was spending prior to implementation of Act 11. (RD at p. 9; *Modified LTIIP*, p. 5.)

2. UGI-CPG has committed to spend an additional $23.9 million over the remaining three years of the original LTIIP plan. (RD at p. 9; *Modified LTIIP*, p. 5.)

3. Under the 5% rate cap, the Company will forego almost $10 million of DSIC-eligible revenue during the current LTIIP period that it could recover if the DSIC rate cap were increased to 10%. (RD at p. 7; UGI-CPG St. 1, p. 7; UGI-CPG Ex. WJM-3.)

4. UGI-CPG made the commitments in its modified LTIIP knowing that it would need rate relief in the form of a DSIC rate cap waiver. (Tr. 89.)

5. UGI-CPG's DSIC rate cap proposal only reflects about 70% of its total anticipated DSIC spending during the current LTIIP period, balancing the Company's interest with that of customers. (RD at pp. 31-32.)

6. UGI-CPG has accelerated spending on both main replacement projects and other reliability and safety related projects to ensure safe and reliable service to customers. (RD at p. 8; *Modified LTIIP*, p. 6; UGI-CPG St. 2-R, pp. 2-5.)

7. UGI-CPG has used the DSIC, has already exceeded the 5% DSIC rate cap, and will reach the 10% DSIC rate cap by October 2017. (RD at pp. 7, 10; UGI-CPG Ex. WJM-3.)

8. Based on UGI-CPG's actual use of the DSIC, at a 5% DSIC rate cap, the DSIC reflects two years of DSIC-eligible plant based on the original LTIIP investment schedule. The Company has since committed to further acceleration. (RD at p. 7.)

9. Increasing the DSIC rate cap will have a much smaller per customer increase than the Company's last base rate proceeding. (UGI-CPG St. 1-R, pp. 5-6.)

10. The Company will have less frequent base rate proceedings as a result of an increased DSIC rate cap. (RD at p. 10; UGI-CPG St. 1, p. 10.)

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[9] The issue of the sufficiency of the evidence in this proceeding is challenged in the following Exceptions: OCA Exception No. 2; OSBA Exception Nos. 1 and 4; and CPGLUG Exception No. 1.

11. Even with an increased DSIC rate cap, UGI-CPG will have to come in for base rate relief on a regular basis, because it will exceed the increased DSIC rate cap under its current accelerated schedule. (RD at p. 10; UGI-CPG St. 1-R, pp. 9-10.)

The RD found, based on the substantial additional evidence beyond the basic showing required under Section 1353, that the Company has met its burden under Section 1358(a)(1).

1. The Arguments Made by OCA and OSBA on Acceleration Misinterpret the Commission's Holding in *Columbia*.

The Commission in *Columbia* found that evidence of acceleration is relevant in determining whether waiver of the DSIC rate cap is necessary. OSBA argues that while DSIC investment has increased, that does not constitute acceleration. (OSBA Exceptions, pp. 3-4). Further, both OCA and OSBA's standard would exclude any safety or reliability improvements other than main replacement from the Commission's consideration of relevant acceleration. (OSBA Exceptions, p. 4; OCA Exceptions, pp. 4-5). These arguments should be rejected by the Commission.

OSBA quotes the Commission's finding in *Modified LTIIP* that the Company had committed to significantly accelerated spending, "the instant petitions propose to increase the amount of infrastructure spending over that of the currently effective LTIIPs by more than 20%." (OSBA Exceptions, pp. 3-4.) However, OSBA seeks to limit the Commission's focus in this proceeding to miles of main, rather than accelerated spending. There may be times when the Company must accelerate projected spending in order to accomplish the same number of miles it might have replaced in a different year, when the cost per mile of main was lower. Insisting that the only relevant metric in determining whether acceleration has occurred is the miles of main planned for replacement ignores this relationship.

OCA would limit the Commission's consideration of acceleration to only those costs associated with replacement of mains. (OCA Exceptions, pp. 4-6.) Both OCA and OSBA would

exclude other categories of relevant infrastructure investment from the Commission's analysis. Nothing in the statute requires, or even suggests, that such a limitation is necessary or appropriate. The DSIC applies to a wide variety of infrastructure replacement spending, because there are many categories of infrastructure that must be repaired or replaced in order for the Company to continue to provide safe and reliable service to its customers. The categories of projects included in the Company's modified LTIIP are critical to ensuring safe and reliable service to its customers, particularly on cold weather days. As stated by the Commission, "these projects include increasing system pressures to higher volume demand areas, regulator station improvements and installations, corrosion control and weatherization of facilities, and PennDOT mandated facility relocations." *Modified LTIIP*, p. 6. The Company cannot continue to provide safe and reliable service into the future without accelerating its spending on reliability projects. There is no reason, in law or fact, to limit the Commission's analysis to main replacement projects.

Finally, OCA argues that the pace of the Company's replacement is sufficient. This argument should be rejected. (OCA Exceptions, pp. 6-7). First this argument is irrelevant, because the acceleration in this proceeding was not predicated specifically on increased investment in main replacement. Second, the OCA's argument relies heavily on its witness, Mr. Mierzwa, who has no engineering or safety expertise. (OCA Exceptions, p. 6). The two expert witnesses qualified to discuss safety considerations and engineering issues in this proceeding agreed that the Company's DSIC-eligible spending addresses infrastructure work that provides important safety benefits to the Company's customers. (I&E St. No. 1, pp. 9-11; UGI-CPG St. No. 2-R, pp. 2-5; Tr. 90; 104.) No other party produced expert witnesses who were qualified to discuss safety or engineering issues. (I&E St. No. SR-1, p. 2.) The RD correctly concluded that

Mr. Mierzwa is not qualified to testify on safety considerations. (RD at p. 26). The Commission should not rely on the OCA's arguments on the pace of main replacement.

2. OSBA's Arguments About the RD's Consideration of Safety Are Incorrect.

OSBA argues that there are no safety considerations warranting accelerated spending. (OSBA Exceptions, pp. 10-11). Neither OSBA, nor any other party to this proceeding, produced testimony that accelerated investment was not necessary to ensure safe and reliable service. No party challenged the spending proposed in the Company's *Modified LTIIP* proceeding. OSBA and OCA only challenge the Company's recovery of that spending. They would have the Company invest heavily in infrastructure – in order to ensure safe and reliable service – without receiving a return on that additional investment and excluding that accelerated investment as evidence that additional recovery may be appropriate. The only credible record evidence in this proceeding on this topic shows that the investment identified in the modified LTIIP is necessary and appropriate in order to address serious safety and reliability issues. (I&E St. No. 1, pp. 9-11; UGI-CPG St. No. 2-R, pp. 2-5; Tr. 90; 104.)

The OSBA seeks to support its safety argument through the testimony of Mr. Knecht, another witness with no expertise in engineering or safety. (OSBA Exceptions, p. 11). The testimony quoted by OSBA indicates that unless a utility was willing to be derelict in its duty to meet its service obligations under 66 Pa.C.S. § 1501, waiver of the DSIC rate cap is not appropriate. (OSBA Exceptions, p. 11). As described in Section II(A), this standard has correctly been rejected by both the RD and the Commission. Mr. Knecht admitted that he was not a safety expert. (Tr. 129-130.) The RD correctly concluded that Mr. Knecht is not qualified to testify on safety considerations. (RD at p. 26). The Commission should reject the OSBA's arguments regarding safety.

3. OCA's Focus on the Frequency of Base Rate Proceedings is Irrelevant.

The OCA argues that the Company has not sufficiently committed to reduce the frequency of base rate proceedings. (OCA Exceptions, p. 8). However, the Company clearly indicated that, to the best of its knowledge and belief, base rate proceedings would be less frequent as a result of an increased DSIC rate cap. (RD at pp. 9-10; UGI-CPG St. 1, p. 10; UGI-CPG St. 1-R, pp. 10-12.) OCA's own witness indicated that more definitive evidence on the timing and frequency of future base rate proceedings is not practicable. (OCA Exceptions, p. 8; citing OCA St. 1, p. 7). Further, it is apparent from the totality of OCA's position in this, and other proceedings, that no commitment to reduced base rate proceedings would be sufficient to satisfy OCA's standard. The Commission should consider the Company's acknowledgement that base rate proceedings will occur on a less frequent basis in the future as evidence of part of the overall financial impact of a DSIC rate cap increase.

4. CPGLUG's Arguments on the Sufficiency of Base Rates Is Untimely and Improper.

CPGLUG argues, for the first time in its Exceptions, that the Company did not provide analysis as to whether existing base rate revenues can be used to fund infrastructure repair and replacement. (CPGLUG Exceptions, p. 7). This argument is untimely, and should not be raised for the first time in Exceptions. *See, e.g., Application of PPL Electric Utilities Corp.*, 2009 Pa. PUC LEXIS 2323, 225-226 (Order entered Nov. 12, 2009) ("It is axiomatic that a party may not introduce conjecture in a brief and masquerade it as legitimate fact, just like the Commission may not make up facts which do not appear in the record and then base a decision on them. This would be a flagrant violation of the due process rights of the parties to the case.").

Even if CPGLUG's untimely argument is considered, the simple answer is that UGI-CPG cannot cover its accelerated infrastructure replacement program with existing base rate revenue.

The original LTIIP identified the baseline level of spending that was previously funded by the Company through base rates, and accelerated significantly from that point. The modified LTIIP has now further accelerated the investment in DSIC-eligible infrastructure by more than 50% over the prior acceleration. The only evidence of record in this proceeding is that the Company has accelerated its investment significantly over the baseline level of spending, and that in doing so it has exceeded the 5% DSIC rate cap.

Moreover, Act 11's expansion of DSIC eligibility was clearly designed to provide a means for the more timely recovery of DSIC-eligible costs without the need to accelerate base rate case filings, and the standard CPGLUG now belatedly attempts to impose would thwart that purpose and is not a requirement for the Commission to exercise its authority to raise the DSIC cap. CPGLUG's untimely attack on the sufficiency of base rate revenues should accordingly be rejected.

D. CPGLUG WRONGLY ASSERTS THAT ITS REJECTED ARGUMENT WAS OVERLOOKED BY THE RD.[10]

CPGLUG argues in its Exception No. 2 that the RD failed to adequately address its argument on the sufficiency of customer protections against the increase in the DSIC rate cap. (CPGLUG Exceptions, p. 8). This is factually incorrect. On page 6 of the RD, it expressly states:

> This Recommended Decision addresses *every pertinent issue raised* in each parties' Briefs. It is noted that the Commission is not required to consider expressly and at length each contention and authority brought forth by a party to the proceeding. *University of Pennsylvania v. Pa. Pub. Util. Comm'n*, 485 A.2d 1217 (Pa.Cmwlth. 1984).

(emphasis added). CPGLUG submitted no testimony in this proceeding and first raised its contentions regarding the sufficiency of the customer protections in its Main Brief. As UGI-CPG argued in its Reply Brief, CPGLUG's arguments were legally deficient, inconsistent with

[10] This exclusively addresses CPGLUG Exception No. 2.

the Commission's prior determinations, and violated the Company's right to procedural due process. (*See* UGI-CPG Reply Brief, pp. 19-22). CPGLUG's challenge was untimely, and the RD rightly did not include a thorough discussion of it as part of the final determination on the merits of this proceeding. The Commission should reject CPGLUG's Exception No. 2, as it is both factually incorrect based on the plain language of the RD, and because the underlying contentions were not properly raised as part of the evidentiary phase of this proceeding.

E. THE COMMISSION SHOULD REJECT THE EXCEPTIONS OF THE OCA AND OSBA ON THE CALCULATION OF THE INCREASED DSIC RATE CAP AND SHOULD ADOPT THE APPROACH ADVOCATED BY UGI-CPG IN ITS EXCEPTIONS.[11]

Both OCA and OSBA have excepted to the RD's methodology to calculate the level of the increased DSIC rate cap. While the Company and I&E also excepted to the findings of the RD on this issue, the Company disagrees with the arguments provided by OCA and OSBA in support of their positions. The Commission should reject the arguments put forward by OCA and OSBA in their Exceptions, and instead adopt the arguments relied upon by UGI-CPG and I&E.

The OCA mischaracterizes the DSIC recovery mechanism and states that the Company will not fail to recover $7 to $9 million. (OCA Exceptions, pp. 10-11). This is incorrect. As the Company pointed out in its Exception No. 2, the amount indicated in UGI-CPG Ex. WJM-3 is incremental recovery, calculated on a quarterly basis, of dollars above the 5% cap that are not currently being recovered, and will never be recovered. Even if the Company files a base rate proceeding, where the plant generating that lost revenue will be incorporated into base rates, that plant will be incorporated at its then depreciated value. Said differently, at the time plant is included in base rates, it will be included at a value less the amount that could have been

[11] This reply exception addresses the following Exceptions: OCA Exception No. 3; and OSBA Exception No. 5.

recovered through the DSIC if the rate cap had been increased at an earlier point in time, thereby defeating Act 11's intent of providing more timely recovery of DSIC-eligible expenses to encourage an acceleration in investments in DSIC-eligible property. OCA is incorrect in its assertion that the Company can, somehow, recover the revenue that is currently being lost on a quarterly basis.

OSBA argues that there is no link between the modified LTIIP and the DSIC rate cap. (OSBA Exceptions, p. 12). As described in UGI-CPG's Reply Exception II(B), *supra*, there is a clear causal relationship between the modified LTIIP and the need to increase the DSIC rate cap. However, as described thoroughly in the Company's Exceptions, the Company agrees that the Commission should not adopt a particular formula in exercising its discretion to grant an increase in the DSIC rate cap. *See* UGI-CPG Exception No. 1. The Commission should reject OSBA Exception No. 5.

For the reasons stated herein, and in the Exceptions of UGI-CPG and I&E, the Commission should not adopt the methodology for the calculation of the increased DSIC rate cap applied in the RD. However, the Commission should similarly reject the arguments employed by OCA and OSBA in their Exceptions, and should adopt the arguments of UGI-CPG in support of its final determination on this issue.

III. CONCLUSION

For the foregoing reasons, UGI Central Penn Gas, Inc. respectfully requests that the Commission deny the following Exceptions:

- OCA Exception Nos. 1, 2 and 3;
- OSBA Exception Nos. 1 through 5; and
- CPGLUG Exception Nos. 1 and 2.

The Company further requests that the Commission affirm the determination in the Recommended Decision that UGI-CPG has met the standard for waiver under 66 Pa.C.S. § 1358(a)(1), that the Commission grant the Company's Exceptions filed on January 4, 2017, and that the Commission allow UGI-CPG to implement a 10% DSIC rate cap subject to one day's notice after a final decision is entered in this proceeding.

Respectfully submitted,

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Date: January 11, 2017