**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

Public Meeting held April 20, 2017

Commissioners Present:

Gladys M. Brown, Chairman, Statement, dissenting

Andrew G. Place, Vice Chairman

John F. Coleman, Jr.

Robert F. Powelson

David W. Sweet

Petition of UGI Penn Natural Gas, Inc. for a P-2016-2537594

Waiver of the Distribution System Improvement

Charge (DSIC) Cap of 5% of Billed Distribution

Revenues and Approval to Increase the Maximum

Allowable DSIC to 10% of Billed Distribution Revenues

**OPINION AND ORDER**

# BY THE COMMISSION:

# I. Matter Before the Commission

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions to the Recommended Decision of Administrative Law Judge (ALJ) Angela T. Jones, issued on December 1, 2016. The Exceptions were filed on January 4, 2017, by the following Parties: UGI Penn Natural Gas, Inc. (UGI-PNG or the Company), the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA) and the Commission’s Bureau of Investigation and Enforcement (I&E).[[1]](#footnote-1) Replies to Exceptions were filed on January 11, 2017, by all the Parties that filed Exceptions. For the reasons delineated in this Opinion and Order, we shall grant I&E’s Exceptions, grant, in part, the Exceptions of UGI-PNG, the OSBA and the OCA, and modify the ALJ’s Recommended Decision, consistent with this Opinion and Order.

# II. History of the Proceeding

On February 14, 2012,Governor Corbett signed into lawAct 11 of 2012, (Act 11), which amended Chapters 3, 13 and 33 of the Public Utility Code (Code). 66 Pa. C.S. § 101, *et seq.* Act 11, *inter alia*, provides jurisdictional water and wastewater utilities, electric distribution companies, and natural gas distribution companies (NGDCs) or a city natural gas distribution operation with the ability to implement a distribution system improvement charge (DSIC) to recover reasonable and prudent costs incurred to repair, improve, or replace certain eligible distribution property that is part of the utility’s distribution system. On August 2, 2012, the Commission entered its Order in *Implementation of Act 11 of 2012,* Docket Number M-2012-2293611 (*Final Implementation Order*), which established procedures and guidelines necessary to implement Act 11 and included a Model Tariff for DSIC filings.

On December 13, 2013, UGI-PNG filed a Petition for Approval of a Distribution System Improvement Charge (DSIC Petition), as well as a Petition for Approval of a Long-Term Infrastructure Improvement Plan, at Docket No. P-2013-2397056. UGI-PNG’s DSIC Petition included all of the components required by Act 11 and the *Final Implementation Order*. By Order entered on September 11, 2014, the Commission approved UGI-PNG’s proposed Long-Term Infrastructure Improvement Plan (LTIIP) and DSIC, subject to refund, pending final resolution of four issues that were assigned to the Office of Administrative Law Judge (OALJ).[[2]](#footnote-2) UGI-PNG was able to reach a settlement with the other Parties in the proceeding on the outstanding litigated issues, and the Commission approved the settlement in an Order entered July 8, 2015.[[3]](#footnote-3)

On February 29, 2016, UGI-PNG filed a *Petition for Approval of a Modification to its Long-Term Infrastructure Improvement Plan* at Docket No. P-2013-2397056 *(Modified LTIIP Petition).* In the *Modified LTIIP Petition*, UGI-PNG identified increased DSIC-eligible investments that triggered the Commission’s requirement at 52 Pa. Code § 121.5(a) because it exceeded 20% of the cost of the original plan. The increased investment relates to the three categories of previously identified projects, including system reliability improvements, service replacements, and mandated relocations of utility facilities. The Commission approved the *Modified LTIIP* *Petition* on June 30, 2016.[[4]](#footnote-4)

On March 31, 2016, UGI-PNG filed a Petition for a waiver pursuant to Section 1358(a) of the Code, 66 Pa. C.S. § 1358(a) (Petition), requesting the Commission’s approval of the following: (1) a waiver of the DSIC cap of 5% of billed distribution revenues; and (2) an increase of the maximum allowable DSIC from 5% to 10% of billed distribution revenues. The Petition sought implementation of the waiver to become effective July 1, 2016, subject to hearing and refund, since UGI-PNG’s DSIC rate had already reached the 5% cap.

On April 20, 2016, the OCA filed a Notice of Intervention, Public Statement and an Answer to the Petition. On the same day, the OSBA filed a Notice of Intervention, Public Statement and an Answer. On May 6, 2016, I&E filed a Notice of Appearance.

A prehearing conference was held on June 17, 2016. Counsel for UGI-PNG, I&E, the OCA, and the OSBA participated.

All Parties filed their respective direct, rebuttal and surrebuttal testimony.

On September 8, 2016, an evidentiary hearing was held for the purpose of cross examining witnesses and admitting into the record the prepared testimony and exhibits after timely motions and objections were addressed. UGI-PNG, I&E, the OCA, and the OSBA participated in the evidentiary hearing. During the hearing, UGI-PNG, I&E, the OCA, and the OSBA, presented written testimonies and exhibits for admission into the record. UGI-PNG, I&E, the OCA and the OSBA each moved to have their exhibits and written testimonies entered into the record. As there were no objections, all of the Parties’ testimony and/or exhibits were admitted into the record during the hearing.

On September 12, 2016, the OSBA’s late-filed exhibit was admitted as there were no objections from the other Parties.

On September 21, 2016, by a written request, counsel for UGI-PNG presented corrections to the transcript for accuracy pursuant to 52 Pa. Code § 5.253(b). UGI-PNG’s request was granted as there were no objections.

The Parties filed Main Briefs on September 22, 2016, and Reply Briefs on September 30, 2016. The record closed on September 30, 2016, upon receipt of the Reply Briefs. The evidentiary hearing generated a transcript of 117 pages.

On October 26, 2016, the Parties were given official notice of the *Modified LTIIP Petition,* at Appendix B, pursuant to 52 Pa. Code § 5.408. Due to the official notice, the record was reopened pursuant to 52 Pa. Code § 5.571(d)(1).

By letter dated November 3, 2016, the OSBA indicated that while it did not object to the official notice, the entire *Modified LTIIP Petition* should be noticed so that the information could be placed in context. The OSBA also suggested that the *Commission-approved Modified LTIIP* should be given notice as well. No other party objected or otherwise requested alternatives to the official notice.

By Order dated November 4, 2016, the ALJ granted the OSBA’s suggestion and modified the official notice to the entire Petition including the appendices to the *Modified LTIIP* *Petition,* but denied the OSBA’s suggestion to take official notice of the *Commission-approved Modified LTIIP*. The record was then closed on November 4, 2016, with the ruling on the official notice.

In the Recommended Decision, issued on December 1, 2016, the ALJ granted UGI-PNG’s request to waive the DSIC cap but denied the Company’s request to increase the DSIC cap to 10%. Alternatively, the ALJ recommended a DSIC cap waiver increase of 6.89%. R.D. at 29, 33.

The Parties filed Exceptions and Replies to Exceptions as previously noted.[[5]](#footnote-5)

# III. Legal Standards

In this Opinion and Order, we will address whether UGI-PNG has met the standards under Act 11 for: (1) a waiver of the current DSIC cap of 5% of billed distribution revenues; and (2) approval of an increase of the current DSIC cap from 5% to 10% of billed distribution revenues.

## A. General Legal Standards

As the petitioner or moving party, UGI-PNG has the burden of proof in this proceeding pursuant to Section 332(a) of the Code. 66 Pa. C.S. § 332(a). To establish a sufficient case and satisfy the burden of proof, UGI-PNG must show, by a preponderance of the evidence, that the relief sought is proper under the circumstances. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied,* 529 Pa. 654, 602 A.2d 863 (1992). That is, UGI-PNG’s evidence must be more convincing, by even the smallest amount, than that presented by an opposing party. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, this Commission’s decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC,* 489 Pa. 109, 413 A.2d 1037 (1980).

Upon the presentation by UGI-PNG of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of UGI-PNG shifts to an opposing party. If the evidence presented by an opposing party is of co-equal value or “weight,” the burden of proof has not been satisfied. UGI-PNG now has to provide some additional evidence to rebut that of the opposing party. [*Burleson v. Pa. PUC,* 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff’d,* 501 Pa. 433, 461 A.2d 1234 (1983).](http://www.lexis.com/research/buttonTFLink?_m=0d7e78528297490763e78babd487bc42&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b2006%20Pa.%20PUC%20LEXIS%20102%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=16&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b66%20Pa.%20Commw.%20282%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=9&_startdoc=1&wchp=dGLzVzz-zSkAz&_md5=44d0f4cf51bc1159652e85695542a09d) While the burden of going forward with the evidence may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. PUC,* 768 A.2d 1217 (Pa. Cmwlth. 2001).

The ALJ made twenty-five Findings of Fact and reached twenty-three Conclusions of Law. R.D. at 6-9, 30-32. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

Before addressing the Exceptions, we note that any issue or Exception that we do not specifically delineate shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the parties. [*Consolidated Rail Corp. v. Pa. PUC,* 625 A.2d 741 (Pa. Cmwlth. 1993);](file://C:\research\buttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c\cite%3e&_butType=3&_butStat=242&_butNum=5&_butInline=1&_butinfo=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b625%20A.2d%20741%5d%5d%3e%3c\cite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=ad2b02d95c2a9216e83b92a3570d4785) *also see, generally,* [*University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).](file://C:\research\buttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c\cite%3e&_butType=3&_butStat=242&_butNum=6&_butInline=1&_butinfo=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b485%20A.2d%201217%5d%5d%3e%3c\cite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=9b1cc8319afd12440738bb82d74455ef)

## B. Act 11 Legal Standards Applicable to this Proceeding

Section 1350 of the Code, 66 Pa. C.S. § 1350, establishes a DSIC mechanism that allows certain utilities, including electric distribution companies; NGDCs, such as UGI-PNG; city natural gas operations; and water and wastewater companies, with distribution or collection systems to recover the costs related to the repair, improvement, and replacement of eligible property outside of a rate case. Section 1351 of the Code sets forth the definition for “eligible property” for each utility type. 66 Pa. C.S. § 1351. Section 1351(2) provides as follows:

(2) For natural gas distribution companies and city natural gas distribution operations, eligible property shall include:

(i) Piping.

(ii) Couplings.

(iii) Gas services lines and insulated and noninsulated fittings.

(iv) Valves.

(v) Excess flow valves.

(vi) Risers.

(vii) Meter bars.

(viii) Meters.

(ix) Unreimbursed costs related to highway relocation projects where a natural gas distribution company or city natural gas distribution operation must relocate its facilities

(x) Other related capitalized costs.

66 Pa. C.S. § 1351(2).

As a precondition to the implementation of a DSIC, Act 11 requires that a utility must file a LTIIP with the Commission and specifies the information to be included in the LTIIP. 66 Pa. C.S. § 1352. Section 1353(a) of the Code explains the process for requesting approval of a DSIC, and allows a NGDC to petition the Commission for approval of a DSIC “to provide for the timely recovery of the reasonable and prudent costs incurred to repair, improve or replace eligible property in order to ensure and maintain adequate, efficient, safe, reliable and reasonable service.” 66 Pa. C.S. § 1353(a).

Section 1357(a) of the Code establishes that the DSIC shall be calculated to allow for the recovery of the fixed cost of eligible property that has not “been reflected in the utility’s rates or rate base” and has been “placed in service during the three-month period ending one month prior to the effective date of the [DSIC].” 66 Pa. C.S. § 1357(a)(1)(i),(ii). Section 1357 of the Code also addresses, in detail, the elements of the DSIC computation. The DSIC calculation is described as follows:

(d) Calculation.

(1) The distribution system improvement charge shall be expressed as a percentage carried to two decimal places and shall be applied in a manner consistent with section 1358 (relating to customer protections) to each customer under the utility's applicable rates and charges. The charge shall not be applied to amounts billed for public fire protection service by water utilities and the State tax adjustment surcharge.

(2) The distribution system improvement charge shall be calculated by dividing one-fourth of the annual fixed costs associated with all eligible property under the distribution system improvement charge by the projected revenue for the quarterly period during which the distribution system will be collected. The projected revenues shall not include revenues from public fire protection service earned by water utilities and the State tax adjustment surcharge.

(3) Supporting data for each quarterly update shall be filed with the commission and served upon the commission, the Office of Consumer Advocate and the Office of Small Business Advocate at least ten days prior to the effective date of the update.

66 Pa. C.S. § 1357(d).

Section 1358 of the Code provides various customer protections. Section 1358(a), 66 Pa. C.S. § 1358(a), which establishes a general rate cap, is particularly significant to this proceeding. Section 1358(a), provides, as follows:

(1) Except as provided under paragraph (2), the distribution system improvement charge may not exceed 5% of the amount billed to customers under the applicable rates of the wastewater utility or distribution rates of the electric distribution company, natural gas distribution company or city natural gas distribution operation. The commission may upon petition grant a waiver of the 5% limit under this paragraph for a utility in order to ensure and maintain adequate, efficient, safe, reliable and reasonable service.

(2) A distribution system improvement charge granted to a water utility under former section 1307(g) (relating to sliding scale of rates; adjustments) or this subchapter may not exceed 7.5% of the amount billed to customers. All proceedings, orders and other actions of the commission related to a distribution system improvement charge granted to a water utility and all practices and procedures of a water utility operating under a distribution system improvement charge prior to the effective date of this paragraph shall remain in effect unless specifically amended or revoked by the commission.

66 Pa. C.S. § 1358(a)

Section 1358(c) of the Code, 66 Pa. C.S. § 1358(c), provides that absent an express limitation on existing ratemaking authority, the Commission retains its full and existing ratemaking authority. Accordingly, the Commission has the full power and authority under the Code to examine, investigate, and audit any and all aspects regarding the data, operation, and implementation of the DSIC to the same extent that it would review a non-DSIC rate matter. As such, Section 1301 of the Code, which requires that “[e]very rate made, demanded, or received by any public utility . . . shall be just and reasonable, and in conformity with regulations or orders of the commission,” applies to the DSIC rate in this proceeding. Section 1358(e) requires that all DSICs shall be subject to audits by the Commission and annual reconciliation based on a period consisting of the twelve months ending December 31 of each year, or quarterly reconciliation. 66 Pa. C.S. § 1358(e)(1)(i),(ii).

# IV. UGI-PNG’s Petition

## A. Overview

By its Petition, UGI-PNG seeks a waiver of Section 1358(a) of the Code, 66 Pa. C.S. § 1358(a), to increase the DSIC cap from 5% to 10% of billed distribution revenues due to the Company’s substantial ongoing investment in DSIC-eligible plant with a potential for less frequent base rate case filings. Petition at 5, 7. According to UGI-PNG, it has already exceeded the 5% DSIC cap due to its substantial ongoing investment in DSIC-eligible plant. The Company asserted that the 10% increase in the DSIC cap would allow the Company to maintain its accelerated main replacement program and ensure that customers receive safe and reliable service consistent with Section 1501 of the Code, 66 Pa. C.S. § 1501. UGI-PNG indicated that even with the 10% DSIC cap, it would exceed the cap well before the end of the current modified LTIIP period. According to the Company, consistent with the *Commission-approved Modified LTIIP*, UGI-PNG is currently investing approximately $25 million per year in DSIC-eligible plant or an 80% increase from the 2009 to 2011 investments, and anticipates spending approximately $85.5 million from January 2016 through December 2018. *Id.* at 6. UGI-PNG further noted that without the increase, it would forego more than $7.8 million in revenue associated with DSIC-eligible plant investment by October 1, 2017. The Company averred that the 10% increase in DSIC cap would only add an additional $2.40[sic][[6]](#footnote-6) to its customers’ monthly bills and that this incremental cost is minimal compared to the noticeable benefits that would result from the accelerated infrastructure replacement. *Id.* at 6-9.

However, while in support of the waiver request, I&E proposes a 7.5% increase instead of the 10% increase requested by the Company. On the other hand, the OCA and the OSBA are opposed to UGI-PNG’s Petition, and have raised a number of issues regarding UGI-PNG’s DSIC cap waiver request as addressed below.

## B. Standard for Waiver of the 5% DSIC Cap

### 1. Positions of the Parties

#### a. UGI-PNG’s Position

UGI-PNG, in its Petition, requested a waiver of the statutory requirement that a DSIC be capped at 5% of a utility’s billed distribution revenues. Petition at 1. UGI-PNG states that Section 1358 of the Code, 66 Pa. C.S. § 1358, permits a waiver of the statutorily set 5% DSIC rate cap under Section 1353 of the Code, 66 Pa. C.S. § 1353, if a utility demonstrates that the initial 5% DSIC cap is insufficient to support the utility’s current and planned levels of DSIC-eligible replacement and spending. UGI-PNG M.B. at 6. According to UGI-PNG, the statutory standard for the initial DSIC, waiver of the 5% DSIC cap, and approval of the LTIIP are identical, which is “to ensure and maintain adequate, efficient, safe, reliable and reasonable service.” *Id.* (citing 66 Pa. C.S. § 1352(a)(6) and (7); 66 Pa. C.S. § 1353(a); and 66 Pa. C.S. § 1358(a)(1)).

UGI-PNG argued that it has met the standard for waiver of the DSIC cap for the following reasons. First, UGI-PNG contended that by approving its modified LTIIP, the Commission acknowledged the Company’s DSIC-eligible projects are necessary to ensure and maintain adequate, efficient, safe, reliable and reasonable service. The Company indicated that the current 5% DSIC cap is insufficient to support the investments identified in its modified LTIIP, especially because it has reached the 5% DSIC cap as of April 1, 2016.[[7]](#footnote-7) UGI-PNG M.B. at 7-9.

UGI-PNG further averred that even before Act 11 was enacted, the Commission demonstrated its support for accelerated main replacement efforts and continuation of such efforts in the Commission’s approval of Aqua Pennsylvania Inc.’s (Aqua PA’s) request to increase its DSIC cap from 5% to 7.5%. UGI-PNG argued that similar to the *Aqua PA Order,*[[8]](#footnote-8) the Company identified additional areas of DSIC-eligible spending that will be addressed by its modified LTIIP. *Id.* at 14-15 (citing *Aqua PA Order*). The Company further argued that subsequent to the enactment of Act 11, the Commission approved Philadelphia Gas Works’ (PGW’s) petition for waiver of the 5% DSIC cap. UGI-PNG emphasized that this Commission action again encouraged the acceleration of main replacement by allowing a waiver and increased PGW’s DSIC cap. UGI-PNG M.B. at 15-16 (citing *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)(*PGW Order)* at 41-44.

UGI-PNG averred that on the contrary, the standard proposed by the OCA and the OSBA in opposition to the Company’s request[[9]](#footnote-9) should be rejected because it requires a utility’s system to be in a state of disrepair or for the utility to be at the point of failing in its ability to provide safe and reliable service in order to be eligible for a DSIC cap waiver. UGI-PNG M.B. at 12-14. According to UGI-PNG, going by the opposing Parties’ standard, no investor-owned utility could qualify for the implementation of the DSIC or a waiver of the DSIC cap. The Company argued that using the inability of a utility to provide safe and reliable service as a standard for granting the DSIC cap waiver effectively places the utility in violation of Section 1501 of the Code, is inconsistent with the legislative intent of both Act 11 and Section 1501 of the Code, and should be rejected. *Id.* at 16-19.

#### b. I&E’s Position

I&E agreed that UGI-PNG has met its burden of proof to show that a waiver of the 5% DSIC cap is warranted. I&E M.B. at 7. I&E averred that UGI-PNG met the standard for waiver of the DSIC cap because the Company’s existing infrastructure poses safety concerns for I&E’s Gas Safety Division and the Company’s current level of investment may not be so easily sustained absent a waiver. *Id.* at 8-9. I&E argued that the Company has demonstrated in its modified LTIIP that the additional DSIC funding would be prudently used to address the safety concerns identified by I&E’s Gas Safety Division. *Id.* at 9-10.

According to I&E, as the only Party in this proceeding with an obligation and authority to inspect UGI-PNG’s pipelines for safety-related issues and enforcement of safety regulations pursuant to 49 C.F.R. § 192, it believes the waiver should be granted to allow UGI-PNG to address the safety issues identified in the Company’s distribution system. In particular, I&E’s Gas Safety witness, Sunil Patel, testified that “compared to other [natural gas distribution companies (]NGDCs[)], UGI-PNG has the highest number of total leaks per mile.” I&E M.B. at 10 (citing I&E St. 1 at 11-12). I&E averred that the Company has an average of 1.65 total leak per mile compared to a statewide average of 0.95 total leaks per mile. I&E further indicated that the Company’s corrosion-related leaks have also increased by 64% from 2013 to 2015. I&E M.B. at 10-11 (citing I&E St. 1 at 10). I&E indicated that denying the Company’s waiver request could deter the Company’s effort to replace its at-risk mains and result in disastrous consequences for the Company, including explosion. Thus, I&E concluded that the proactive approach undertaken by the Company should be encouraged by granting the waiver request in order to prevent the occurrence of the identified disastrous incidents. I&E M.B. at 11-15.

#### c. The OCA’s Position

The OCA is opposed to UGI-PNG’s DSIC waiver request. The OCA stated that the Company has not satisfied the statutory standard nor shown that Commission discretion should be exercised in waiving the 5% DSIC cap. The OCA contended that UGI-PNG’s waiver request should be denied because the Company failed to carry its burden of proof to demonstrate that without the waiver, UGI-PNG cannot ensure and maintain adequate, efficient, safe, reliable and reasonable service. OCA M.B. at 4-5. The OCA believes UGI-PNG has not met the requirement for granting the waiver. The OCA averred that the Company has failed to demonstrate that its infrastructure currently poses safety and reliability issues or that its current replacement efforts are inadequate. *Id.* at 5-6 (citing *September 2014 UGI-PNG DSIC Order* at 17; *Commission-approved modified LTIIP* at 4, 6).

In addition, the OCA indicated that the record shows that the Company has made progress in reducing risks in its distribution system using the current 5% DSIC cap. OCA M.B. at 6 (citing OCA St. 1R at 2). The OCA argued that UGI-PNG’s system appears to be in much better shape when compared to PGW’s system when the Commission granted a waiver for PGW. Specifically, the OCA averred that while the Commission granted a waiver so that PGW could reduce its cast iron main replacement period from eighty-six to forty-eight years, UGI-PNG is on track to replace all of its cast iron mains within fourteen years and its bare steel mains within thirty years at the current 5% DSIC cap. OCA M.B. at 7 (citing *PGW* *Order* at 10, 14, 41-42; *September 2014 UGI-PNG DSIC Order* at 8-9, 19; *Commission-approved modified LTIIP* at 6, 17).

#### d. The OSBA’s Position

The OSBA is also opposed to UGI-PNG’s 5% DSIC cap waiver request. The OSBA argued that considering the restrictions in Act 11 regarding approval of waiver of the 5% DSIC cap, the Company did not present sufficient evidence to warrant a waiver. In particular, the OSBA averred that Section 1358 imposes a “hard cap” on the DSIC that can only be waived under extraordinary circumstances, which the OSBA believes the Company has failed to demonstrate in this proceeding. OSBA M.B. at 5-7 (citing 66 Pa. C.S. § 1353; 66 Pa. C.S. § 1358; OSBA St. 1-S at 4; OSBA St. 1 at 6-7). The OSBA argued that “if simply exceeding the cap is sufficient justification for a waiver, there is obviously no point to including the cap as a basic consumer protection within the legislation.” OSBA M.B. at 7-8 (citing OSBA St. 1 at 8). The OSBA, however, believes the legislative history and the legislature’s use of an explicit numerical cap for the DSIC in Act 11 is an indication that the waiver should not be granted relatively easily as presented by the Company in the instant proceeding. OSBA M.B. at 8-12.

### 2. ALJ’s Recommendation

The ALJ addressed two aspects regarding the Petition in this case: (1) the appropriate standard for waiver of the 5% DSIC cap and whether it was met; and (2) the new recommended DSIC cap rate of billed distribution revenues of UGI-PNG. R.D. at 11-29.

In her analysis of the appropriate standard for waiver of the 5% DSIC cap, ALJ Jones stated that:

a waiver to increase the 5% DSIC rate cap imposed by statute may be granted when a utility shows that the initial 5% DSIC rate cap is not sufficient to support its planned levels of plant replacement and DSIC-eligible spending corresponding to the utility’s LTIIP.

R.D. at 19 (citing 66 Pa. C.S. § 1358(a)). The ALJ explained that similar to UGI-PNG’s request in the instant proceeding, in the *Aqua PA Order*, the Commission increased Aqua PA’s DSIC when the utility demonstrated that the 5% DSIC cap was not sufficient to address its planned investment levels for DSIC-eligible spending. R.D. at 19 (citing *Aqua PA Order*). The ALJ also highlighted Section 121.5 of the Commission’s Regulations, which allows revision to an initial LTIIP, and in this case, to accommodate increased spending of UGI-PNG’s DSIC-eligible plant investments. R.D. at 19 (citing 52 Pa. Code § 121.5.).[[10]](#footnote-10)

The ALJ stated that UGI-PNG’s modified LTIIP qualifies as a “major modification” because it increased the total estimated cost of the company’s original LTIIP by 24.5% over the remaining three years of the plan. R.D. at 19-20 (citing 52 Pa. Code § 121.2(iii); UGI-PNG M.B. at 20). The ALJ further indicated that no Party disputed the fact that UGI-PNG’s DSIC-eligible plant investments has gone beyond 5% of the Company’s distribution revenues or challenged the proposed spending in the modified LTIIP as inaccurate or unreasonable expenses. According to the ALJ, the opposing Parties in the instant proceeding, who were equally Parties to the modified LTIIP proceeding, did not dispute the fact that the modified LTIIP produced an increase in planned spending for UGI-PNG’s DSIC-eligible plant investments by 24.5%. More importantly, the ALJ noted that the Commission’s approval of the modified LTIIP is an acknowledgement of the underlying premise that the increased total cost would ensure and maintain adequate, efficient, safe, reliable, and reasonable service. R.D. at 20-21 (citing 66 Pa. C.S. § 1352(a)(6)&(7)).

ALJ Jones stated that based on the projections put forth by UGI-PNG in the instant proceeding, the evidence is very clear that the Company has reached the 5% DSIC cap and pursuant to the modified LTIIP, the Company would exceed the cap through the remaining 3-year term of the modified LTIIP.[[11]](#footnote-11) The ALJ reiterated that the Commission approved the modified LTIIP because its contents met the statutory standard and noted that she supports the premise that the standard for the modification of the LTIIP is the same standard for the waiver of the 5% DSIC cap. R.D. at 23. The ALJ found that any other interpretation would be at odds with the plain language of the Code, would be inconsistent with the requirements that rates be “just and reasonable,” and would make the Commission’s Regulations illogical. *Id.* (citing 1 Pa. C.S. § 1932).

Additionally, the ALJ indicated that in *the* *PGW Order*, the Commission determined that an increase is proper when the current state of a utility’s distribution infrastructure improvements, repairs or replacements to maintain safe, adequate and reasonable service, require spending for DSIC-eligible plant that exceeds the current 5% DSIC cap. The ALJ determined that UGI-PNG has demonstrated that as of April 1, 2016, the Company’s DSIC spending exceeded 5% and none of the Parties to this proceeding challenged this fact. R.D. at 23 (citing *PGW Order* at 41; UGI-PNG Exh. WJM-3). The ALJ observed that similar to *the PGW Order*, the Commission determined in *Commission-approved Modified LTIIP* that approval of UGI-PNG’s modified LTIIP would allow the Company to ensure and maintain efficient, safe, adequate, reliable and reasonable service to its ratepayers. R.D. at 24.

Next, the ALJ dismissed the OSBA’s efforts to challenge the data put forth by I&E in support of the Company’s waiver request. The ALJ acknowledged I&E’s comparison of the leaks in UGI-PNG’s system to other NGDCs in the state including I&E’s determination that the leaks detected in the Company’s system are a safety risk. R.D. at 22 (citing Tr. at 80; I&E St. 1 at 11-12). The ALJ further acknowledged I&E’s expertise in pipeline safety and the importance of I&E’s witness’ assessment of the Company’s system.[[12]](#footnote-12) R.D. at 24. The ALJ noted that whether or not the number of leaks in UGI-PNG’s system is comparable to other NGDC’s, the safety of the Company’s system is more important than anything else and an accelerated main replacement demonstrated in the modified LTIIP would help to reduce the risk of leaks in the Company’s system. *Id.* at 22. The ALJ also dismissed the opposing Parties’ argument that the Company does not need the waiver to accelerate the replacement of its distribution infrastructure because UGI-PNG is committed to the modified LTIIP whether or not the Commission grants the waiver request. *Id.* at 25 (citing OSBA M.B. at 14; OCA M.B. at 5-6).

Finally, in rejecting the opposing Parties’ argument that no extraordinary circumstance has been presented by the Company to warrant a waiver of the DSIC, the ALJ noted that the only DSIC waiver granted by the Commission since Act 11 was enacted was in the *PGW Order*. The ALJ explained that the Commission’s approval of PGW’s waiver request was not limited to extraordinary circumstances. Rather, the Commission relied on a combination of substantial evidence on the record that justified accelerating the replacement of PGW’s aging infrastructure and how the repair, improvement or replacement would help PGW ensure and maintain adequate, efficient, safe, reliable and reasonable service. RD. at 23-25. According to the ALJ, UGI-PNG has demonstrated that up to 14.09% of its distribution revenue is needed to implement the modified LTIIP and that absent the waiver it might have to file a base rate case and spend significant amounts to sustain its financial health.[[13]](#footnote-13) *Id.* at 26 (citing UGI-PNG Exh. WJM-3).

Thus, the ALJ granted UGI-PNG’s waiver request stating that the Company provided substantial evidence that warrants granting the waiver request because the modified LTIIP is approved for “the manner in which the replacement of aging infrastructure will be accelerated and how the repair, improvement or replacement will ensure and maintain adequate, efficient, safe, reliable and reasonable service.” R.D. at 23-26.

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### 3. Exceptions and Replies

#### a. OCA’s Exceptions Nos. 1 and 2 and UGI-PNG and I&E’s Replies

In its Exception No. 1, the OCA contends that the ALJ’s recommendation approving UGI-PNG’s waiver request should be denied because she applied an incorrect standard for waiver of the 5% DSIC cap. The OCA asserts that unlike the Commission’s decision in *Columbia* *DSIC Waiver Order* and the *Final Implementation Order*, the ALJ created a new standard that the waiver can be granted “when a utility shows that the initial 5% DSIC rate cap is not sufficient to support its planned levels of plant replacement and DSIC-eligible spending corresponding to the utility’s LTIIP.” OCA Exc. at 2-3 (citing R.D. at 19; *Columbia* *DSIC Waiver Order*; *Final Implementation Order*).

The OCA cites to the ALJ’s explanation that:

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

OCA Exc. at 3 (citing R.D. at 21). The OCA asserts that the ALJ’s proposed standard, which is not supported by the plain language and legislative history of Act 11 or prior Commission decisions, “would abolish the protections of the DSIC cap, limiting its application to ‘initial’ DSICs only.” OCA Exc. at 3 (citing OCA R.B. at 3-7). Further, the OCA argues that the application of the ALJ’s standard would fundamentally change the Commission’s existing process for review of LTIIP modifications, which does not address whether the plant included in the LTIIP is DSIC-eligible or how the costs will be recovered. OCA Exc. at 3 (citing *UGI-PNG 2014 DSIC Order*; *Petition of Peoples TWP, LLC for Approval of its LTIIP,* Docket No. P-2013-2344595 (Order entered May 23, 2013) *(Peoples LTIIP Order)* at 42-43; *Petition of Duquesne Light Co. for Approval of its LTIIP,* Docket No. P-2016-2540046 (Order entered September 15, 2016) *(Duquesne LTIIP Order)*.

Finally, the OCA explains that the correct standard, which requires the utility to establish a need for the waiver beyond the Commission’s approval of a supporting LTIIP, was upheld by the Commission in *Columbia* *DSIC Waiver Order*, in which the Commission stated:

We also agree with the ALJ’s conclusion that more evidence is required for approval of a waiver of the 5% DSIC cap or limit in Section 1358, than is required in Section 1353. Therefore, we find no merit in Columbia’s argument that the same standard should be applied in approving both the initial DSIC request and the 5% DSIC cap waiver request.

OCA Exc. at 4 (citing *Columbia* *DSIC Waiver Order* at 49).

In its Exception No. 2, the OCA argues that the ALJ erred in finding that UGI-PNG met the burden for waiver of the 5% DSIC cap. The OCA contends that the record does not support the ALJ’s recommendation for the following reasons. First, the OCA emphasizes that the ALJ’s reliance on the Commission’s approval of the modified LTIIP in granting the waiver request is misplaced. OCA Exc. at 4 (citing R.D. at 26). Citing to *Columbia* *DSIC Waiver Order* and *PGW Order*, the OCA reiterates that the Commission’s approval of the LTIIP or modified LTIIP does not necessarily mean an acceleration of main replacement or that the utility can collect all of its DSIC-eligible infrastructure investments through the DSIC. The OCA asserts that UGI-PNG’s waiver request is not tied to an acceleration of its main replacement. Rather, UGI filed its modified LTIIP because its projected spending increased. The OCA argues that in approving the modified LTIIP, the Commission essentially reapproved the same replacement schedule for UGI-PNG that it originally approved in 2014. OCA Exc. at 4-6 (citing *Columbia* *DSIC Waiver Order*; *PGW Order*; *September 2014* *UGI-PNG DSIC Order* at 17; *Commission-approved Modified LTIIP*).

Secondly, contrary to the ALJ’s identification of potential safety and reliability issues with UGI-PNG’s system, the OCA contends that UGI-PNG’s current rate of replacement is adequate and that there is no evidence of safety or reliability concerns with the Company’s distribution system. According to the OCA, unlike in the *PGW Order*, in which the Commission approved a waiver of the DSIC cap to enable PGW to reduce its replacement of cast iron mains from eighty-six to forty-eight years, UGI-PNG maintains the same replacement schedule as its initial LTIIP. OCA Exc. at 6-7 (citing *PGW* *Order* at 10, 14; *September 2014* *UGI-PNG DSIC Order* at 17; *Commission-approved Modified LTIIP* at 4, 6). The OCA points out that unlike the *PGW Order*, in which 66% of PGW’s mains were at risk, and gas leaks and broken pipes were notably on the increase, the same cannot be said of UGI-PNG’s system. Rather, the OCA asserts that similar to the *Columbia* *DSIC Waiver Order*, the state of UGI-PNG’s distribution infrastructure and rate of replacement are adequate and do not support a waiver of the 5% DSIC cap. OCA Exc. at 7-8 (citing *Columbia* *DSIC Waiver Order* at 56-58; *PGW* *Order* at 41-42; *September 2014* *UGI-PNG DSIC Order* at 8-9, 19; *Commission-approved Modified LTIIP*).

Finally, the OCA contends that despite the ALJ’s acknowledgement of UGI-PNG’s argument that absent the waiver of the DSIC cap, it might need to file a base rate case to ensure its financial health, similar to the situation in the *Columbia* *DSIC Waiver Order*, the Company has made no commitment to reduce the frequency of base rate proceedings if the waiver is granted. OCA Exc. at 8 (citing *Columbia* *DSIC Waiver Order* at 54; UGI-PNG St. 1R at 3). The OCA further reiterates it does not believe a waiver is warranted in this case and suggests that the Company utilize the fully projected future test year (FPFTY), which according to the OCA, the Company has not used as of yet. The OCA states that going by the Company’s current spending levels, a 5% DSIC cap provides roughly eighteen to twenty-six months of DSIC recovery. However, the use of the FPFTY would increase this recovery period to thirty to thirty-six months, which would extend the Company’s time between rates cases without an increase in the 5% DSIC cap. OCA Exc. at 9-10 (citing OSBA St. 1 at 11-12, Table IEc-1).

In its Replies to the OCA’s Exceptions Nos. 1 and 2, UGI-PNG avers that contrary to the OCA’s assertions, at no point in this proceeding did the OCA argue in favor of the standard it now identifies in its Exceptions. The Company contends that prior to the Commission’s decision in *Columbia* *DSIC Waiver Order*; the OCA had adopted the “extraordinary circumstances” standard. UGI-PNG contends that the OCA’s new “additional evidence” standard is no different from the “extraordinary circumstances” standard the OCA previously advocated. UGI-PNG argues that because the “additional evidence” standard and the “extraordinary circumstances,” standard proposed by the OCA are impossible to satisfy and are similar, the OCA’s argument should be rejected. UGI-PNG R. Exc. at 4-6.

In its Reply to the OCA’s Exception No. 2, I&E disagrees with the OCA’s argument that UGI-PNG failed to meet the standard for waiver of the 5% DSIC cap and that there “has been no showing that the current state of UGI-PNG’s infrastructure poses significant safety and reliability issues . . . .” I&E R. Exc. at 1-2 (citing OCA Exc. at 6). I&E disputes the OCA’s assertion that UGI-PNG’s pipelines are not risky enough to warrant a waiver of the DSIC cap. I&E states that it has established in this proceeding that the average leak per mile for UGI-PNG is 1.65 compared to the statewide average of 0.95. I&E R. Exc. at 2 (citing I&E St. 1 at 11). I&E not only questions the veracity of the data relied upon by the OCA in making its argument but also questions the expertise of the OCA’s witness with regard to pipeline safety. I&E believes granting the waiver of the DSIC cap would allow UGI-PNG to make the necessary repairs and replacement to ensure safety and reliability of its system. I&E R. Exc. at 2-3.

#### b. OSBA’s Exceptions and Replies

##### i. OSBA’s Exceptions Nos. 1 and 2 and UGI-PNG’s Replies

In its Exception No. 1, the OSBA disputes Findings of Fact Nos. 9 and 10 in the Recommended Decision.[[14]](#footnote-14) According to the OSBA, the ALJ’s use of the term “accelerated” in Finding of Fact Nos. 9 and 10 is misguided. The OSBA contends that contrary to the definition of acceleration, which means “speeding something up,” the expenditures in the table set forth in Finding of Fact No. 9 were increased but not “accelerated.” In support of its argument, the OSBA cited to the *Commission-approved Modified LTIIP* as follows:

Each of the UGI Companies’ modified LTIIPs are five-year plans, spanning the years 2014-2018. The LTIIPs detail accelerated infrastructure improvements that are intended to enhance system resiliency and reliability on an aging infrastructure. ***The instant petitions do not propose to change or extend the term of the current LTIIPs.*** Rather, the instant petitions propose to increase the amount of infrastructure spending over that of the currently effective LTIIPs by more than 20%, which is considered a Major Modification. The UGI Companies as a group propose spending more than 50% additional capital in the final three years of their LTIIPs compared to the original projections.

The UGI Companies’ current LTIIPs planned to remove all cast iron distribution main from their systems in 14 years (by 2027) and all bare steel distribution mains from their systems in 28 years (by 2041). ***The UGI Companies are not proposing to change these timelines for the removal of legacy materials.*** Instead, UGI is proposing to spend additional capital on projects to improve the reliability of its distribution systems. 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.

OSBA Exc. at 3-4 (citing *Commission-approved Modified LTIIP* at 3-4, 6) (emphasis added). The OSBA argues that in *Commission-approved Modified LTIIP*, the Commission acknowledged that the modified LTIIP did not “accelerate” UGI-PNG’s system improvements as there were no proposed changes to the Company’s LTIIP schedule. With regard to Finding of Fact No. 10, the OSBA contends that the modifications were made for system reliability and that there was no proposed acceleration of replacement of cast iron and/or unprotected steel mains. Thus, the OSBA contends that the ALJ’s presentation of Finding of Fact No. 10 is materially inaccurate. OSBA Exc. 4.

In its Exception No. 2, the OSBA echoes the OCA’s argument that the Commission should reject the ALJ’s incorrect standard for waiver of the 5% DSIC cap.

First, the OSBA disputes the ALJ’s conclusion that “[a] waiver to increase the 5% DSIC rate cap imposed by statute may be granted when a utility shows that the initial 5% DSIC rate cap is not sufficient to support its planned levels of plant replacement and DSIC-eligible spending corresponding to the utility’s LTIIP.” OSBA Exc. at 4-5 (citing R.D. at 19). The OSBA asserts that the ALJ’s proposed legal standard which relies on a utility’s LTIIP is not supported by the plain language of Section 1358(a). OSBA Exc. at 5. According to the OSBA, contrary to the ALJ’s legal theory, Section 1358(a) does not permit a waiver of the 5% cap if the cap “is not sufficient to support [the utility’s] planned levels of plant replacement and DSIC-eligible spending corresponding to the utility’s LTIIP.” The OSBA argues that Section 1358(a) does not take into consideration, a utility’s LTIIP. OSBA Exc. at 5. The OSBA further explains that the legislature’s intent for the 5% DSIC cap in Act 11 was for it to be an important consumer protection mechanism. Thus, a demonstration of costs in a utility’s LTIIP or modified LTIIP that exceeds the recoverable 5% DSIC cap should not be used as a justification to override that protection. The OSBA argues that going by the ALJ’s standard, any utility that files an LTIIP or modified LTIIP with costs that exceed the 5% DSIC would automatically be granted a waiver. The OSBA believes this would effectively make Section 1358(a) meaningless and in violation of 1 Pa C.S. § 1922. OSBA Exc. at 5-6 (citing Columbia *DSIC Waiver Order* at 48; OSBA M.B. at 8-10).

Additionally, the OSBA requests that the Commission apply in the instant proceeding, the same legal reasoning it applied in its decision in *Columbia* *DSIC Waiver Order*, in which the Commission averred that no other section of the statute shall automatically grant a DSIC cap waiver but that each waiver must be evaluated on its own merits. According to the OSBA, the General Assembly requires a utility to develop an LTIIP in order to be granted a DSIC. However, there is nothing in Act 11 that states that an approval of an LTIIP automatically means that a DSIC cap waiver must be granted if the LTIIP costs are sufficiently high. OSBA Exc. at 7. The OSBA also questions the ALJ’s reliance on the Commission’s decision in the pre-Act 11 *Aqua PA Order*. Citing to its Reply Brief, the OSBA reiterates its position that “[a] decision that was entered prior to the passage of Act 11 is of no relevance to the granting of a waiver under Section 1358(a)(1), and has no probative value in the determination of the proper legal standard for that section of the Public Utility Code.” OSBA Exc. at 7 (citing OSBA R.B. at 8, n.1). The OSBA believes there is no support either in *Aqua PA Order* or the statutory language of Section 1358(a)(1), for the standard applied by the ALJ in her recommendation granting the waiver request. Thus, the OSBA concludes that while an approved LTIIP is a condition for granting an initial DSIC and is therefore logically necessary for a DSIC cap waiver, it is not a sufficient basis for granting a waiver of the 5% DSIC cap. OSBA Exc. at 8.

In Reply, UGI-PNG asserts that contrary to the correct standard adopted by the ALJ in her approval of the waiver request, the “extraordinary circumstances” standard advanced by the OSBA for granting the DSIC cap waiver request, is inconsistent with the plain language and the purpose of Act 11 and should be rejected. The Company argues that the Commission affirmed in the *Columbia* *DSIC Waiver Order* that approval of the waiver request is not conditioned solely on a utility’s demonstration of “extraordinary circumstances.” Rather, the Commission emphasized that the goal of the DSIC is to facilitate acceleration of qualifying main replacements and other capital investments and that while more evidence beyond that required for the initial DSIC in Section 1353 is needed for granting a waiver of the 5% DSIC cap, “extraordinary circumstances” should not be viewed as the gold standard for approval of a DSIC cap waiver. UGI-PNG asserts that the “extraordinary circumstances” standard being projected by the OSBA is a very difficult standard to meet and should be rejected by the Commission in this proceeding, just as it was in prior DSIC waiver proceedings. UGI-PNG R. Exc. at 1-4 (citing *Columbia* *DSIC Waiver Order* at 49-51, 54;  *PGW Order* at 43-44; *Aqua PA Order* at 11‑15).

## Additionally, the Company asserts that the arguments proffered by the OSBA in support of the extraordinary circumstances standard are also incorrect. Specifically, the Company argues that the OSBA’s argument that the ALJ adopted the same statutory construction that the Commission rejected in *Columbia* *DSIC Waiver Order*, specifically that Sections 1353 and 1358 contain identical language and require the same evidentiary showing, is incorrect and should be rejected. UGI-PNG R. Exc. at 7 (citing OSBA Exc. at 7). The Company avers that it 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 ALJ clearly employed this analysis. The Company points out that the modified LTIIP was one piece of evidence to be considered but it was not the only evidence weighed in the R.D. UGI-PNG R. Exc. at 7‑8. The Company argues that the OSBA’s contention that the ALJ’s standard would result in an automatic waiver of the DSIC cap and create a slippery slope that will render a DSIC waiver petition and the Commission’s review of such waivers meaningless is also incorrect and should be rejected. The Company disputes the OSBA’s argument that seems to reject consideration of the Commission’s pre-Act 11 DSIC waiver determinations in the instant proceeding. The Company notes that the Commission considered pre-Act 11 waiver determinations in its recent *Columbia* *DSIC Waiver Order* and *PGW Order*. Finally, the Company rejects the OSBA’s claim that the ALJ’s proposed 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)).” UGI-PNG R. Exc. at 8 (citing OSBA Exc. at 7-8).

##### ii. OSBA’s Exception No. 3 and UGI-PNG and I&E’s Replies to OSBA’s Exceptions Nos. 2 and 3

In its Exception No. 3, similar to the argument it made in Exception No. 2, the OSBA contends that the ALJ’s reliance on the approval of a modified LTIIP in granting the 5% DSIC cap waiver is misplaced and should be rejected. Citing to the ALJ’s conclusion that “the standard for the modification of the LTIIP is the same standard for the waiver of the capped DSIC rate,” the OSBA argues that the Commission’s Regulations for the modification of an LTIIP have nothing to with the granting of a waiver of the 5% DSIC cap. OSBA Exc. at 8-9 (citing R.D. at 20-23). The OSBA asserts that the fact that a utility demonstrates that the costs approved in an LTIIP, or even a “modified” or “major revision” to the LTIIP exceed the 5% DSIC cap is not a justification for granting a waiver of the 5% DSIC cap. OSBA Exc. at 9-10.

In Reply, UGI-PNG avers that OSBA Exception No. 3 is not a true representation of all the factors the ALJ considered in reaching her decision to grant the waiver. Specifically, the Company argues that as opposed to the OSBA’s stance, the ALJ considered the Commission’s approval of the modified LTIIP as one piece of relevant evidence to support her decision to grant the waiver request. UGI-PNG R. Exc. at 9-10 (citing R.D. at 6-9, 20). The Company further asserts that the OSBA and the OCA’s argument that the standard adopted by the ALJ in her Recommended Decision would result in a slippery slope have no standing and should be dismissed. According to the Company, the Commission has and will always have a fact-based approach in its review of DSIC waiver requests. In this regard, the Commission takes into account all relevant factors in reaching its decision to grant or deny such requests. The Company believes the ALJ applied the same principle in the instant proceeding. UGI-PNG R. Exc. at 10-11.

In its Reply to OSBA’s Exceptions Nos. 2 and 3, similar to UGI-PNG, I&E disputes the OSBA’s argument that the ALJ relied solely on the Commission-approved Modified LTIIP in granting the waiver request. I&E contends that the OSBA and OCA fail to acknowledge the fact that the ALJ also considered the safety issues associated with UGI-PNG’s system in reaching her decision to grant the waiver request. I&E R. Exc. at 3-4 (citing OSBA Exc. at 8; I&E St. 1 at 4).

##### iii. OSBA’s Exception No. 4 and UGI-PNG and I&E’s Replies

In its Exception No. 4, the OSBA argues that the ALJ erred in appearing to conclude that if any risks are reduced through an LTIIP, the DSIC cap waiver must be granted. OSBA Exc. at 10 (citing R.D. at 21-25). The OSBA cites to the ALJ’s Recommended Decision which stated that:

A leak of gas is a serious safety issue and should be addressed as aggressively as possible. If leaks exist, whether or not the percentage of leaks in UGI-PNG’s infrastructure are compared to other NGDCs, the leaks should be repaired in the interest of public safety. The best way to curtail leaks in a distribution system of an NGDC is to accelerate the replacement of at risk piping.

\* \* \*

Pipeline safety is especially important with gas service where an occurrence can be catastrophic if safety of pipelines is not maintained.

OSBA Exc. at 10 (citing R.D. at 22, 24 (citations omitted).

The OSBA contends that the above statements seem to suggest that the mere existence of leaks in UGI-PNG’ system overrides the consumer protections afforded to the Company’s customers. The OSBA asserts that the safety issues prevalent to UGI-PNG’s system are not different from those of other NGDCs in the state. From the OSBA’s perspective, the risks in the Company’s system are not significant enough to warrant a waiver of the DSIC cap. OSBA Exc. at 11-12 (citing R.D. at 22; OSBA M.B. at 17-19; OSBA St. 1-R (Redacted) at 3)). To support its argument, the OSBA avers that Section 1501 of the Code requires UGI-PNG to provide and maintain adequate, efficient, safe and reasonable service whether a DSIC waiver is granted or not. OSBA also references its witness Robert D. Knecht’s unrebutted testimony wherein he stated that:

Moreover, the Companies indicate that granting a waiver to the DSIC cap in this proceeding will have zero impact on public safety, since the Companies’ proposed investment programs are not affected by approval or rejection of the waiver. Therefore, public safety considerations do not justify granting a waiver of the DSIC cap in this proceeding.

OSBA Exc. at 12 (citing OSBA St. 1-R (Redacted) at 3)).

In Reply, UGI-PNG disagrees with the OSBA’s dismissal of the ALJ’s emphasis on the importance of safety in the Company’s system in granting the waiver. The Company argues that none of the Parties to this proceeding challenged the *Commission-approved Modified LTIIP* or the fact that accelerated investment is necessary to ensure safe and reliable service. Yet, the OCA and the OSBA oppose the recovery of such spending which they acknowledge is necessary and appropriate to address serious safety and reliability issues. UGI-PNG R. Exc. at 14-15. UGI-PNG further questions the expertise of the OSBA’s witness and his ability to adequately assess the safety status of the Company’s system. Thus, UGI-PNG requests that the Commission dismiss OSBA Exc. No. 4. UGI-PNG R. Exc. at 14-15 (citing OSBA Exc. at 11; R.D. at 24; Tr. at 110).

I&E also dismisses the OSBA’s argument questioning the testimony of its witness regarding the risk assessment of the Company’s system and the OSBA’s effort to undermine the data provided by I&E’s witness in support of the waiver. I&E reiterates that unlike the OSBA’s witness, its witness has extensive knowledge in pipeline safety and has obtained the requisite training to adequately assess the risk associated with the Company’s system. I&E R. Exc. at 5-6.

### 4. Disposition

Based on our review of the record, the positions of the Parties, and the applicable law, we will grant I&E’s Exceptions; grant in part, and deny, in part, the Exceptions of UGI-PNG, the OCA, and the OSBA; and modify ALJ Jones’ Recommended Decision. While we concur with the ALJ’s approval of the waiver request, we disagree with the ALJ’s calculation and recommended 6.89 % DSIC cap increase.

At the outset, we note that Act 11 authorizes the Commission to use its discretion in granting a waiver of the 5% DSIC cap if the waiver is necessary for the utility to provide “adequate, efficient, safe, reliable and reasonable service.” 66 Pa. C.S. § 1358(a)(1). Also, consistent with our position in *Columbia* *DSIC Waiver Order,* it is our policy to conduct an evaluation of a DSIC cap waiver request on a case-by-case basis on the merits of the record evidence in each individual case. *Columbia* *DSIC Waiver Order* at 54. In the *Columbia* *DSIC Waiver Order,* we denied Columbia’s waiver request after we considered: (1) the state of Columbia’s infrastructure; (2) the current and projected pace of replacement; (3) the Company’s experience using the DSIC; (4) evidence regarding future filings; and (5) the Company’s ability to fund its replacement program without a waiver. *Columbia* *DSIC Waiver Order* at 52-53.

While this is not a case of first impression, the Commission has had only two other opportunities to consider whether the DSIC should be raised above the 5% cap for gas distribution companies.In the *Columbia DSIC Waiver Order*, we denied any increase above 5%. On the other hand, in the *PGW Order,* we granted an increase to 7.5%. The instant proceeding is not entirely analogous to either of these previous DSIC waiver petitions. There are clear differences between the instant proceeding and the Columbiaand PGWproceedings, in terms of the justifications for the requested waiver, as well as in the companies’ ratemaking methodologies, capital formation, and status of plant in service, to mention a few.[[15]](#footnote-15)

Under the circumstances in this case, we agree with the ALJ’s decision to grant the waiver of the 5% DSIC cap for the following reasons. We note that the Code provides that “[t]he commission may upon petition grant a waiver of the 5% limit under this paragraph for a utility *in order to ensure and maintain adequate, efficient, safe, reliable and reasonable service*.” 66 Pa. C.S. § 1358(a)(1) (emphasis added). We acknowledge I&E’s testimony regarding the current state of UGI-PNG’s distribution system as it pertains to safety and reliability. Throughout this proceeding, I&E, the only Party with the requisite qualification and expertise to make an assessment of UGI-PNG’s system, has highlighted the safety and reliability concerns regarding the system and the need for the Commission to grant the waiver to allow the Company to address those concerns. Specifically, I&E’s Gas Safety Witness, Sunil Patel, testified that “compared to other NGDCs, UGI-PNG has the highest number of total leaks per mile.” According to I&E, “the statewide average is .95 leaks per mile, while PNG is 1.65 miles per mile.” Tr. at 80; I&E St. 1 at 11-12. I&E stated that the Company’s corrosion-related leaks have also increased by 64% from 2013 to 2015. I&E St. 1 at 10. I&E further indicated that denying the Company’s waiver request could deter the Company’s effort to replace its at-risk mains and result in disastrous consequences for the Company, including a gas explosion. I&E M.B. at 11-15.

Our safety and reliability concerns in this case bear similarities to the safety and reliability concerns we expressed in our *PGW Order.* In the *PGW Order*, we approved PGW’s waiver request and increased the DSIC cap from 5% to 7.5% to assist PGW in accelerating its main replacement efforts and addressing the safety and reliability issues of its distribution system. In that Order, we stated the following:

We believe that granting PGW a waiver of the statutory 5% DSIC limitation, as provided for in Act 11, may be the most cost-effective and least problematic means of ensuring that the Company can obtain this additional funding in a timely fashion. Based on the evidence presented in this case, we find that PGW has met its burden of showing that a waiver of the 5% DSIC cap will “ensure and maintain adequate, efficient, safe, reliable and reasonable service,” as required by 66 Pa. C.S. § 1358(a)(1). We further find that PGW’s proposal to spend an additional $11 million per year on its main replacement program is reasonable and will permit the Company to achieve an approximate 44% reduction in the projected timeline to replace its at-risk mains, while having a modest impact on ratepayers.[[16]](#footnote-16) PGW St. 1 at 10. Thus, we will grant PGW’s request to increase its DSIC cap to permit it to collect DSIC-eligible costs at a level representing 7.5% of its distribution revenues, which will provide the Company with the means to recover the additional $11 million it intends to spend to implement the accelerated replacement of its mains.

*PGW* *Order* at 42.

In the instant proceeding, we conclude that UGI-PNG has also shown that a waiver of the 5% DSIC cap will “ensure and maintain adequate, efficient, safe, reliable and reasonable service.

The safety and reliability concerns present in this case are markedly different from the factual circumstances in the *Columbia DSIC Waiver Order*. There was no showing in the Columbia proceeding that the current state of Columbia’s infrastructure posed significant safety and reliability issues or that the current pace of the Company’s replacement efforts was unacceptable and potentially harmful to the public. By 2012, Columbia reported that it had reduced Open Class 2 leaks by nearly fifty percent as a result of its accelerated replacement program and annual surveying of target mains. As of 2016, Columbia’s target or “at risk” mains comprised only 21 percent of its total mains.

Additionally, consistent with the *Commission-approved Modified LTIIP,* the Company has proposed to increase the amount of infrastructure spending over its original LTIIP to improve the safety and reliability of its system. UGI-PNG proposed an additional $16.8 million, or an increase of 24.5%, in its modified LTIIP from 2016 to 2018 to improve the safety and reliability of its system. *Commission-approved Modified LTIIP* at 5. We note that, while the *Commission-approved Modified LTIIP* is only one factor we have considered in making a determination on the waiver request, we believe it supports the Company’s case for granting the waiver of the 5% DSIC cap.

Further, while the proposed increase did not change the timeline of replacement of the Company’s legacy facilities, the “predominate focus” of the spending increase in the Company’s modified LTIIP is “installing or upgrading regulator stations and higher pressure pipelines to increase system pressure.” *Commission-approved Modified LTIIP* at 6. According to UGI-PNG, “These projects will improve system reliability in many areas of UGI’s distribution system, including projects in the Harrisburg/Camp Hill region and the Millersville/Lancaster region.” *Id.* Problems with low pressure qualify as a reliability issue within the meaning of the statute, and are of a safety concern as well. UGI-PNG further indicated that the proposed increase would help the Company to address the Pennsylvania Department of Transportation mandated facility relocations. *Id.* As indicated, not only is UGI-PNG increasing its main replacement investments to improve the safety and reliability of its system, it is also addressing mandated improvements. Notably, in his testimony, I&E’s witness, Sunil Patel, also highlighted UGI-PNG’s effort to comply with meter relocations as mandated by the Commission’s Regulations and the potential positive impact of the Company’s compliance through its meter relocation project. Tr. at 86; 52 Pa. Code § 59.18. Therefore, although UGI-PNG did not commit to increasing its pipeline replacement schedule, DSIC recovery should not be strictly limited to pipeline replacement.

Moreover, this case is analogous to *Aqua PA Order,* in which the ALJ relied on the results of Aqua PA’s “Water Main Renewal Program Study” in reaching a conclusion to approve the Company’s waiver request. The ALJ in *Aqua PA Order* also found Aqua PA’s argument that it had expended more than it recovered through its 5% DSIC cap in 2005, 2006 and 2008 to be persuasive. *Aqua PA Order* at 6-7, 13. Similarly, in the instant proceeding, UGI-PNG has demonstrated an increase in capital spending through its modified LTIIP. UGI-PNG raised its capital spending at the same time it requested an increase in the DSIC. The *Modified LTIIP* *Petition* filed by UGI-PNG on February 29, 2016, increased the amount that the Company intends to spend on infrastructure during the 2016 to 2018 time period by 24.5%, which is well above the 20% level that is considered a major modification and, therefore, requires a filing with the Commission.[[17]](#footnote-17) The Commission adopted the modified LTIIP to become effective on July 1, 2016. On March 31, 2016, one month after filing the *Modified LTIIP* *Petition*, UGI-PNG filed the instant Petition for a waiver to increase its DSIC from 5% to 10%. The effective date that UGI-PNG requested (July 1, 2016) was the same as the requested effective date for the modified LTIIP. Thus, UGI-PNG’s increase in infrastructure spending was contemporaneous with its Petition to waive the DSIC cap.

In the instant proceeding, UGI-PNG indicated that as of April 1, 2016, it has reached the 5% DSIC cap and cannot recover additional capital investments beyond the cap. UGI-PNG began to actively recover investments under the DSIC on April 1, 2015, and reached the 5% DSIC cap on April 1, 2016. UGI-PNG St. 1 at 5, 7; UGI-PNG Exh. WJM-3; UGI-PNG M.B. at 22. This, in essence, means that contrary to *Columbia* *DSIC Waiver Order* in which Columbia used the DSIC for only one quarter at a 1.5% DSIC rate prior to requesting a waiver of the DSIC cap, UGI-PNG, utilized its DSIC mechanism for about a year and has reached the 5% DSIC cap prior to requesting a waiver of the DSIC cap in the instant proceeding. *Columbia* *DSIC Waiver Order*at 56.

The instant case is further distinguishable from the *Columbia* *DSIC Waiver Order*, in which in addition to the 5% DSIC cap, Columbia effectively utilized base rate cases on an almost annual basis, including utilizing the FPFTY mechanism in Act 11 to adequately address its main replacement efforts. *Columbia* *DSIC Waiver Order* at 50. In this proceeding, the record evidence indicates that UGI-PNG’s last base rate case was filed in 2008 with the rates going into effect in August 2009. UGI-PNG St. 1-R at 5; OCA M.B. at 9. The record evidence in this case shows that prior to its recent rate increase filing on January 19, 2017, UGI-PNG did not file a base rate case for almost eight years and has also not utilized the FPFTY that Columbia effectively used to address its main replacement efforts. While we echo the OCA’s proposal that encourages UGI-PNG to utilize the FPFTY mechanism in Act 11 to recover some of its main replacement investment costs in the future, we believe the record evidence in this case supports a waiver of the DSIC cap for UGI-PNG.

In light of the above factors, we concur with the ALJ that UGI-PNG has satisfied its burden of proof and has met the standard for granting the 5% DSIC cap waiver. Accordingly, we will deny the OCA and the OSBA’s Exceptions regarding this matter and grant I&E and the Company’s Exceptions that UGI-PNG has satisfied its burden of proof and met the standard for approval of the 5% DSIC cap waiver.

## C. DSIC Cap Increase from 5% to 10% and the ALJ’s Calculation and Recommended Increase

### 1. Positions of the Parties

#### a. UGI-PNG’s Position

UGI-PNG, in its Petition, also requested approval to increase the DSIC cap from 5% to 10%. Petition at 1. UGI-PNG argued that it has met the standard for waiver of the DSIC cap and increase of the cap to 10% for the following reasons. First, UGI-PNG contended that by approving its modified LTIIP, the Commission acknowledged the Company’s DSIC-eligible projects are necessary to ensure and maintain adequate, efficient, safe, reliable and reasonable service. The Company indicated that the current 5% DSIC cap is insufficient to support the investments identified in its modified LTIIP, especially because it has reached the 5% DSIC cap as of April 1, 2016.[[18]](#footnote-18) According to the Company, increasing the DSIC cap to 10% would allow UGI-PNG to continue its aggressive main replacement while also reducing the frequency of its rate cases. UGI-PNG M.B. at 7-9.

Next, UGI-PNG averred that while it agrees with I&E’s support for granting the waiver request, it disagrees with I&E’s proposed 7.5% increase in the DSIC cap. UGI-PNG averred that the DSIC-eligible plant investments in the *Commission-approved Modified LTIIP* contemplate a 24.5% increase in planned spending on DSIC-eligible plants over the remaining three years of the plan.[[19]](#footnote-19) UGI-PNG averred that the accelerated improvement would help the Company address the identified safety and reliability issues in its system, including reducing the number of leaks in the system, enable it to install additional safety mechanisms, and relocate meters that are currently located inside customer’s buildings. *Id.* at 20-22 (citing *Commission-approved Modified LTIIP* at 5).

Finally, the Company indicated that an increase of the DSIC cap from 5% to 10% would help enhance the increased spending identified in the modified LTIIP as well as provide a balance between the Company’s use of the DSIC and the Company’s filing of base rate cases for cost recovery. The Company also stated that an increase of the DSIC cap from 5% to 10% would have a minimal impact on its customers as it would only result in an increase of $2.40 per month per customer’s bill. Thus, UGI-PNG averred that because the waiver is in the public interest, the Commission should approve the waiver request to allow the Company to increase its DSIC from 5% to 10% of billed distribution revenues. UGI-PNG M.B at 22-23.

#### b. I&E’s Position

While I&E agreed that UGI-PNG has met its burden of proof to show that a waiver of the 5% DSIC cap is warranted, I&E recommended a 7.5% increase as opposed to the 10% increase in the DSIC cap requested by the Company. I&E M.B. at 7. I&E contended that increasing the DSIC cap to 7.5% is in the public interest because it will facilitate the replacement of the Company’s cast iron mains in a more timely manner and ultimately promote safety and reliability of service for the Company’s customers. *Id.* at 8-9. I&E argued that the Company has demonstrated in its modified LTIIP that the additional DSIC funding would be prudently used to address the safety concerns identified by I&E’s Gas Safety Division. *Id.* at 9-10.

#### c. The OCA’s Position

The OCA is opposed to UGI-PNG’s DSIC waiver request and approval to increase the DSIC cap from 5% to 10%. The OCA believes UGI-PNG has not met the requirement for increasing the DSIC cap to 10% for the following reasons. First, the OCA averred that the Company has failed to demonstrate that its infrastructure currently poses safety and reliability issues or that its current replacement efforts are inadequate. OCA M.B. at 5-6 (citing *September 2014 UGI-PNG DSIC Order* at 17; *Commission-approved Modified LTIIP* at 4, 6). In addition, the OCA indicated that the record shows that the Company has made progress in reducing risks in its distribution system using the current 5% DSIC cap. OCA M.B. at 6 (citing OCA St. 1R at 2).

Furthermore, with regard to the Company’s contention that a waiver and an increase of its DSIC cap to 10% might potentially reduce the Company’s frequency of base rate case filings and reduce rate case expenses, the OCA retorted that additional evidence than just extending the time between base rate cases is required for granting a waiver of the DSIC cap. OCA M.B. at 8-10. Finally, the OCA stated that even if the Commission decides to waive the DSIC cap, the Commission should deny the Company’s request to increase the cap to 10% because an increase would be an additional burden on the Company’s customers. The OCA suggested that UGI-PNG should instead take advantage of other rate recovery mechanisms including the FPFTY permitted by Act 11. *Id.* at 11-13.

#### d. The OSBA’s Position

The OSBA is also opposed to UGI-PNG’s DSIC cap waiver request and approval to increase the DSIC cap from 5% to 10%. OSBA M.B. at 7-8. The OSBA believes the legislative history and the legislature’s use of an explicit numerical cap for the DSIC in Act 11 is an indication that the waiver should not be granted relatively easily as presented by the Company in the instant proceeding. OSBA M.B. at 8-12.

### 2. ALJ’s Recommendation

In its request for an increase of the DSIC cap from 5% to 10%, UGI-PNG stated that:

A 10% DSIC rate cap would support the Company’s DSIC-eligible replacement [of infrastructure], and would allow the Company to strike a balance between the use of the DSIC and base rate proceedings for cost recovery purposes. UGI-PNG states that the increase in the DSIC capped rate will decrease the need for frequent rate cases, enhance reasonable service, and save both the ratepayer and the Company the cost of a rate base case.

UGI-PNG M.B. at 22-23.

The ALJ denied the Company’s request for a 10% increase and recommended a 6.89% increase. ALJ Jones also rejected I&E’s proposed 7.5% increase to the DSIC cap. The ALJ found that I&E based its proposed 7.5% increase on the amount that was approved by the Commission in *PGW* *Order* without any substantial evidence to demonstrate similarities between *PGW* *Order* and the instant proceeding.[[20]](#footnote-20) R.D. at 26-27.

The ALJ noted that the modified LTIIP increased UGI-PNG’s total projected DSIC-eligible plant expenditures from 2014 through 2018 from a total of $114.5 million over the five year term of the plan to $138.7 million over the same period. The increase in the modified LTIIP from 2016 through 2018 is 24.5%. *Id.* at 27. According to the ALJ, going by the Company’s projection, it would reach the 10% DSIC cap in July 2017. The ALJ noted that a 10% DSIC cap would provide UGI-PNG another approximately fifteen months of full recovery of the expenditures. The ALJ explained that while a 10% DSIC cap would still result in approximately $9.6 million of unrecovered projected DSIC-eligible plant investments, projected unrecovered investments at the current 5% cap would be approximately $15.6 million. The ALJ, however, posited that any amount not recovered due to the current DSIC cap can be recovered through base rates. *Id.* at 27-28.

Nonetheless, the ALJ recommended that UGI-PNG’s DSIC rate should be capped at 6.89%, stating as follows:

I find that the DSIC capped rate should be increased to 6.89% for the following reasons. UGI-PNG proposed a 10% increase although it projected an increase to 14.02% through the remaining three-years of the term of the modified LTIIP. It is noted that this 14.02% corresponds to the modified LTIIP that was approved by the Commission in *UGI-PNG Modified LTIIP*. The percentage increase to spending levels of the modified LTIIP as compared with the original LTIIP is 21%.[[21]](#footnote-21) An increase from 5% to 14.02% is 9 percentage points of an increase. 21% of a 9 percentage point increase is a 1.89 percentage point increase yielding an increase from 5% up 1.89 percentage points to 6.89%. In viewing the data provided in the record, a DSIC rate of 6.89% occurs before July 2016. UGI-PNG Exhibit WJM-3.

This 6.89% figure is a tad less than half of the 14.02% that the Company has projected necessary for full recovery of projected DSIC eligible spending for accelerating its repair, replacement and improvement of its infrastructure to ensure and maintain adequate, efficient, safe, reliable and reasonable service through its modified LTIIP. In contrast, the Company’s proposed 10% capped DSIC rate is about 70% of the projected DSIC rate of 14.02% needed for full recovery of the projected spending corresponding to the modified LTIIP. I find this 6.89% figure for the DSIC capped rate reasonable and supported by the evidence. I find this figure balances the interests of UGI-PNG and its ratepayers.

The result of a 6.89% capped DSIC rate for UGI-PNG is that the rates will be capped before July 2016. Residential heating gas customer’s bills will have an added (1.89 x $0.48 = $0.91) $0.91 per month from July 2016 to the end of the term of the LTIIP (end of year 2018). UGI-PNG Exhibit WJM-3. UGI-PNG will obtain approximately $933,940[[22]](#footnote-22) that was not

collected because the DSIC was capped at 5% and the Company would fail to recover approximately $14,671,552.[[23]](#footnote-23)

*Id.* at 28-29.

### 3. Exceptions and Replies

#### a. UGI-PNG’s Exception No. 1 and the OCA and the OSBA’s Replies

In its Exception No. 1, UGI-PNG disagrees with the ALJ’s recommended DSIC cap of 6.89%. The Company avers that the ALJ’s calculation and her recommended 6.89% DSIC rate is not supported by the record in this proceeding or by any Commission precedent.[[24]](#footnote-24) UGI-PNG contends that the ALJ’s calculation, which is contrary to the approach applied by the Commission in granting a waiver in *Aqua PA Order* and *PGW Order,* fails to consider the increased spending in UGI-PNG’s modified LTIIP. The Company also argues that the ALJ’s calculation fails to consider the totality of the Company’s circumstances, including the Company’s current and future operational and financial needs, the impact of the proposed DSIC rate on the Company’s customers, and the total cost of the Company’s identified DSIC-eligible plants. UGI-PNG Exc. at 3‑5 (citing R.D. at 28-29; *PGW Order*; *PGW Reconsideration;[[25]](#footnote-25) Aqua PA Order*).

Comparing its waiver request to *Aqua PA Order,* the Company avers that going by the difference in the DSIC implementation for water utilities and that of NGDCs, the impact of its request for a 10% DSIC cap on customers is comparable to the 7.5% DSIC cap approved by the Commission in *Aqua PA Order*. According to UGI-PNG, while the DSIC for water companies is applied to 100% of the total water customer’s bill, the DSIC for NGDCs is not applied to commodity charges (*e.g.,* the purchased gas cost) for a gas customer’s bill. UGI-PNG asserts that commodity charges often constitute approximately one third to one half of the customer bills, and that a gas DSIC at 10% recovers approximately the same total percent of a water customer’s bill at 5% DSIC. UGI-PNG Exc. at 5-6 (citing UGI-PNG St. 1-R at 15). UGI-PNG claims it considered both the Commission’s historic approach to DSIC waivers and the constraints added to gas utilities by Act 11 in requesting a 10% increase in the DSIC cap. UGI-PNG Exc. at 6.

UGI-PNG avers that the record evidence in this proceeding shows that the Company would exceed the ALJ’s recommended DSIC cap of 6.89% by October 1, 2016, and that the ALJ’s recommendation provides the Company with only a fraction of the accelerated investments in the Commission-approved modified LTIIP and does not protect UGI-PNG’s customers or further the policy goals of the Commission.[[26]](#footnote-26) UGI-PNG reiterates that increasing the DSIC cap to 10% would only increase its average residential heating customer’s monthly bill by $2.40 and that the 10% would not be reached until mid-2017. UGI-PNG Exc. at 6-7 (citing UGI-PNG Exh. WJM-3). UGI-PNG, however, asserts that while it does not support adoption of the ALJ’s calculation, should the Commission elect to adopt it, the Commission should modify the ALJ’s calculation by using the 24.5% increase identified in the modified LTIIP instead of the 21% used by the ALJ in her Recommended Decision.[[27]](#footnote-27) UGI-PNG Exc. at 7 (citing R.D. at 28-29; *Commission-approved Modified LTIIP* at 5). The Company asserts that rather than adopting the ALJ’s recommended calculation which encourages gamesmanship, the Commission should consider the totality of all the factors in this proceeding and recommend a DSIC cap increase that appropriately balances the interests of the Company and its the customers. UGI-PNG Exc. at 7-8.

In Reply, the OCA disagrees with the Company for the following reasons. First, the OCA argues that unlike *PGW Order,* in which PGW requested an increase from 5% to 7.5% in order to reduce the timeline for replacement of its at-risk mains from eighty-six years to forty-eight years, UGI-PNG’s proposed cap increase is not tied to any reduction of the timeline for its main replacement. OCA R. Exc. at 2-3 (citing *PGW* *Order* at 10, 14; *September 2014 UGI-PNG DSIC Order*; *Commission-approved Modified LTIIP*). The OCA further contends that UGI-PNG’s request for a 10% increase in the DSIC cap is also not tied to a reduction in the frequency of the Company’s base rate case filings. The OCA, however, suggests that the Company utilize the FPFTY mechanism permitted in Act 11 for recovery of its DSIC-eligible plant investments. The OCA disputes the Company’s comparison of the 7.5% increase in the water bills to its 10% increase in gas bills. According to the OCA, “the Company ignores that the General Assembly established a 5 percent cap *in addition* to limiting the DSIC to the distribution portion of the gas customers’ bills.” OCA R. Exc. at 3-4 (citing UGI-PNG Exc. at 5‑6; 66 Pa. C.S. § 1358(a)(1)-(2)).

The OCA also dismisses the Company’s 10% increase request which is based on the fact that 10% is near the mid-point between the existing 5% cap and the total charge of 14.02% that would be applicable if all DSIC-eligible projects as of January 1, 2019, were reflected in the DSIC rate. OCA R. Exc. at 4 (citing UGI-PNG Exc. at 6). The OCA asserts that as established by the Commission in *Columbia DSIC Waiver Order* and PGW *Order*, UGI-PNG is not entitled to recover 100% of its projected LTIIP through the DSIC. OCA R. Exc. at 4-5 (citing *Columbia DSIC Waiver Order* at 50, 57; PGW *Order* at 54-55). Finally, with regard to the Company’s argument that a 10% DSIC cap is appropriate because it would only increase the Company’s average residential heating customer’s bills by $2.40 per month, the OCA argues that no increase to a customer’s bill is just and reasonable, especially when there has been no showing that an increase to the DSIC charge would provide any specific or concrete benefit to the ratepayers. OCA R. Exc. at 4 (citing UGI-PNG Exc. at 7; OCA M.B. at 11-13; *Columbia DSIC Waiver Order* at 9).

In its Reply to UGI-PNG’s Exception No. 1, the OSBA asserts that going by the definition of the term “accelerate,”[[28]](#footnote-28) the Company has on several occasions in this proceeding, incorrectly used the term “accelerate” to support its waiver request. The OSBA contends that while the Company’s original LTIIP demonstrates an acceleration of its DSIC-eligible investments, the modified LTIIP failed to do the same.[[29]](#footnote-29) OSBA R. Exc. at 9‑10. According to the OSBA, the fact that the Company is spending more money does not necessarily equate to an acceleration of its main replacement or reduction of leaks in its system. The OSBA avers that the Commission should not grant the waiver or increase the DSIC cap because the Company has repeatedly emphasized that it would still conduct system upgrades whether or not the that waiver request is granted. *Id.* at 10 (citing OSBA St. 1 at 7). Citing to *Columbia DSIC Waiver Order,* the OSBA concludes that because the increased spending in the Company’s modified LTIIP does not necessarily translate to an acceleration of main replacement, the Company’s request to waive the DSIC and increase the cap to 10% should be denied. OSBA R. Exc. at 10-11 (citing *Columbia DSIC Waiver Order).*

#### b. UGI-PNG’s Exception No. 2 and the OCA and the OSBA’s Replies

In its Exception No. 2, the Company disputes the ALJ’s statement that “what is not recovered through any capped DSIC rate can be recovered through the means of a base rate proceeding.” UGI-PNG Exc. at 9 (citing R.D. at 28). The Company asserts that the ALJ’s statement fails to accurately reflect the operation of the DSIC mechanism. According to the Company, the DSIC allows utilities to collect lost depreciation between base rate proceedings. For example, for any quarter where revenue associated with DSIC-eligible plant exceeds the 5% DSIC cap, new plant placed in service is excluded from the DSIC calculation. While the utility can include the plant that was excluded from the DSIC when it eventually files a base rate case, the recovery on that plant will be reduced by the depreciation that occurred during the period between the in-service date and the date of the FPFTY. The Company contends that contrary to the ALJ’s assumption, any amounts not recovered through the DSIC in a particular quarter cannot be recovered at a later time. UGI-PNG Exc. at 9. Consequently, the Company states that any plant it placed in service on or after the quarter ending March 31, 2016, is currently not reflected in the DSIC and no revenue is being recovered on that plant. The Company avers that there is currently $3 million unrecovered plant investment that is not reflected in the Company’s DSIC and by January 1, 2019, that amount would increase to $15 million. *Id.* at 10 (citing UGI-PNG Exh. WJM-3).

Next, the Company disputes the ALJ’s notion of “full recovery” in her determination that the Company’s proposal of 10% DSIC cap is “about 70% of the projected DSIC rate of 14.02% needed for full recovery of the projected spending corresponding to the modified LTIIP.” UGI-PNG Exc. at 10 (citing R.D. at 29). The Company asserts that the 10% DSIC cap will not provide full recovery but would only allow the Company to reflect DSIC-eligible plant placed in service in its DSIC through the third quarter of 2017, when the DSIC is expected to reach the 10% rate cap. According to the Company, by that time, it can no longer collect any more revenue on its DSIC-eligible plants, despite having a whole year left in its modified LTIIP. The Company avers that including DSIC-eligible plant in the DSIC does not provide for immediate recovery of the full costs of the plant. Rather, the DSIC recovers a return on and of DSIC-eligible investments over time, broken down on a quarterly basis. The Company avers that while an increased DSIC cap would reflect all eligible plant placed in service prior to reaching the cap, “full recovery” for the plant would take many years of continuous operation of the DSIC. UGI-PNG Exc. at 10. UGI-PNG argues that in the same way the Commission recognized the need to modify the DSIC cap to accommodate the substantial infrastructure investments embarked upon by water utilities, it should also increase the DSIC cap to 10% to make the DSIC fully effective for NGDCs undertaking significant long-term plant investments. *Id.* at 10-11.

In Reply, the OCA agrees with the Company regarding the ALJ’s misrepresentation of the unrecovered amount if the waiver request is not granted. The OCA, however, disagrees with the Company’s argument that the 10% DSIC cap would not provide full recovery but would only allow the Company to reflect DSIC-eligible plant placed in service in its DSIC through the third quarter of 2017. According to the OCA, the failure to “fully” recover DSIC-eligible investment through the third quarter of 2017 is not a good enough reason to increase the DSIC cap to 10%. OCA R. Exc. at 5-6 (citing UGI-PNG Exc. at 9, 11). The OCA argues that the purpose of the DSIC is not to *eliminate* all regulatory lag but that the lag will exist regardless of the DSIC cap and the lag is actually built into the statutory DSIC calculation because the utility can recover costs only after the funds have been invested. OCA R. Exc. at 6-7 (citing 66 Pa. C.S. § 1357(a)(1)(ii)). The OCA cautions the use of surcharges, even those approved by the General Assembly, due to the additional burden they impose on ratepayers. OCA R. Exc. at 7.

In its Reply to UGI-PNG’s Exception No. 2, the OSBA references the Company’s argument that “without an increase in the DSIC rate cap, the rate cap will limit much needed rate relief for utilities undertaking work that will ensure safe and reliable service for customers.” The OSBA dismisses the Company’s reliance on a DSIC cap increase to comply with its statutory responsibility of providing safe and reliable service. OSBA R. Exc. at 11-12 (citing 66 Pa. C.S. § 1501). The OSBA asserts that based on the Company’s explanation, there is a possibility that UGI-PNG and every other utility in the state might seek higher increases beyond 10% in the not-too-distant future. According to the OSBA, the only way to prevent such future occurrence is to establish that UGI-PNG failed to demonstrate “extraordinary circumstances” and does not warrant a waiver and an increase of the 5% DSIC cap in the instant proceeding. OSBA R. Exc. at 12-13 (citing OSBA St. 1-S at 2).

#### c. I&E’s Exceptions and the OCA and the OSBA’s Replies

In its Exception No. 1, while I&E agrees with the ALJ’s recommendation approving the waiver of the 5% DSIC cap, it disagrees with the ALJ’s recommended 6.89% DSIC cap. In particular, I&E questions the ALJ’s calculation and recommended 6.89% DSIC cap as opposed to the 7.5% DSIC cap it proposed. I&E Exc. at 2-3. I&E asserts it does not believe the ALJ’s calculation is accurate and there is no Commission precedence or evidence to support the calculation. I&E argues that the ALJ’s determination that the 6.89% is appropriate because it is “…a tad less than half of the 14.02% that the Company has projected….” is arbitrary and should be rejected. *Id.* at 3‑4 (citing R.D. at 29). According to I&E, in PGW *Order,* the Commission did not provide a calculation to support its determination that a 7.5% DSIC cap was appropriate for PGW. I&E Exc. at 4. Rather, the Commission only noted that “approval of an increased DSIC cap level must be balanced by considering the impact on customer bills.” *Id.* (citing R.D. at 28; PGW *Order*). I&E argues that the same principle should be applied in the instant proceeding. Finally, I&E posits that because the Company’s modified LTIIP is merely a plan for infrastructure replacement, the ALJ’s reliance on the LTIIP in her calculation is not only limiting but is also misguided and should, therefore, be rejected. I&E Exc. at 4-5.

In Reply, the OCA avers that all the Parties in this proceeding agree that the ALJ’s recommended calculation and suggested DSIC cap increase is not supported by the record evidence. The OCA also agrees with I&E’s reasoning that the DSIC cap should not be derived from projections in the LTIIP. The OCA, however, disagrees with I&E’s proposal that the DSIC cap be increased to 7.5%. OCA R. Exc. at 8 (citing OCA Exc. at 10-11; OSBA Exc. at 13; I&E Exc. at 2-5; UGI-PNG Exc. at 3-9). The OCA disputes I&E’s assertion that the Company has met the standard for waiver and increase of the 5% DSIC cap. The OCA avers that the facts in this case do not establish that UGI-PNG needs to increase the DSIC cap above 5% in order to ensure and maintain safe and reliable service. OCA R. Exc. at 8 (citing I&E Exc. at 2-5; OCA Exc. at 9-10). Specifically, the OCA argues that unlike the record in PGW *Order,* the record in this case shows that UGI-PNG has progressively reduced the risk in its system with the current 5% DSIC cap. Further, the OCA argues that I&E failed to provide any calculations or specific evidence to support its proposed 7.5% increase and, as such, there is no basis to increase the cap from 5% to 7.5%. OCA R. Exc. at 8-10 (citing PGW *Order* at 41, 42, 45, n. 10).

In its Reply to I&E’s Exception No. 1, the OSBA references I&E’s argument that:

While I&E agrees with the ALJ’s conclusion that the record contains substantial evidence that a DSIC cap increase is warranted, I&E does not agree with the ALJ’s calculation of the recommended 6.89% DSIC cap.

OSBA R. Exc. at 13 (citing I&E Exc. at 3).

According to the OSBA, while it agrees with I&E that the Commission should reject the ALJ’s calculation and recommended DSIC rate, it disagrees with I&E’s assertion that there is substantial evidence to grant a DSIC cap waiver. The OSBA argues that the risk concerns expressed by I&E do not justify granting a waiver or an increase of the DSIC cap. OSBA R. Exc. at 13 (citing OSBA Exc. at 12-13; OSBA M.B. at 16-19).

#### d. OCA’s Exception No. 3 and UGI-PNG and I&E’s Replies

In its Exception No. 3, the OCA contends that the ALJ erred in recommending an increase above the 5% DSIC cap. The OCA argues that while it agrees with the ALJ’s conclusion that UGI-PNG’s proposed 10% increase in the DSIC cap is improper, it disagrees with the ALJ’s calculation and recommendation of a 6.89% increase based on the percentage increase in spending in the modified LTIIP. OCA Exc. at 10-11 (citing *Columbia* *DSIC Waiver Order* at 9; R.D. at 28-29). The OCA also disputes the ALJ’s finding that the Company would fail to recover $14 million under her proposed DSIC cap versus $15 million under the current 5% DSIC cap. The OCA avers that contrary to the ALJ’s finding, in the next base rate case, the depreciated original cost of all plant investments will be included in rate base and the Company will recover the return of and the return on its investment. According to the OCA, the only amount the utility may fail to recover if the waiver request is denied is the depreciation and return on incremental plant investment above the 5% DSIC cap which can also be recovered when new base rates go into effect. OCA Exc. at 11 (citing 66 Pa. C.S. § 1358(b); R.D. at 28).

In Reply, UGI-PNG agrees with the OCA regarding the ALJ’s calculation and recommended increase to the DSIC cap but disagrees with the OCA’s supporting argument. UGI-PNG asserts that the OCA mischaracterizes the DSIC recovery mechanism when it states that “the Company will not fail to recover $15 million. UGI-PNG R. Exc. at 16 (citing OCA Exc. at 10-11). The Company argues that the amount reflected in UGI-PNG Exh. WJM-3 is incremental recovery that is calculated on a quarterly basis above the 5% DSIC cap. According to the Company, this amount is not currently being recovered and will never be recovered. UGI-PNG further argues that at the time of a future base rate filing, the plant in question will be included at a value less than the amount that could have been recovered through the DSIC if the rate cap had been increased earlier. The Company believes this is contrary to the intent of Act 11, which is to allow for timely recovery and encourage an accelerated replacement of DSIC-eligible plant investments. UGI-PNG R. Exc. at 16-17.

I&E, in its Reply, disagrees with the OCA’s argument that there was no basis for the ALJ to increase the Company’s DSIC cap from 5%. I&E believes there is sufficient evidence in this proceeding to support the increase requested by the Company. I&E R. Exc. at 4-5.

#### e. OSBA’s Exception No. 5 and UGI-PNG’s Reply

In its Exception No. 5, the OSBA disagrees with the ALJ’s calculation and recommended 6.89% DSIC rate. The OSBA reiterates that similar to the ALJ’s standard for granting the waiver, her reliance on the Company’s modified LTIIP in calculating the 6.89% DSIC rate is flawed. The OSBA concludes that there is no logical, reasonable or legal link between an original or modified LTIIP and the waiver or an increase of the 5% DSIC cap. OSBA Exc. at 12-13.

In Reply, while UGI-PNG agrees with the OSBA’s position regarding the ALJ’s calculation and recommended 6.89% DSIC cap, it disagrees with the OSBA’s argument that there is no link between the modified LTIIP and the DSIC waiver. UGI-PNG argues that the Commission should reject OSBA’s Exception No. 5, because as it explained in its Exception No. 1, there is a clear link between the modified LTIIP and the need to increase the DSIC cap. UGI-PNG R. Exc. at 17 (citing OSBA Exc. at 12-13; UGI-PNG Exc. No. 1).

### 4. Disposition

We note that every Party in this proceeding filed Exceptions to the ALJ’s calculation and recommended DSIC cap of 6.89%. The Parties argue that the ALJ’s calculation, which is based on the percentage increase in spending on DSIC-eligible plant in the *Commission-approved Modified LTIIP,* is unprecedented and is not supported by the record evidence. UGI-PNG Exc. at 3-5; I&E Exc. at 2-3; OCA Exc. at 10-11; OSBA Exc. at 12-13. We also note that every Party in this proceeding, except UGI-PNG, is opposed to the Company’s proposed 10% increase in the DSIC cap. I&E M.B. at 7; OCA M.B. at 5-6; OSBA M.B. at 7-8. ALJ Jones also agreed with the Parties that the record evidence does not support the 10% increase requested by the Company. R.D. at 26-29.

Hence, while we agree with the ALJ’s recommendation that grants the waiver request and denies the Company’s request to increase the DSIC cap from 5% to 10%, we disagree with the ALJ’s calculation and recommended 6.89% DSIC rate increase. We note that while Act 11 established a formula for calculating the initial 5% DSIC, there is no established formula for calculating an increase above the 5% DSIC cap. However, as earlier stated, since Act 11 gives the Commission authority and the discretion to grant a waiver of the 5% DSIC cap, we will determine an appropriate increase from the 5% DISC cap under the circumstances in this case.

In this regard, we acknowledge the Company’s disagreement with the ALJ’s recommended 6.89% DSIC cap increase and the Company’s assertion that the Commission should reject the ALJ’s recommended calculation of the increase, and, instead, consider the totality of all the factors in this proceeding. The Company suggests a DSIC cap increase that appropriately balances the interests of the Company and its customers, rather than adopting the ALJ’s calculation. UGI-PNG Exc. at 7-8. In particular, UGI-PNG argues that the ALJ’s calculation and recommended increase of 6.89% DSIC cap rate would potentially encourage gamesmanship on the part of utilities and should therefore be rejected. *Id.* UGI-PNG explains this potential gamesmanship on the part of the utilities with regard to a DSIC waiver request, as follows:

. . . but applying the RD’s approach would provide a perverse incentive for utilities to start with a lower original LTIIP investment, and then adopt a higher percentage increase in order to manipulate the outcome of the methodology. For instance, a utility that showed a 60% increase in its original LTIIP and only a 20% increase in its modified LTIIP would receive a much lower DSIC rate cap than an identically situated utility that showed a 20% increase in its original LTIIP, and a 60% increase in its modified LTIIP.

UGI-PNG Exc. at 8-9.

The OCA also dismisses the Company’s request for a 10% increase, which, according to the Company, is based on the fact that 10% is near the mid-point between the existing 5% cap and the total charge of 14.49% that would be applicable if all of its DSIC-eligible projects as of January 1, 2019, were reflected in the DSIC rate. OCA R. Exc. at 4-5 (citing UGI-PNG Exc. at 6). Referencing *Columbia* *DSIC Waiver Order* and PGW *Order*, the OCA states that UGI-PNG is not entitled to recover 100% of its projected LTIIP spending through the DSIC. To this end, we agree with the OCA’s argument that “Act 11 does not mandate that the Commission guarantee that a utility be able to recover all of its eligible infrastructure investments through a quarterly surcharge.” OCA R. Exc. at 5-6 (citing UGI-PNG Exc. at 9, 11; *Columbia* *DSIC Waiver Order* at 50, 57; PGW *Order* at 54-55). We also agree with the OCA that the purpose of the DSIC is not to *eliminate* all regulatory lag, because the lag will exist regardless of the DSIC cap and the lag is actually built into the statutory DSIC calculation, as the utility can recover costs only after the funds have been invested. OCA R. Exc. at 6-7 (citing 66 Pa. C.S. § 1357(a)(1)(ii); *Columbia* *DSIC Waiver Order* at 51-52). Further, just as we highlighted in *Columbia* *DSIC Waiver Order,* the function of the DSIC is not to replace but to supplement a utility’s base rate case recovery of capital investments. *Columbia* *DSIC Waiver Order* at 50.

Additionally, in its argument in support of the waiver request, I&E proposed that the DSIC cap be increased to 7.5% and that increasing the DSIC cap to 7.5% is in the public interest because it would facilitate the replacement of the Company’s cast iron mains in a more timely manner and ultimately promote safe and reliable service for the Company’s customers. I&E M.B. at 8-9**.** I&E argued that the Company has demonstrated in its modified LTIIP that the additional DSIC funding would be prudently used to address the safety concerns identified by I&E’s Gas Safety Division. *Id.* at 9-10.

Moreover, the record evidence in this proceeding indicates that a 1% increase in the DSIC cap increases the Company’s customers’ bills by $0.48 per month. Therefore, an increase of the DSIC cap from 5% to 7.5% would result in an additional increase of 2.5% or $1.20 per month compared to the additional 5% or $2.40 per month increase in the Company’s customer bill for a 10% increase. Given the additional benefits of repairing and replacing at-risk mains in the Company’s distribution system, we believe a 7.5% increase is adequate to provide sufficient funds for the Company to embark on its accelerated main replacement program, while also resulting in a moderate increase in the Company’s customers’ monthly bills compared to the significant increase in monthly customer bills for a 10% increase. We find that a 7.5% increase is reasonable in this case and is also consistent with our prior decisions permitting a 7.5% increase. *See,* *Aqua PA Order*; *PGW Order; Petition of Pennsylvania-American Water Company for Approval to Implement a Tariff Supplement To Tariff Water-PA P.U.C. No. 4 Revising the Distribution System Improvement Charge*, Docket Nos. P-00062241, *et al.*, (Order entered August 14, 2007).

Furthermore, we stated in *PGW Waiver Petition* as follows:

While it is clear that Act 11 contemplates the possibility that an increase to the 5% DSIC cap may be advisable under certain circumstances in order to ensure safe and reliable service, it does not mandate that the Commission guarantee that a utility be able to collect DSIC revenues at the full percentage designated by the cap in any given quarter. We conclude that allowing PGW to increase its DSIC cap to 7.5% will permit the Company to significantly accelerate its main replacement efforts to address the problems resulting from its aging infrastructure, as discussed above, and PGW has met its burden of proof to demonstrate that an increase to 7.5% is necessary to ensure “adequate, efficient, safe, reliable and reasonable service.” This is consistent with the legislative intent of Act 11.

*PGW Waiver Petition* at 54-55. Here, similar to our decision in *PGW Waiver Petition*, we believe a 7.5% increase will enhance UGI-PNG’s accelerated main replacement program as well as address the Company’s safety and reliability issues to ensure “adequate, efficient, safe, reliable and reasonable service.” As previously stated, I&E’s Gas Safety witness, Sunil Patel, testified that “compared to other NGDCs, UGI-PNG has the highest number of total leaks per mile.” I&E St. 1 at 11-12; Tr. at 80. Further, UGI-PNG has an average of 1.65 total leak per mile compared to a statewide average of 0.95 total leaks per mile. I&E St. 1 at 10; Tr. at 80. In addition, I&E testified that the Company’s corrosion-related leaks have also increased by 64% from 2013 to 2015. I&E St. 1 at 10.

In light of all of the above, we shall grant UGI-PNG a waiver of the 5% capped DSIC rate and permit it to increase the current rate by 2.5 percentage points for a new capped DSIC rate of 7.5% as proffered by I&E. However, we emphasize that the increase of UGI-PNG’s DSIC rate to 7.5% is not a permanent rate change. Determining the appropriate DSIC rate, and, in particular, whether the waiver permitting 7.5% recovery will continue, should be an issue when UGI-CPG files a new LTIIP at the end of 2018. Accordingly, we shall approve a waiver of the 7.5% DSIC rate until UGI-PNG’s next LTIIP filing, absent a statutory reason to reduce or suspend the DSIC. Consistent with this determination, I&E’s Exceptions on this issue are granted and the remaining Parties Exceptions are denied.

## D. Retroactive Recovery of the DSIC

### 1. Positions of the Parties

#### None of the Parties raised this issue in their Main Briefs.

### 2. ALJ’s Recommendation

In her Recommended Decision, ALJ Jones seemed to imply that UGI-PNG could retroactively recover the recommended 6.89% DSIC increase. Specifically, the ALJ stated that “Residential heating gas customer’s bills will have added (1.89 x $0.48 = $0.91) $0.91 per month from July 2016 to the end of the term of the LTIIP (end of year 2018).” R.D. at 29 (citing UGI-PNG Exh. WJM-3). The ALJ further explained that “UGI-PNG will obtain approximately $933,940[[30]](#footnote-30) that was not collected because the DSIC was capped at 5% and the Company would fail to recover approximately $14,671,552.” [[31]](#footnote-31) *Id.*

### 3. Exceptions and Replies

#### a. UGI-PNG’s and OCA’s Exception No. 3 and the OCA’s Reply

In its Exception No. 3, UGI-PNG requests that the Commission clarify when the Company’s DSIC rates should become effective. The Company asserts that the Recommended Decision did not clearly articulate when the DSIC cap should be increased and what additional revenues can be collected. Citing to page 29 of the Recommended Decision, UGI-PNG asserts it appears from the statement above that the Company can retroactively apply the new DSIC rate to bills rendered on or after July 2016. UGI-PNG Exc. at 12 (citing R.D. at 29). UGI-PNG states that although the Recommended Decision appears to allow the Company to recover additional revenue for 2016 through an under collection mechanism, it would rather that the Commission increase the DSIC cap to 10%, as opposed to the 6.89% cap recommended by the ALJ. UGI-PNG Exc. at 12-13. Finally, the Company encourages the Commission to make any increase in the DSIC cap effective upon one day’s notice after a final order is issued in this proceeding. According to the Company, if the Commission elects to allow UGI-PNG to recover any past under collection that exceeds the increased DSIC cap, it should direct the Company the same way it did in *PGW Order* and *PGW Reconsideration.* UGI-PNG Exc. at 12 (citing *PGW Waiver Petition*; *PGW Reconsideration*).

In its Exception No. 3 regarding this issue, the OCA avers that to the extent that the ALJ is recommending a retroactive approval of the DSIC, the OCA disagrees. The OCA asserts that the Company did not request a retroactive approval, neither is there a provision in Act 11 that supports a retroactive recovery of the DSIC cap. OCA Exc. at 11-12 (citing 66 Pa. C.S. § 1358(a)(1); R.D. at 3, 29; UGI-PNG St. 1 at 11-12; UGI‑PNG Exh. WJM-2).

In its Reply to UGI-PNG’s Exception No. 3 regarding this issue, the OCA agrees with the Company’s argument that contrary to the ALJ’s suggestion, a prospective rather than a retroactive recovery is appropriate. OCA R. Exc. at 7 (citing OCA Exc. at 11-12; UGI-PNG Exc. at 13). According to the OCA, “the Company’s recommendation for prospective recovery is consistent with Act 11, which does not provide for retroactive waiver of the DSIC cap.” OCA R. Exc. at 7 (citing 66 Pa. C.S. § 1358(a)(1); UGI-PNG Exc. at 12). Nonetheless, the OCA opposes the Company’s request for a higher DSIC cap in the instant proceeding. *Id.*

### 4. Disposition

As indicated by the Parties in their Exceptions and Replies, although ALJ Jones’ Recommended Decision seemed to suggest a retroactive recovery, we concur with the Parties that Act 11 does not permit a retroactive recovery of the DSIC. Therefore, we clarify that our recommended DSIC rate cap increase to 7.5% in this proceeding will become effective for bills rendered on and after July 1, 2017. Consistent with the Model Tariff for DSIC filings and the quarterly DSIC changes articulated in the *Final Implementation Order*, we consider the recommended effective date of July 1, 2017, to be appropriate. *Final Implementation Order* at 22-26, 28; Appendix.

# V. Conclusion

Based on our review of the record, and consistent with the foregoing discussion we shall: (1) grant I&E’s Exceptions; (2) grant, in part, and deny, in part, the Exceptions of UGI-PNG, the OCA and the OSBA; (3) grant, in part, and deny, in part, UGI-PNG’s Petition requesting to waive the 5% DSIC cap and increase the cap from 5% to 10% of billed distribution revenues; and (4) modify the ALJs’ Recommended Decision, consistent with the discussion herein; **THEREFORE,**

**IT IS ORDERED:**

1. That the Exceptions filed by the Commission’s Bureau of Investigation and Enforcement on January 4, 2017, are granted, consistent with this Opinion and Order.

2.That the Exceptions filed by UGI Penn Natural Gas, Inc., on January 4, 2017, are granted, in part, and, denied, in part, consistent with this Opinion and Order.

3. That the Exceptions filed by the Office of Consumer Advocate, on January 4, 2017, are granted, in part, and, denied, in part, consistent with this Opinion and Order.

4. That the Exceptions filed by the Office of Small Business Advocate, on January 4, 2017, are granted, in part, and, denied, in part, consistent with this Opinion and Order.

5. That the Petition of UGI Penn Natural Gas, Inc., filed on March 31, 2016, for a waiver of the distribution system improvement charge cap of 5% and approval to increase the maximum allowable distribution system improvement charge up to 10% of billed distribution revenues is, granted, in part, and denied, in part, consistent with this Opinion and Order.

6. That the Recommended Decision of Administrative Law Judge Angela T. Jones, issued on December 1, 2016, is modified, consistent with this Opinion and Order.

7. That UGI Penn Natural Gas, Inc. is approved to increase its maximum allowable distribution system improvement charge up to 7.5% of billed distribution revenues until its next Long-Term Infrastructure Improvement Plan filing, absent a statutory reason to reduce or suspend the DSIC.

8. That UGI Penn Natural Gas, Inc. shall file a tariff supplement containing the changes approved in this Opinion and Order along with its next distribution system improvement charge rate filing due on June 20, 2017, for the rate effective July 1, 2017.

9. That the following transcript corrections proposed by UGI Penn Natural Gas, Inc. by written request dated September 21, 2016, are accepted:

Page Line Correction

* 1. 25 12 Change “to” into “and”.
  2. 26 11 Strike “the”.
  3. 33 2 Strike “our”.
  4. 37 10 Change “Columbia” to “Columbia’s”.
  5. 48 9 Change “1RS” to “1SR”.
  6. 48 19 Strike “we”.

Page Line Correction

* 1. 51 2 Change “Exhibit WJM-1SR” to “Exhibit WJM-

1S”.

* 1. 57 19 Change “Not that many” to “I don’t have any”.
  2. 67 23 Strike “as”.
  3. 67 24 Strike “filed with the Public Utility

Commission and approved”.

* 1. 69 13 Strike “to increase out proceeding”.
  2. 86 4 Change “has order” to “has an order”.
  3. 102 18 Change “investor of a” to “investor-owned”.
  4. 115 17 Change “there no” to “there are no”.

10. That this proceeding be marked closed.

**BY THE COMMISSION,**



Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: April 20, 2017

ORDER ENTERED: May 10, 2017

1. Exceptions were due on December 21, 2016, and Replies were originally due on January 3, 2017. However, on December 13, 2015, UGI-PNG submitted a letter stating that counsel for the Company had requested and obtained an extension of time to file Exceptions and Replies from the Commission’s Office of Special Assistants. Per the letter, prior to the issuance of the ALJ’s Recommended Decision, the instant proceeding had been conducted jointly with a similar DSIC waiver proceeding for UGI Central Penn Gas, Inc. (UGI-CPG) at Docket No. P-2016-2537609. The Recommended Decision for the UGI-CPG proceeding was issued on December 5, 2016. The letter also stated that the issues addressed in the Exceptions in both cases would be identical and that having different due dates for the two proceedings would be burdensome for the Parties. According to the letter, the Parties agreed that the holiday season may impact their ability to prepare and file Exceptions and Replies on the deadlines established for both proceedings. Therefore, new dates of January 4, 2017, for filing Exceptions, and January 11, 2017, for filing Replies to Exceptions, were established to allow the Parties to align the due dates for both proceedings. This ensured that the filings would not be filed during the holiday period and permitted the Parties to produce a single coherent theory applicable to both cases. [↑](#footnote-ref-1)
2. *See, 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-2013-2397056 (Order entered September 11, 2014) *(September 2014 UGI-PNG DSIC Order)*. [↑](#footnote-ref-2)
3. *See, Petition of UGI Penn Natural Gas, Inc. for Approval of a Distribution System Improvement Charge,* Docket No. P-2013-2397056 (Order entered July 8, 2015) *(July 2015 UGI-PNG DSIC Order).* [↑](#footnote-ref-3)
4. *See,* *Petition of UGI Penn Natural Gas, Inc. for Approval of their Modified Long-Term Infrastructure Improvement Plan (Modified LTIIP Petition),* Docket No. P‑2013-2397056 (Order entered June 30, 2016) *(Commission-approved Modified LTIIP).* [↑](#footnote-ref-4)
5. On January 19, 2017, UGI-PNG filed a request for a general rate increase at Docket No. R-2016-2580030 *(UGI-PNG 2017 Rate Request)*. UGI-PNG filed Supplement Nos. 9 and 9-S proposing to increase its annual jurisdictional revenues by approximately $21.7 million or by 10.4% to become effective for service rendered on or after March 20, 2017. UGI-PNG averred that even if the proposed increase is granted by the Commission, the average monthly residential heating customer bill will be 39% lower than the average bill following the Company’s last base rate case in 2009. According to the Company, since 2009, it has expanded domestic natural gas supplies from regions such as the Marcellus Shale which has led to a multi-year decline in natural gas commodity prices and substantially lowered its overall customer bills. The Company, however, indicated that there are also other factors that have increased the cost of providing gas service to the public. This, according to the Company, is the reason for its current rate increase filing. In its statement of reasons for filing the rate increase, UGI-PNG stated that it anticipates spending $168 million in capital projects to upgrade its system over the next two years. Specifically, the Company asserted that its capital replacement and betterment program, including the accelerated repair and replacement of its aging infrastructure, has increased. UGI-PNG also indicated that it has reached the current DSIC cap of 5% of distribution revenues which effectively prevents the Company from getting a reasonable return on additional DSIC-eligible investments. *UGI-PNG 2017 Rate Request* at 1-2. [↑](#footnote-ref-5)
6. The Company averred that for each 1% increase to the DSIC cap, the impact on customer bills will increase by only $0.48 per monthly bill. The Company stated an increase to the total monthly bill of $2.39 instead of $2.40. Petition at 7. [↑](#footnote-ref-6)
7. UGI-PNG began to actively recover investments under the DSIC on April 1, 2015, and reached the 5% DSIC cap on April 1, 2016. The Company indicated that it can no longer recover DSIC-eligible investments through the DSIC due to the cap. UGI-PNG M.B. at 22. [↑](#footnote-ref-7)
8. *Pa. PUC v. Aqua Pennsylvania, Inc.,* Docket Nos. R-2008-2079310, *et al.* (Order entered July 23, 2009) (*Aqua PA Order*). [↑](#footnote-ref-8)
9. The OCA and the OSBA state that a demonstration of “extraordinary circumstances” is required, similar to PGW’s system in the *PGW Order,* to be eligible for the DSIC cap waiver. The OSBA’s witness explained that:

   under extraordinary circumstances, a utility may not have access to capital markets necessary to raise funds needed to safely operate its distribution system without being able to obtain near-term rate relief that could not be achieved promptly through a lengthy base rates proceeding.

   Tr. at 121-122. [↑](#footnote-ref-9)
10. 52 Pa. Code § 121.5(a), states, in pertinent part, that “If a utility elects to modify a Commission-approved LTIIP during its term to incorporate a major modification to any of the elements in Section 121.3(a) (relating to LTIIP), the utility shall file a separate petition for modification.” A “major modification” is defined as follows:

    A change to a utility’s previously approved LTIIP which meets at least one of the following criteria:

    1. Eliminated a category of eligible property from the LTIIP.
    2. Extends the schedule for repair, improvement or replacement of a category of eligible property by more than 2 years.
    3. ***Increases the total estimated cost of the LTIIP by more than 20%.***
    4. Otherwise reflects a substantial change to the current Commission-approved LTIIP.

    R.D. at 19 (citing 52 Pa. Code § 121.2) (emphasis added). [↑](#footnote-ref-10)
11. Section 121.1 of the Commission’s Regulations, states, in pertinent part, that “[t]he LTIIP must show the acceleration of the replacement of aging infrastructure by the utility and be sufficient to ensure and maintain adequate, efficient, safe, reliable and reasonable service to customers.” 52 Pa. Code § 121.1 [↑](#footnote-ref-11)
12. The ALJ took note of the fact that the only witness that went through the Pipeline and Hazardous Materials Safety Administration (PHMSA) training in this proceeding and is employed by the Commission as a gas safety engineer recommended that UGI-PNG receive a waiver to increase its capped DSIC rate above 5%. R.D. at 24 (citing I&E St. 1 at 12; Tr. at 73). [↑](#footnote-ref-12)
13. The last base rate case for UGI-PNG was filed in 2008 with the rates going into effect in August 2009. OCA M.B. at 9; UGI-PNG St. 1-R at 5. [↑](#footnote-ref-13)
14. Finding of Fact No. 9 states:

    [T]he accelerated infrastructure expenditures over the five year term of the UGI-PNG modified LTIIP are as follows:”

    |  |  |
    | --- | --- |
    | Year | Investment (in millions of dollars) |
    | 2014 | $26.1 actual |
    | 2015 | $27.1 actual |
    | 2016 | $35.9 projected |
    | 2017 | $24.8 projected |
    | 2018 | 24.8 projected |

    R.D. at 7 (citing UGI-PNG St. 1 at 8).

    Finding of Fact No. 10 states the following: “The accelerated repair and improvements of the infrastructure contained in the modified LTIIP will help UGI-PNG address and reduce the number of leaks in its piping, install additional safety mechanisms and relocate meters that are currently inside customers’ buildings.” R.D. at 7 (citing UGI-PNG St. 2‑R at 2-5). [↑](#footnote-ref-14)
15. PGW, a municipally-owned utility with limited access to capital (funded by City bonds) and entirely without equity capital, is regulated on a cash flow (not rate base) basis and, therefore, is not comparable to UGI or any of the private companies that serve Pennsylvania. [↑](#footnote-ref-15)
16. We noted that even with this 44% reduction in PGW’s replacement timeline, the Company still expects that it will take forty-eight years for it to complete its main replacement program.  *PGW* *Order* at 42 n. 8 (citing PGW St. 1 at 10). [↑](#footnote-ref-16)
17. A “major modification” includes a “change to a utility’s previously approved LTIIP which . . . [i]ncreases the total estimated cost of the LTIIP by more than 20%.” 52 Pa. Code § 121.2. [↑](#footnote-ref-17)
18. UGI-PNG began to actively recover investments under the DSIC on April 1, 2015, and reached the 5% DSIC cap on April 1, 2016. The Company indicated that it can no longer recover DSIC-eligible investments through the DSIC due to the cap. UGI-PNG M.B. at 22. [↑](#footnote-ref-18)
19. The Company’s originally anticipated spending of $22.9 million per year for a total of $114.5 million over the five year period of the original LTIIP would now be increased to $138.7 million for DSIC-eligible plant expenditures for the year 2014 through 2018 in the modified LTIIP. UGI-PNG Exc. at 21 (citing *Commission-approved Modified* LTIIP at 5). [↑](#footnote-ref-19)
20. According to the ALJ, although I&E stated that the risks in this proceeding do not warrant increasing the DSIC cap to10% and, therefore, recommended that the DSIC be set at 7.5%, I&E failed to indicate why it should be 7.5% rather than some other percentage below 10%. R.D. at 27 (citing I&E M.B. at 15). [↑](#footnote-ref-20)
21. The original LTIIP projected annual expenditures of $22.9 million or $114.5 million over a five-year period ($22.9 million x 5 = $114.5 million). The modified LTIIP schedule provides for projected expenditures of $138.7 million over a five-year period from 2014 to 2018 (i.e., $26.1 million (in 2014) + $27.1 million (in 2015)+ $35.9 million (in 2016) + $24.8 million (in 2017) + $24.8 million (in 2018) = $138.7 million) or an increase of 21% ($138.7 million - $114.5 million)/ $114.5 million = 21%). [↑](#footnote-ref-21)
22. According to the ALJ, UGI-PNG Exhibit WJM-3 indicates that the cumulative unrecovered amount through July 2016 was $933,940. R.D. at 29. [↑](#footnote-ref-22)
23. The ALJ also indicated that UGI-PNG Exhibit WJM-3 shows that the Company was unable to collect $15,605,492 under the 5% capped DSIC rate. Under the ALJ’s recommended 6.89% DSIC rate, the uncollectible amount would be reduced to $14,671,552 ($15,605,492 - $933,940 = $14,671,552). *Id.* [↑](#footnote-ref-23)
24. The ALJ’s calculation is as follows: Statutory DSIC cap of 5% + (Difference between amount of projected DSIC charge at January 1, 2019 without cap less 5% current cap)\*(Percent increase in LTIIP DSIC investment) = Increased DSIC rate cap, or 5% + (9\*21%) = 6.89%. UGI-PNG Exc. at 4. [↑](#footnote-ref-24)
25. *Petition for Reconsideration of the 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 July 6, 2016)(*PGW* *Reconsideration).* [↑](#footnote-ref-25)
26. UGI-PNG avers that even the 7.5% DSIC cap proposed by I&E would not be sufficient in light of the substantial accelerated DSIC-eligible investments shown in its Commission-approved modified LTIIP. UGI-PNG Exc. at 7 (citing I&E St.1 at 12; UGI-PNG St. 1-R at 2-3, 5-6). [↑](#footnote-ref-26)
27. This would change the calculation to 7.21% (5% + (9 x 24.5%) = 7.21%). [↑](#footnote-ref-27)
28. According to the OSBA, the Merriam Webster dictionary defines accelerate as “to bring about at an earlier time,” “to cause to move faster,” and “to hasten the progress or development of.” OSBA R. Exc. at 9. [↑](#footnote-ref-28)
29. According to the OSBA, the Commission emphasized that the modified LTIIP did not demonstrate an accelerated pace stating:

    The UGI Companies’ current LTIIPs planned to remove all cast iron distribution main from their systems in 14 years (by 2027) and all bare steel distribution mains from their systems in 28 years (by 2041). ***The UGI Companies are not proposing to change these timelines for the removal of the legacy materials.*** Instead UGI is proposing to spend additional capital on projects to improve the reliability of its distribution systems.

    OSBA R. Exc. at 10 (citing *Commission-approved Modified LTIIP* at 6) (emphasis added). [↑](#footnote-ref-29)
30. According to the ALJ, UGI-PNG Exhibit WJM-3 indicates that the cumulative amount that the Company has not recovered through July 2016 was $933,940. R.D. at 29. [↑](#footnote-ref-30)
31. The ALJ also indicated that UGI-PNG Exhibit WJM-3 shows that the Company was unable to collect $15,605,492 under the 5% capped DSIC rate. Under the ALJ recommended 6.89% DSIC rate, the uncollectible amount would be reduced to $14,671,552 ($15,605,492 - $933,940 = $14,671,552). *Id.* [↑](#footnote-ref-31)