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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
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**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 Appeal to Increase the Maximum Allowable DSIC to 10% of Billed Distribution Revenues
Docket No. P-2016-2537594**

Dear Secretary Chiavetta:

Enclosed, for filing, are the Reply Exceptions of UGI Penn Natural 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 Penn Natural Gas, Inc.
(Docket No. P-2016-2537594)**

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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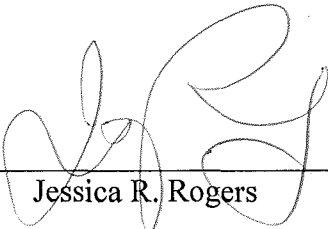
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Date: January 11, 2017



Jessica R. Rogers

**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 :

REPLY EXCEPTIONS OF UGI PENN NATURAL GAS, INC.

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TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. REPLIES TO EXCEPTIONS	1
A. THE STANDARDS ADVANCED BY OCA AND OSBA ARE INCONSISTENT WITH THE PLAIN LANGUAGE AND PURPOSE OF ACT 11 AND THEREFORE SHOULD BE REJECTED.....	1
1. Waiver of the DSIC rate cap for UGI-PNG is Appropriate Under the Commission’s Decision in <i>Columbia</i>	2
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.	4
3. OSBA’s Arguments Against the Standard in the RD Are Unsupported and Irrelevant.	6
B. THE RELATIONSHIP BETWEEN THE MODIFIED LTIP AND THE DSIC IS RELEVANT EVIDENCE OF THE NECESSITY OF THE WAIVER.....	9
C. UGI-PNG HAS MADE THE EVIDENTIARY SHOWING NECESSARY TO MEET THE STANDARD FOR WAIVER OF THE DSIC RATE CAP.	11
1. The Arguments Made by OCA and OSBA on Acceleration Misinterpret the Commission’s Holding in <i>Columbia</i>	12
2. OSBA’s Arguments About the RD’s Consideration of Safety Are Incorrect.	14
3. OCA’s Focus on the Frequency of Base Rate Proceedings is Irrelevant...	15
D. 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-PNG IN ITS EXCEPTIONS.....	16
III. CONCLUSION.....	18

TABLE OF AUTHORITIES

Page

Pennsylvania Administrative Agency Decisions

Pa. P.U.C v. Aqua Pennsylvania, Inc., Docket Nos. R-2008-2079310, *et al.* (Order entered July 23, 2009)..... 3, 4, 6

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)..... *passim*

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 (Order entered January 28, 2016)..... 4, 8

Petition of UGI Penn Natural Gas, Inc. for Approval of its Modified Long Term Infrastructure Improvement Plan, Docket No. P-2013-2397056 (Order entered June 30, 2016)*passim*

Petition of UGI Penn Natural Gas, Inc. for Approval of its Long-Term Infrastructure Improvement Plan/Petition of UGI Penn Natural Gas, Inc. for Approval of a Distribution System Improvement Charge, Docket No. P-2013-2537594 (Orders entered September 11, 2014) 10

Pennsylvania Statutes & Regulations

1 Pa.C.S. § 1922..... 4, 8

66 Pa.C.S. § 1308(e) 4

66 Pa.C.S. § 1352(a)(6)&(7)..... 9

66 Pa.C.S. § 1358(a)(1).....*passim*

66 Pa.C.S. § 1501..... 15

52 Pa. Code § 121.5 9

I. INTRODUCTION

Administrative Law Judge Angela T. Jones issued a Recommended Decision (“RD”) in this proceeding on December 1, 2016. All parties to the proceeding filed Exceptions on January 4, 2017.¹ UGI Penn Natural Gas, Inc. (“UGI-PNG” or the “Company”) files these reply exceptions to the following Exceptions filed by the Office of Consumer Advocate (“OCA”) and the Office of Small Business Advocate (“OSBA”):

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

There is significant overlap among the above identified Exceptions filed by the OCA and OSBA. 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 and OSBA should be denied by the Pennsylvania Public Utility Commission (“Commission”).

II. REPLIES TO EXCEPTIONS

A. THE STANDARDS ADVANCED BY OCA AND OSBA ARE INCONSISTENT WITH THE PLAIN LANGUAGE AND PURPOSE OF ACT 11 AND THEREFORE SHOULD BE REJECTED.²

The RD correctly applied a fact-based analysis, and considered three key factors in determining that UGI-PNG met the requirements of Section 1358(a)(1) for an increase in the DSIC rate cap: (1) UGI-PNG’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. 23); (2) ongoing operational and safety improvements that the safety

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

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

witnesses to this proceeding agreed must be addressed, (RD at pp. 21-22); and (3) the concurrent commitment made by UGI-PNG to significantly accelerate spending associated with DSIC-eligible infrastructure repair and replacement to address these safety improvements. (RD at pp. 20-21). In their Exceptions, OCA and OSBA misconstrue and mischaracterize the RD. OSBA proposes 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’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 LTIP”.³ 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 effectively strip the Commission of its discretion to grant a DSIC waiver. The standards of review proposed by OCA and OSBA should be rejected, and the standard adopted by the RD should be approved.

1. Waiver of the DSIC rate cap for UGI-PNG 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

³ LTIP stands for “long-term infrastructure improvement plan”.

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.⁴

In its Exceptions, OSBA continues to advocate for the extraordinary circumstances standard rejected by the Commission in *Columbia*. (OSBA Exceptions, pp. 10-11). Its proposed

⁴ The evidence supporting the RD is discussed in greater detail in Section (II)(C).

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. § 1922.⁵ As OSBA witness, Mr. Knecht, acknowledged, the “extraordinary circumstances” standard supported by OSBA would make it extremely difficult, if not impossible, for the Commission to grant a petition to waive the DSIC cap. (Tr. 103-104; 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. 104-105; OSBA Ex. IEC-1, p. 1.) Further, Mr. Knecht did not believe that even PGW met his standard. (Tr. 105-106); *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) (“*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 LTIP.” (OCA Exceptions, p. 4). The Company agrees that the Commission’s decision in

⁵ In addition to being inconsistent with the language and intent of Act 11, OSBA’s standard would duplicate power already granted to the Commission under 66 Pa.C.S. § 1308(e) (extraordinary rate relief). (UGI-PNG 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.

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-PNG 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. 20; OCA Main Brief at pp. 6-9; OCA St. No. 1, p. 6.) OCA’s application of its newly articulated standard, however, primarily in Exception No. 2, is identical in every way to the analysis it used when it argued that extraordinary circumstances must be shown. UGI-PNG 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 LTIIIP.” (OCA Exceptions, p. 4). However, the Company’s modified LTIIIP, which was approved in *Petition of UGI Penn Natural Gas, Inc. for Approval of its Modified Long Term Infrastructure Improvement Plan*, Docket No. P-2013-2397056 (Order entered June 30, 2016) (“*Modified LTIIIP*”), is not a “supporting LTIIIP” in the way the Section 1352 LTIIIP is a necessary supporting document for the DSIC under Section 1353. Rather, the modified LTIIIP filed by UGI-PNG is a stand-alone filing, evidencing a significant increase in expenditures on DSIC-eligible property exceeding the original LTIIIP 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 LTIP 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 LTIP, 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, pp. 6-7); (2) the standard adopted in the RD will result in automatic DSIC cap waivers once the Commission approves a modified LTIP (OSBA Exceptions, pp. 5-6); (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-PNG 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 LTIP 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 LTIP*. The modified LTIP 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-PNG Reply Brief, pp. 1-5). The OSBA’s argument therefore should be rejected.

B. THE RELATIONSHIP BETWEEN THE MODIFIED LTIP AND THE DSIC IS RELEVANT EVIDENCE OF THE NECESSITY OF THE WAIVER.⁶

OCA and OSBA mischaracterize the RD's findings regarding the importance of the modified LTIP 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 LTIP alone necessitated waiver of the DSIC rate cap. Rather, the RD considered the Commission's approval of the modified LTIP as one piece of relevant evidence supporting the need for waiver of a DSIC rate cap. (RD at pp. 6-9).

OSBA argues that the RD finds that the DSIC waiver is necessary because the Commission has approved the modified LTIP. (OSBA Exceptions, pp. 8-10). This is clearly not the case. The RD correctly concluded that the Commission's standard under the modified LTIP regulations is identical to the standard to be applied in its consideration of the waiver of the DSIC rate cap. (RD at p. 20). That standard is that the plant and costs to be included and recovered must "ensure and maintain adequate, efficient, safe, reliable and reasonable service." (RD at p. 20, citing 66 Pa.C.S. § 1352(a)(6)&(7)). Therefore, the RD concluded that the Commission's approval of the modified LTIP, 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 an LTIP and waiver of the DSIC rate cap.

OCA makes an oblique reference suggesting that the Commission has distinguished the plant and programs in the LTIP from the cost recovery component of the DSIC. (OCA

⁶ The issue of the content of the modified LTIP 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.

Exceptions, p. 3). This argument is misleading and should be rejected. In its original combined LTIP/DSIC orders, the Commission stated:

While the Commission's Final Implementation Order stated, at page 18, that the LTIP "need only address the specific property eligible for DSIC recovery," the inclusion of arguably non-DSIC-eligible property does not void the LTIP application, nor is the inclusion of such property in the LTIP 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 Penn Natural Gas, Inc. for Approval of its Long-Term Infrastructure Improvement Plan/Petition of UGI Penn Natural Gas, Inc. for Approval of a Distribution System Improvement Charge, Docket No. P-2013-2537594, p. 24 (Orders entered September 11, 2014) (emphasis added). OCA's argument must fail because unlike the original LTIP/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 LTIP and recovered through the waived DSIC rate cap; (2) the costs of the programs; or (3) the necessity of undertaking the identified replacements.⁷ Without evidence in either the *Modified LTIP* proceeding or this DSIC waiver proceeding challenging the necessity and appropriateness of the costs identified in the modified LTIP, the RD appropriately concluded that the Commission's approval of the modified LTIP 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 LTIP was approved. Rather, the Commission's consideration and approval of the modified LTIP is simply evidence that the Company is undertaking additional accelerated investment that is DSIC-eligible.

⁷ The RD has a full discussion on the lack of challenge to the Company's Modified LTIP either in the *Modified LTIP* proceeding or in this proceeding. *See* RD at pp. 20-21.

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, p. 9; 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.

C. UGI-PNG HAS MADE THE EVIDENTIARY SHOWING NECESSARY TO MEET THE STANDARD FOR WAIVER OF THE DSIC RATE CAP.⁸

The RD correctly found that UGI-PNG 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-PNG 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. 8; *Modified LTIIP*, p. 5.)
2. UGI-PNG has committed to spend an additional \$16.8 million over the remaining three years of the original LTIIP plan. (RD at pp. 7-8; *Modified LTIIP*, p. 5.)

⁸ The issue of the sufficiency of the evidence in this proceeding are challenged in the following Exceptions: OCA Exception No. 2; and OSBA Exceptions No. 1 and 4.

3. Under the 5% rate cap, the Company will forego almost \$15 million of DSIC-eligible revenue during the current LTIP period that it could recover if the DSIC rate cap were increased to 10%. (RD at p. 7; UGI-PNG St. 1, p. 7; UGI-PNG Ex. WJM-3.)
4. UGI-PNG made the commitments in its modified LTIP knowing that it would need rate relief in the form of a DSIC rate cap waiver. (Tr. 70-71.)
5. UGI-PNG's DSIC rate cap proposal only reflects about 70% of its total anticipated DSIC spending during the current LTIP period, balancing the Company's interest with that of customers. (RD at p. 29.)
6. UGI-PNG 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 pp. 7-8; *Modified LTIP*, p. 6; UGI-PNG St. 2-R, pp. 2-5.)
7. UGI-PNG 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. 6, 9; UGI-PNG Ex. WJM-3.)
8. Based on UGI-PNG's actual use of the DSIC, at a 5% DSIC rate cap, the DSIC reflects less than two years of DSIC-eligible plant based on the original LTIP investment schedule. The Company has since committed to further acceleration. (RD at p. 6; *Modified LTIP*, p. 6.)
9. Increasing the DSIC rate cap will have a much smaller per customer increase than the Company's last base rate proceeding. (UGI-PNG 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. 8; UGI-PNG St. 1, p. 10.)
11. Even with an increased DSIC rate cap, UGI-PNG 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. 8; UGI-PNG 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 LTIP* 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 LTIPs by more than 20%." (OSBA Exceptions, p. 3). 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 LTIP 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 LTIP*, 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-PNG St. No. 2-R, pp. 2-5; Tr. 70-71, 85-86.) 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. 24). 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. 10-12). 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 LTIP* 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 LTIP is necessary and appropriate in order to address serious safety and reliability issues. (I&E St. No. 1, pp. 9-11; UGI-PNG St. No. 2-R, pp. 2-5; Tr. 70-71, 85-86.)

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. 110.) The RD correctly concluded that Mr. Knecht is not qualified to testify on safety considerations. (RD at p. 24). 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. 8-9; UGI-PNG St. 1, p. 10; UGI-PNG 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.

D. 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-PNG IN ITS EXCEPTIONS.⁹

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-PNG and I&E.

The OCA mischaracterizes the DSIC recovery mechanism and states that the Company will not fail to recover \$15 million. (OCA Exceptions, pp. 10-11). This is incorrect. As the Company pointed out in its Exception No. 2, the amount indicated in UGI-PNG 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 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

⁹ This reply exception addresses the following Exceptions: OCA Exception No. 3; and OSBA Exception No. 5.

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 LTIP and the DSIC rate cap. (OSBA Exceptions, pp. 12-13). As described in UGI-PNG's Reply Exception II(B), *supra*, there is a clear causal relationship between the modified LTIP 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-PNG Exception No. 1. The Commission should reject OSBA Exception No. 5.

For the reasons stated herein, and in the Exceptions of UGI-PNG 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-PNG in support of its final determination on this issue.

III. CONCLUSION

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


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

The Company further requests that the Commission affirm the determination in the Recommended Decision that UGI-PNG 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-PNG 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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