COMMONWEALTH OF PENNSYLVANIA

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January 11, 2017

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 171020

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 Approval to Increase the Maximum Allowable DSIC to 10% of Billed Revenues
Docket No. P-2016-2537609

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Reply Exceptions in the above-referenced proceeding.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

/s/ Erin L. Gannon
Erin L. Gannon
Assistant Consumer Advocate
PA Attorney I.D. #83487

Attachment
cc: Honorable Angela T. Jones
ra-OSA@pa.gov (e-mail only)
Certificate of Service
228746

CERTIFICATE OF SERVICE

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 Revenues	: : : : :	Docket No. P-2016-2537609

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Reply Exceptions, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 11th day of January 2017.

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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 Revenues	Docket No. P-2016-2537609

REPLY EXCEPTIONS OF THE
OFFICE OF CONSUMER ADVOCATE

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Dated: January 11, 2017

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I. INTRODUCTION

On December 5, 2016, the Office of Administrative Law Judge issued the Recommended Decision (R.D.) of Administrative Law Judge Angela T. Jones (ALJ). Exceptions were due on January 4, 2017. The Office of Consumer Advocate (OCA), Office of Small Business Advocate (OSBA) and Central Penn Gas Large Users Group (CPGLUG) excepted to the ALJ's recommended approval of UGI Central Penn Gas, Inc.'s (UGI-CPG or Company) requested waiver of the statutory Distribution System Improvement Charge (DSIC) cap. The 5 percent cap is an important consumer protection and the Company did not show that its waiver was necessary for the utility to ensure and maintain adequate, efficient, safe, reliable and reasonable service.

All parties excepted to the ALJ's recommended new cap of 8.65 percent. UGI-CPG filed Exceptions in favor of a 10 percent cap and the Bureau of Investigation & Enforcement (I&E) filed Exceptions in favor of a 7.5 percent cap, in response to which the OCA files these Reply Exceptions.

The OCA notes that, since the Recommended Decision was issued, the Commission entered an Order denying the request of Columbia Gas of Pennsylvania, Inc. for waiver of the 5 percent cap. Petition of Columbia Gas of Pa., Inc. for a Waiver of the DSIC Cap, Docket No. P-2016-2521993, Order at 49 (Dec. 22, 2016) (Columbia). In Columbia, the Commission specifically rejected the standard for waiver that was applied by the ALJ in this case.

The OCA does not waive its opposition on contested issues because it does not repeat arguments here. Accordingly, the OCA incorporates herein by reference the arguments and analysis contained in its Briefs and Exceptions. For the reasons contained in those filings and below, the Exceptions of UGI-CPG and I&E should be rejected.

II. OCA REPLIES TO EXCEPTIONS

Reply to CPG Exception No. 1: There Is No Evidentiary Basis to Increase the DSIC Cap to 10 Percent.
CPG Exc. at 5-6; R.D. at 28-29; OCA R.B. at 9-10.

The Company argues that the ALJ's method for calculating a DSIC cap should be rejected. CPG Exc. at 3-8. The OCA, I&E and OSBA also filed exceptions to the ALJ's proposal to set a DSIC cap based on the percentage increase in spending on DSIC-eligible plant in the modified LTIIP. See OCA Exc. at 10-11; OSBA Exc. at 13; I&E Exc. at 2-5. All parties agree that this methodology is not supported by the record.

UGI-CPG also argues, however, that the DSIC cap should be increased to 10 percent. CPG Exc. at 5-7. It claims that 10 percent strikes an appropriate balance between the interests of the customer and the Company. Id. Every other party provided expert testimony and/or exceptions opposing an increase to 10 percent. See, e.g., OCA St. 1 at 3-8; OSBA St. 1 at 8-15; I&E St. 1 at 12; CPGLUG Exc. at 4-8. The ALJ agreed with the OCA, OSBA and I&E that the record does not support doubling the DSIC cap. R.D. at 30-32. She noted that UGI-CPG has not filed a base rate case for several years and that the Company conceded that a 10 percent DSIC cap might have no effect on the timing of future base rate filings. Id. at 31. The ALJ properly concluded that a 10 percent cap does not balance the interests of UGI-CPG and its ratepayers. R.D. at 30-32; PGW at 55.

Since the passage of Act 11, the Commission has authorized one waiver of the DSIC cap for Philadelphia Gas Works. Petition of Philadelphia Gas Works for Waiver of Provisions of Act 11, Docket No. P-2015-2501500, Order at 54-55 (Jan. 28, 2016) (PGW). There, the Commission accepted the Company's assertion that the incremental 2.5 percent revenue increase was necessary for the utility to reduce the timeline for at-risk main replacement from 86 years to 48 years. PGW at 10, 14. The Commission declined to permanently increase the utility's DSIC cap to 10 percent.[1] The Commission stated:

> An increase to ratepayers bills is unavoidable if PGW's DSIC is to be raised to a level that is high enough to ensure that significant progress can be made in addressing the poor condition of the Company's infrastructure. Nevertheless, we see no need to further burden customers by guaranteeing that PGW can raise its DSIC even higher—up to a maximum of 10%, or a 100% increase in the current DSIC…

Id. at 54-55. Here, the evidence shows that the Company has been making progress in reducing risk with a DSIC capped at 5 percent. OCA St. 1R at 2. In 2016, the Commission re-approved the same replacement schedule for UGI-CPG for the 2014-2018 LTIIP period that it originally approved in 2014. See Petition of UGI Central Penn Gas, Inc. for Approval of its LTIIP, Docket No. P-2013-2398835, Order at 17 (Sept. 11, 2014); Petition of UGI Penn Natural Gas, Inc. for Approval of its Modified LTIIP, Docket No. P-2013-2398835, Order at 4, 6 (June 30, 2016). Thus, the proposed cap increase is not tied to any reduction in the timeline for replacement.

Likewise, there is no tie between a 10 percent cap and reduced rate case expense. See UGI-CPG St. 1 at 10. The Company concedes that a higher DSIC cap may have no impact at all on the timing of rate filings and does not commit to any stay out if the cap is increased. CPG St. 1R at 12; see OCA St. 1 at 8. In contrast, using the fully forecasted rate year (FFRY) mechanism can accomplish the goal of extending the time between rate cases, without any increase to the statutory 5 percent DSIC cap. 66 Pa. C.S. § 315(e); OSBA St. 1 at 11-12, Table IEc-1. The

[1] The Commission approved a new DSIC cap of 7.5 percent. Subsequently, the Commission considered new information and approved a temporary increase to 8.84 percent to provide recovery of an $11.4 million, one-time undercollection caused by PGW transitioning to an annualized, levelized DSIC. PGW, Order at 17, 26 (July 9, 2016). The Commission required the utility to reduce the DSIC cap to the previously-approved level of 7.5 percent after two years. PGW, Order at 27-28 (July 9, 2016).

FFRY applies to the recovery of all utility costs rather than the subset that is DSIC-eligible. UGI-CPG has not used the FFRY tool and has not filed a base rate case since 2010. Pa. P.U.C. v. UGI Central Penn Gas, Inc., Docket No. Docket No. R-2010-2214415, Order (Aug. 19, 2011) (CPG 2011).

UGI-CPG argues that the requested 10 percent DSIC cap provides an appropriate balance between customers and the Company for three reasons. First, it contends that a 10 percent cap represents a comparable increase to the 7.5 percent cap the Commission granted certain water utilities prior to the passage of Act 11. CPG Exc. at 5-6. The Company notes that the water DSIC is applied to 100 percent of the water customer's total bill, whereas the gas DSIC is not applied to commodity charges on a gas customer's bill. Id. UGI-CPG claims that a higher DSIC cap is appropriate because of the "constraints added to gas utilities by Act 11." Id. The Company ignores that the General Assembly established a 5 percent cap *in addition to* limiting the DSIC to the distribution portion of gas customers' bills. 66 Pa. C.S. § 1358(a)(1)-(2). UGI-CPG's position would use the waiver provision to circumvent the limitations placed on the gas DSIC, in conflict with the plain language of the statute.

Second, UGI-CPG argues that the Company's proposed 10 percent cap on the DSIC charge should be adopted because it is near the mid-point between the existing 5 percent cap and the total charge that would be applicable if all DSIC-eligible projects as of January 1, 2019 were reflected in the DSIC rate (14.49 percent). CPG Exc. at 6, 9. This can only be considered a balancing of interests if the Company is entitled to recover 100 percent of its projected LTIIP spending through the DSIC. The Commission has recognized that Act 11 does not mandate that the Commission guarantee that a utility be able to collect all of its eligible infrastructure investments through a quarterly surcharge. Columbia at 50, 57; Petition of Philadelphia Gas

Works for Waiver of Provisions of Act 11, Docket No. P-2015-2501500, Order at 54-55 (Jan. 28, 2016) (PGW). The Commission stated:

> We agree that the 5% DSIC cap underscores the function of the DSIC, which is to supplement, rather than replace base rate proceedings.

Columbia at 50. This argument is addressed further in the following exception.

Third, UGI-CPG argues that a 10 percent cap is appropriate because it would have a minimal, $2.80 per month impact on the average residential heating customer's bills. CPG Exc. at 7. No increase to customers' bills is just and reasonable, however, because there has been no showing that an increase to the DSIC charge would provide any specific or concrete benefit to ratepayers. Supra at 3-4; OCA M.B. at 11-13; OCA R.B. at 9. As the Commission recently stated in Columbia, the DSIC rate must be just and reasonable under Section 1301 of the Public Utility Code. 66 Pa. C.S. § 1301; Columbia at 9.

For the reasons discussed above, the ALJ properly rejected a 100 percent increase to the DSIC charge because the increase would provide no specific or concrete benefit to customers and the Company's exception should be denied.

Reply to CPG Exception No. 2: The Purpose of the DSIC Is Not to Eliminate All Regulatory Lag.
CPG Exc. at 8-11; OCA Exc. at 10-11.

In the Recommended Decision, the ALJ incorrectly stated that the Company would fail to recover $7 million under her proposed DSIC cap versus $9 million under the existing 5 percent DSIC cap. R.D. at 32. The OCA filed an exception to clarify that the amount at issue is limited to the *depreciation and return on* the $9 million (above the 5 percent DSIC cap) and only until new base rates go into effect. OCA Exc. at 10-11. Moreover, even where the depreciation and return are not recovered through the DSIC, a utility's existing base rates may already be providing a sufficient return on its total investment (DSIC-eligible and non DSIC-eligible). That is how gas utilities have added hundreds of millions of dollars in plant additions without filing a base rate case and without a DSIC. See Pa. P.U.C. v. PECO Energy Co. – Gas Division, Docket No. R-2008-2028394, R.D. at 14-15 (Sept. 17, 2008) (PECO did not file a base rate case in 21 years, during which it increased its rate base by nearly $700 million without a DSIC); Columbia, R.D. at 15 (Oct. 12, 2016) (according to the utility, in 2007, before the passage of Act 11, Columbia doubled its replacement rate for aging mains).

UGI-CPG also filed an exception to clarify that, in the next base rate case, the *depreciated* original cost of all plant investment will be included in rate base. CPG Exc. at 9-10. This is correct. The failure to "fully" recover its DSIC-eligible investment through September 2017, however, is not a persuasive reason to increase the DSIC cap by 5 percent. OCA Exc. at 10-11; CPG St. 1 at 9, 11. The purpose of the DSIC is not to *eliminate* all regulatory lag. Rather as stated in the Act 11 and recognized by the Commission, the purpose is to provide an additional tool for "timely" recovery; that is, to *reduce* regulatory lag.[2] Implementation of Act 11 of 2012, Docket No. M-2012-2293611, Final Implementation Order at 4, 58 (Aug. 2, 2012); 66 Pa. C.S. § 1350 et seq. The Commission made this point in its recent order denying the Columbia Gas petition for waiver. In Columbia, the utility argued that the 5 percent cap allowed recovery of the pretax return and depreciation on less than nine months of eligible plant investment and contended that a 10 percent DSIC cap would increase recovery to seventeen

[2] Lag is actually built into the statutory DSIC calculation because the utility can recover costs only after the funds have been invested. 66 Pa. C.S. § 1357(a)(1)(ii). This lag will exist regardless of the DSIC cap.

months. The Commission found that Columbia could still "timely" recover its eligible investment with a 5 percent DSIC cap (by filing annual base rate cases and using the FFRY mechanism). It stated:

> Nothing in the record convinces us that Columbia has demonstrated a *need* to increase the DSIC cap from 5% to 10% because the current 5% DSIC cap remains sufficient for Columbia to continue to maintain safe and reliable service to all of its customers through the "timely recovery of the reasonable and prudent costs incurred to repair, improve or replace eligible property," consistent with Section 1353 of the Code.

Columbia at 51-52.

Single-issue surcharge authority, even where the General Assembly has specifically authorized it, should be used cautiously, as it imposes additional burdens on ratepayers. The fact is that UGI-CPG has not increased its base rates in 7 years or availed itself of the FFRY mechanism of Act 11. 66 Pa. C.S. § 315(e). Accordingly, and for the additional reasons discussed above, the Company has not shown that it is just and reasonable for it to increase its DSIC rate cap to 10 percent. 66 Pa. C.S. § 1301.

Reply to CPG Exception No. 3: Act 11 Does Not Provide for Retroactive Waiver and the ALJ's Recommendation Does Not Support a Higher DSIC Cap Prospectively.
CPG Exc. at 11-12; R.D. at 29; OCA Exc. at 11-12.

The OCA filed an Exception to the Recommended Decision because the ALJ suggested that waiver of the DSIC cap could be granted retroactively. OCA Exc. at 11. UGI-CPG filed a similar exception, in which it opposed retroactive approval. It states:

> [T]he RD should be revised to adopt an effective date that implements a 10% DSIC rate cap based on one day's notice after a final order is issued, for prospective recovery only.

CPG Exc. at 12. The Company's recommendation for prospective recovery is consistent with Act 11, which does not provide for retroactive waiver of the DSIC cap. 66 Pa. C.S. § 1358(a)(1); OCA Exc. at 11.

UGI-CPG also argues, however, that the Commission should approve a rate cap higher than the 8.65 percent cap reflected in the RD. CPG Exc. at 12. The OCA opposes the Company's request for a higher DSIC cap for the reasons articulated in its Reply to CPG Exception No. 1, *supra*.

Reply to I&E Exception No. 1: There Is No Evidentiary Basis to Increase the DSIC Cap to 7.5 Percent.
I&E Exc. at 3-4; R.D. at 26-27; OCA St. 1R at 2.

As stated in response to the Company's first exception, all parties agree that the methodology used by the ALJ is not supported by the record. OCA Exc. at 10-11; OSBA Exc. at 13; I&E Exc. at 2-5; CPGLUG Exc. at 8; CPG Exc. at 3-8. I&E points out, correctly, that the DSIC cap should not be derived from projections in the LTIIP:

> Pipeline replacement is a fluid, dynamic process that is dependent on earnings, revenues, borrowing, rate of borrowing, pipe being available, workers being available, and permits being approved. A company's LTIIP merely provides a plan by which the company will replace aging infrastructure. Setting the maximum DSIC cap based on an odd formula derived from the LTIIP has never been accepted in prior Commission proceedings and should not be done in the instant proceeding. <u>Further, it may serve to incentivize a company to inflate its LTIIP in order to be granted a higher maximum DSIC cap.</u>

I&E Exc. at 4-5 (emphasis added).

I&E recommends, however, that the DSIC cap should be increased to 7.5 percent. I&E Exc. at 3-4. The OCA disagrees with the underlying premise that UGI-CPG has met the standard for waiver of the statutory 5 percent cap. As discussed in more detail above, taken together, the facts do not establish that UGI-CPG needs to increase the DSIC cap above 5 percent in order to ensure and maintain safe and reliable service. <u>Supra</u> at 2-5; OCA Exc. at 9-10. For example, there is no showing that the current pace of the Company's replacement efforts is unacceptable or that UGI-CPG will accelerate its main replacement if the cap is increased. OCA St. 1 at 6-8; OCA St. 1R at 2-3; OCA St. 1S at 4. Instead, the record shows that the Company has made progress in reducing risk with a DSIC capped at 5 percent. OCA St. 1R at 2.

The OCA and OSBA also opposed I&E's recommended 7.5 percent DSIC cap because it has no basis in the record. OCA witness Mierzwa stated:

> [I&E witness] Patel has presented no analysis to support increasing the DSIC cap to 7.5 percent. That is, he has presented no analysis demonstrating that the 2.5 percent increase in the DSIC cap would resolve his concerns, nor has he analyzed the impact the increase would have on CPG's risk levels.

OCA St. 1R at 2; OSBA St. 1R at 2 (I&E does not provide any calculations or specific criteria explaining why a 7.5 percent cap is more or less reasonable than any other cap).

The ALJ agreed that I&E's proposed 7.5 percent cap was not supported by the record and rejected it. R.D. at 28-29. She found no correlation between the evidence provided in PGW to the evidence provided in this case and stated:

> I&E does not advocate that the record shows a 7.5% capped DSIC is reasonable and balanced versus a 6.5% or 8.5% capped DSIC rate. In fact, the 7.5% seems to be reached simply because that was the figure approved in [PGW] for remediation of aging gas infrastructure. But, I&E does not show that the substantial evidence in the [PGW] proceeding is comparable to the percentage increase in the instant case.

Id. at 29.

In approving an increase in the DSIC cap to 7.5 percent, the Commission found that PGW's circumstances were "unique and exigent." It stated:

> PGW is a cash-flow company that serves the most populous area of the Commonwealth with an infrastructure that contains some of the oldest mains, the most cast iron mains, and the most hazardous leaks in the Commonwealth. Despite PGW's efforts to replace its mains under the existing DSIC, the number of incidents involving breaks in its cast iron mains continue to trend upward.

PGW at 45, n.10. A Staff report recommended aggressive increases to PGW's pace of infrastructure replacement for the safety of the public. Id. at 41, 42. While each waiver petition will be decided on a case-by-case basis, it must be recognized that UGI-CPG has not demonstrated the same severity and exigency as PGW. Given that no evidence was presented in this case in support of an increase to 7.5 percent, however, the OCA submits that it would not be just or reasonable to increase the DSIC cap for UGI-CPG to the 7.5 percent level approved for PGW.

In summary, none of the proposed, higher DSIC caps – 10 percent, 8.65 percent or 7.5 percent – are just and reasonable. The evidence does not establish the need for or reasonableness of DSIC recovery in excess of 5 percent. The OCA submits that the statutory 5 percent DSIC cap should be maintained.

III. CONCLUSION

As set forth above, and in the OCA's Main and Reply Briefs and Exceptions, the OCA respectfully submits that the Exceptions of UGI Penn Natural Gas, Inc. and the Bureau of Investigation & Enforcement should be denied as discussed herein.

Respectfully Submitted,

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