



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

IN REPLY PLEASE  
REFER TO OUR FILE

January 11, 2017

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

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

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

Dear Secretary Chiavetta:

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

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

Sincerely,

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

CBW/sea  
Enclosure

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

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SECRETARY'S OFFICE

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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

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

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

Dated: January 11, 2017

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## I. INTRODUCTION

The Bureau of Investigation and Enforcement (“I&E”) incorporates, by reference, both the Introduction and Procedural History sections contained in its Main Brief of September 22, 2016.<sup>1</sup> After the parties to this proceeding filed Main Briefs, in accordance with the established procedural schedule, I&E, UGI Central Penn Gas, Inc. (“CPG” or “Company”), the Office of the Consumer Advocate (“OCA”), the Office of the Small Business Advocate (“OSBA”), and the Central Penn Large Users Group (“CPLUG”) filed Reply Briefs on September 30, 2016.

On December 5, 2016, Administrative Law Judge Angela Jones (“ALJ”) issued a Recommended Decision (“RD”) approving an increase to CPG’s maximum distribution system improvement charge (DSIC) from 5% to 8.65%. Exceptions to the RD were filed by CPG, I&E, OSBA, CPLUG and OCA on January 4, 2016. I&E now files these timely Reply Exceptions in response to the Exceptions raised by CPLUG, OSBA and OCA.

## II. REPLY EXCEPTIONS

1. **Reply to OCA Exception No. 2: The ALJ Properly Found that CPG Met the Burden for Waiver of the 5 Percent Cap. (OCA Exceptions, pp. 4-10; RD, pp. 21-28).**

The OCA recommended that CPG’s DSIC maximum remain at the current 5%. However, after evaluating all of the testimony, presiding over an evidentiary hearing, and reviewing the Main Briefs and Reply Briefs submitted in this proceeding, the ALJ disagreed with OCA and recommended CPG be granted a waiver of its DSIC cap.

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<sup>1</sup> I&E Main Brief, pp. 1-5.

Of particular note, OCA states that in this proceeding there “has been no showing that the current state of CPG’s infrastructure poses significant safety and reliability issues...”<sup>2</sup> This is simply untrue. I&E did, in fact, show that while the risk for cast iron mains is decreasing, the risk for steel mains is increasing.<sup>3</sup> Just because one set of risks is trending down, does not mean that all other risks to the system should be ignored. The assessment by OCA that the Company’s pipelines are not risky enough to warrant a DSIC cap waiver has little weight. First, OCA Witness Mierzwa’s assessment is based on a single year of data and not the full picture of the Companies’ situation. Further, OCA Witness Mierzwa has not received the gas safety training I&E Witness Patel has received. Mr. Patel has extensive Pipeline Hazardous Materials and Safety Administration (“PHMSA”) Training, has attended over 16 gas safety courses and has performed over 350 gas safety inspections in the field.<sup>4</sup> Mr. Patel is qualified to assess whether a gas pipeline presents any safety risks. In contrast, as noted by the ALJ, the OCA witness is simply not qualified to make safety assessments.<sup>5</sup>

It would not prudent to wait until a utility falls into an extreme state of disrepair to permit a waiver of the DSIC cap maximum. I&E believes the DSIC can and should be used as an effective preventative measure for a natural gas distribution company (“NGDC”). Waiting until a significant safety incident, such as an explosion, occurs before granting a DSIC cap waiver fails to achieve the mission of the DSIC to replace aging infrastructure in order to provide safe and reliable service to the utility customers of

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<sup>2</sup> OCA Exceptions, p. 6.

<sup>3</sup> I&E St. No. 1, p. 11.

<sup>4</sup> Transcript, pp. 73-74.

<sup>5</sup> RD, p. 25.

the Commonwealth. The concern in any DSIC proceeding, particularly those involving NGDCs, must be the maintenance of safe and adequate service. Accordingly, the ALJ correctly found that I&E was qualified to assess CPG's pipeline risk and appropriately determined that the Company met its burden for granting a DSIC cap waiver.

2. **Reply to OSBA Exceptions No. 2 and No. 3 and OCA Exception No. 1 and CPLUG Exception No. 1: The OSBA, OCA, and CPLUG Wrongly Conclude That the ALJs Only Basis for Granting the DSIC Cap Waiver Was the Company's Modified Long-Term Infrastructure Improvement Plan ("LTIIIP"). (OSBA Exceptions, pp. 5-10; OCA Exceptions, pp. 2-4; CPLUG Exceptions, pp. 4-8; RD, pp. 21-28).**

OSBA, OCA, and CPLUG incorrectly imply that the ALJ relied only on the increased spending contained in CPGs modified LTIIIP when determining whether a DSIC cap waiver was warranted. This argument largely ignores the safety concerns the ALJ determined were present in the proceeding.

As stated in the I&E direct testimony there is a link between the DSIC and the LTIIIP:

In order for a utility to implement a DSIC, an LTIIIP must be filed and approved by the Commission. The LTIIIP should address replacement of aging infrastructure and must be sufficient to ensure safe and reliable service. The DSIC provides infrastructure improvement recovery in rates and the LTIIIP provides information on the infrastructure replacements and repairs that are needed.<sup>6</sup>

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<sup>6</sup> I&E St. No. 1, p. 4.

Therefore, as noted by OSBA, a company must have an approved LTIP to be granted a DSIC and, thus, it is necessary to have an approved LTIP to be granted a DSIC waiver.<sup>7</sup> If the LTIP was the only thing that was relied on when determining whether to grant a DSIC waiver, it is possible that a company would simply submit an LTIP with inflated spending in order to obtain a DSIC cap waiver. However, in this proceeding the ALJ also determined that there were safety issues occurring with CPG. Those safety issues in combination with increase LTIP spending were sufficient to warrant a DSIC cap waiver. Therefore, I&E believes the record evidence shows a waiver of the DSIC cap is warranted.

**3. Reply to OCA Exception No. 3: The ALJ Did Not Err in Recommending a Cap Above 5% (OCA Exceptions pp. 10-11; RD, pp. 21-28).**

While, as noted in the I&E Exceptions, I&E agrees with OCA that the ALJ's calculation of a 8.65% DSIC cap had no evidentiary basis,<sup>8</sup> I&E disagrees with the notion that there was no basis to increase the DSIC cap above 5%.

In this proceeding, I&E presented evidence that certain pipeline risks were increasing for CPG. This evidence is uncontroverted as no Party to this proceeding challenged this evidence. CPG, in fact, corroborated this information at hearing.<sup>9</sup> As noted by the ALJ, the only witness in this proceeding to receive training through the Pipeline and Hazardous Materials Safety Administration, was the I&E witness. The ALJ then goes on to state that "[t]he I&E witness has the expertise to make an assessment on

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<sup>7</sup> OSBA Exceptions, p. 8.

<sup>8</sup> I&E Exceptions, pp. 2-5.

<sup>9</sup> Tr. p. 80.

the safety [of the] pipelines. Neither Mr. Mierzwa, the witness for OCA, nor Mr. Knecht, the witness for OSBA, has this expertise.”<sup>10</sup>

The ALJ determined that the standard for whether a DSIC cap waiver should be granted includes whether the utility is providing safe service. As noted above, the OCA and OSBA witnesses are not qualified to make that assessment. The concern in any DSIC proceeding, particularly those involving an NGDC, must be the maintenance of safe and adequate service. As the I&E witness was qualified to assess the risky state of CPG’s pipeline, I&E believes that the record evidence shows that CPG has met its burden for granting a DSIC cap waiver above 5%. Therefore, OCA’s Exception that the ALJ erred in recommending an increase above the 5% cap must be rejected.

**4. Reply to OSBA Exception No. 4: The ALJ Did Not Err in Concluding that a Reduction in Risk is One Reason to Grant a DSIC Waiver (OSBA Exceptions pp. 10-12; RD, pp. 21-25).**

In its Exceptions, the OSBA largely ignores the safety issues raised by I&E and comes to its own conclusion that because all NGDCs have leaks and cast iron and bare steel that need to be replaced there is no reason to grant CPG’s DSIC waiver.<sup>11</sup> The conclusion drawn by OSBA is simply incorrect.

OSBA once again advances the argument that the information provided by I&E is invalid because I&E did not provide enough information about CPG’s risk relative to other NGDCs in the Commonwealth.<sup>12</sup> The comparison requested by OSBA is simply not necessary. A DSIC cap waiver is based on the particular individual circumstances of

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<sup>10</sup> RD, p. 25.

<sup>11</sup> OSBA Exceptions, p. 10.

<sup>12</sup> OSBA Exceptions, p. 11.

each utility, not on how it compares to other utilities. While OSBA attempts to argue that I&E's risk assessment is not relevant to this proceeding because it does not believe I&E presented sufficient evidence comparing risks of NGDCs throughout the Commonwealth, it is clear that this is simply not the case.<sup>13</sup> The I&E witness in this proceeding is employed by this Commission as a Gas Safety Engineer. He has extensive training in pipeline risk and routinely conducts safety inspections on gas distribution systems. OSBA has provided no evidence that its witness is qualified to make any sort of safety assessment. Therefore, it appears that the OSBA assessment that "...public safety considerations do not justify granting a waiver of the DISC cap in this proceeding"<sup>14</sup> is not relevant to this proceeding.

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<sup>13</sup> OSBA Exceptions, p. 11.

<sup>14</sup> OSBA Exceptions, p. 11.



### III. CONCLUSION

For the reasons stated herein, the Bureau of Investigation & Enforcement respectfully requests that the Commission deny the above-referenced exceptions of the Office of the Consumer Advocate, the Central Penn Large Users Group and the Office of Small Business Advocate.

Respectfully submitted,



Carrie B. Wright

Prosecutor

PA Attorney I.D. #208185

Pennsylvania Public Utility Commission  
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P.O. Box 3265  
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Dated: January 11, 2016

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**CERTIFICATE OF SERVICE**

I hereby certify that I am serving the foregoing **Reply Exceptions** dated January 11, 2017, in the manner and upon the persons listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party):

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