



COMMONWEALTH OF PENNSYLVANIA

May 25, 2017

**E-FILED**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

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

Dear Secretary Chiavetta:

I am delivering for filing today the Petition for Reconsideration, on behalf of the Office of Small Business Advocate ("OSBA"), in the above-docketed proceeding. As evidenced by the enclosed Certificate of Service, copies will be served on all known parties in this proceeding.

If you have any questions, please contact me.

Sincerely,

  
Steven E. Gray  
Assistant Small Business Advocate  
Attorney ID No. 77538

***Enclosures***

cc: The Honorable Angela T. Jones  
Parties of Record  
Mr. Robert D. Knecht

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**PETITION FOR RECONSIDERATION  
ON BEHALF OF THE  
OFFICE OF SMALL BUSINESS ADVOCATE**

Pursuant to 66 Pa. C.S. § 703 and 52 Pa. Code § 5.572, the Office of Small Business Advocate (“OSBA”) files this Petition for Reconsideration of the Opinion and Order of the Pennsylvania Public Utility Commission (“Commission”) entered in the above-captioned proceeding on May 10, 2017.

**I.     Introduction**

1.     On March 31, 2016, UGI Central Penn Gas, Inc. (“UGI CPG” or the “Company”) filed a Petition for a 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 (“*Petition*”) with the Pennsylvania Public Utility Commission (“Commission”).

2.     On April 19, 2016, the Office of Small Business Advocate (“OSBA”) filed a Notice of Intervention and Answer to the *Petition*.

3. On June 17, 2016, a Prehearing Conference was held before Administrative Law Judge (“ALJ”) Angela T. Jones. On June 21, 2016, ALJ Jones issued Prehearing Order # 2 setting forth the procedural schedule in this case.

4. On July 21, 2016, the OSBA served the Direct Testimony of Robert D. Knecht. On August 19, 2016, the OSBA served the Rebuttal Testimony of Mr. Knecht. On August 29, 2016, the OSBA served the Surrebuttal Testimony of Mr. Knecht.

5. On September 8, 2016, an Evidentiary Hearing was held before ALJ Jones.

6. On September 16, 2016, the OSBA served the redacted Rebuttal Testimony of Mr. Knecht.

7. On September 22, 2016, the OSBA served its Main Brief.

8. On September 30, 2016, the OSBA served its Reply Brief.

9. On December 5, 2016, ALJ Jones issued her Recommended Decision (“RD”).

10. On December 13, 2016, UGI CPG sent a Letter to the Commission requesting a change in the due dates for Exceptions and Reply Exceptions because of the upcoming holidays.

11. On December 19, 2016, UGI CPG informed all parties via email that the Commission had granted the change in due dates for both the Exceptions and Reply Exceptions, but would not be issuing a formal notice of the scheduling change.

12. On January 4, 2017, the OSBA filed Exceptions to the RD.

13. On January 11, 2017, the OSBA filed Reply Exceptions.

14. On May 10, 2017, the Commission entered its Opinion and Order in *Petition of UGI Central Penn Gas, Inc. for a 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*, Docket No. P-2016-2537609 (Order entered May 10, 2017) (“*May 10<sup>th</sup> CPG Order*”).

## II. The Legal Requirements to Grant a Petition for Reconsideration

15. In *Philip Duick et al. v. Pennsylvania Gas and Water Company*, Docket No. C-R0597001 (Order entered December 17, 1982), 1982 Pa. PUC LEXIS 4, 56 Pa. PUC 553 (1982), the Commission explained the basis for rescinding or amending a prior order:

A petition for reconsideration, under the provisions of 66 Pa. C.S. § 703(g), may properly raise any matters designed to convince Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part. . . . What we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission.

*Duick*, 1982 Pa. PUC LEXIS 4, at \*11-\*13.

16. In *Pennsylvania Public Utility Commission v. Jackson Sewer Corporation*, 2001 Pa. PUC LEXIS 44, the Commission also stated:

Additionally, a Petition for Reconsideration is properly before the Commission where it pleads newly discovered evidence, alleges errors of law, or a change in circumstances.

*Jackson Sewer*, 2001 Pa. PUC LEXIS 44, at \*6.

17. This Petition for Reconsideration satisfies both *Duick* and *Jackson Sewer*, as this Petition for Reconsideration raises issues “which appear to have been overlooked or not addressed by the Commission” (there is no need for UGI CPG to be granted a waiver to the DSIC rate cap) and “alleges errors of law” (the Commission fails to follow its own standard for the granting of a DSIC rate cap waiver).

**III. Argument**

18. The OSBA seeks reconsideration of the Commission decision, as follows:

In light of all of the above factors, we concur with the ALJ, I&E and the Company that UGI-CPG has satisfied its burden of proof and has met the standard for granting the 5% DSIC cap waiver.

*May 10<sup>th</sup> CPG Order*, at 44.

19. The Commission ultimately ordered, as follows:

That UGI Central Penn 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.

*May 10<sup>th</sup> CPG Order*, at 73, Ordering Paragraph 8.

The Legal Standard for the Granting of a DSIC Rate Cap

20. The Commission, in section III.B. (“Legal Standards; Act 11 Legal Standards Applicable to this Proceeding”) of its May 10<sup>th</sup> CPG Order, cites to Section 1358(a)(1) of the Public Utility Code, 66 Pa. C.S. Section 1358(a)(1). *May 10<sup>th</sup> CPG Order*, at 10-11. Section 1358(a)(1) of the Public Utility Code (“Consumer protections; Limitation”) states:

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.

66 Pa. C.S. § 1358.

21. Based upon this statutory language, the Commission clearly enunciated the legal standard that fixed utilities, including every natural gas distribution company (“NGDC”), must meet in order to be granted a DSIC rate cap waiver:

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).

*May 10<sup>th</sup> CPG Order*, at 38-39 (emphasis added). The Commission’s legal standard as set forth in the *May 10<sup>th</sup> CPG Order* is consistent with the underlying legislation and should be adopted and followed. The legislature intended that DSIC rate cap waivers be granted only in extraordinary circumstances, and most Pennsylvania fixed utilities (including UGI CPG) are readily able to meet their service obligations in the absence of a DSIC cap waiver. The Commission’s standard sensibly requires a petitioner to demonstrate that it is unable to meet its obligations without a DSIC cap waiver.

22. The Commission further stated that “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.” *May 10<sup>th</sup> CPG Order*, at 39. This standard also is consistent with the legislation. Moreover, a case-by-case review of DSIC rate cap waiver petitions underscores the legislative intent that waivers only be granted in extraordinary circumstances.

No Evidence of Necessity to Grant UGI CPG a Waiver of the DSIC Rate Cap

23. Where the OSBA respectfully differs from the Commission is the application of its enunciated standard in light of the record evidence. Simply put, the record evidence demonstrates that UGI CPG has undertaken reasonable repairs to its distribution system as contemplated by Act 11 and will continue to do so regardless of the outcome of this proceeding. There is no evidence that UGI CPG is in dire need of financial help completing these repairs, nor is there evidence that the UGI CPG distribution system poses a danger to any of the Company’s customers. Furthermore, there is no evidence that CPG will be unable to provide adequate, efficient, safe, reliable, and reasonable service if a DSIC cap waiver is *not* granted.

24. In support of its decision to grant the DSIC rate cap, the Commission cited to I&E's Gas Safety witness Sunil Patel. *May 10<sup>th</sup> CPG Order*, at 40. The Commission correctly observed that some of the metrics employed by Mr. Patel demonstrate the increasing safety of UGI CPG's distribution system. *Id.* In fact, Mr. Patel's exhibit stated that, by one of his metrics, UGI CPG is the safest NGDC in the Commonwealth. *See* I&E Statement No. 1, Exhibit 1, Schedule 3 (CPG has the lowest "total leaks per mile" of any NGDC in the Commonwealth).

25. Furthermore, Mr. Patel's exhibit also stated that UGI CPG has the second lowest number of inside meters of any NGDC in the Commonwealth. *See* I&E Statement No. 1, Exhibit 1, Schedule 2. The Commission observed that UGI CPG's meter relocations were a "potential positive" in granting the DSIC rate cap waiver. *May 10<sup>th</sup> CPG Order*, at 44. However, the Commission's reliance on Mr. Patel's assessment of inside meters is a mistake. First, Mr. Patel's I&E Exhibit No. 1 Schedule 2 demonstrates that UGI CPG has the second lowest number of inside meters of the ten natural gas distribution utilities for which data are presented. Thus, the only record evidence on this issue demonstrates that UGI CPG has superior performance. Moreover, Mr. Patel's data for UGI CPG are highly suspect, as they indicate that the number of inside meters at the Company increased from 2,853 in 2013 to 3,848 in 2014, as if UGI PNG were actually moving meters indoors. When asked about this apparent anomaly during the hearings, UGI CPG witness Mr. Bell indicated that Mr. Patel's meter data "are accurate to the extent that the underlying records upon which the figures were prepared are also accurate." Transcript, at 84. Mr. Bell explained that the meter records are updated "to reflect what our personnel observe in the field" resulting in meter data that "reflect the net change as a result of physical as well as data corrections." *Id.*

26. The Commission expressed concern that “steel risks increased from 63,475 points to 65,441 points (2012-2015),” once again citing Mr. Patel. This appears to be the main issue upon which the Commission rests its decision to grant the DSIC rate cap waiver.<sup>1</sup> The OSBA agrees with I&E that “cathodically unprotected base steel pipelines pose a safety risk for NGDCs.” I&E Main Brief, at 11. The question is: Is a DSIC cap waiver *necessary* to address this one particular safety risk identified by Mr. Patel?

27. The Commission then cited I&E for two propositions. First, the Commission stated:

I&E believes granting the waiver of the DSIC cap would *allow* UGI-CPG to make the necessary repairs and replacements to ensure safety and reliability of its system.

May 10<sup>th</sup>, CPG Order, at 40 (emphasis added). This statement contradicts the record evidence in this proceeding. OSBA witness Robert D. Knecht’s un rebutted testimony stated:

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.

OSBA Statement No. 1-R (Redacted), at 3. Furthermore, under cross examination. UGI CPG witness Hans G. Bell stated:

- UGI CPG will “continue with [its annual] asset optimization [plan] as filed ... in order to maintain our current levels or improve our levels of safe and reliable service” regardless of whether a DSIC rate cap waiver was approved (Transcript, at 86);

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<sup>1</sup> The Commission also observed that UGI CPG was working to “increase system pressure” in certain regions, and address future PennDOT facility relocations. *May 10<sup>th</sup> CPG Order*, at 42. The Commission acknowledged that both of these issues are addressed in the Company’s modified LTIP. *Id.* As set forth in this Petition for Reconsideration, Company witness Hans G. Bell testified that all repairs and improvements set forth in the Company’s modified LTIP will be executed regardless of the granting of a DSIC rate cap waiver.



- In regard to the Company’s originally filed LTIP, and its modified LTIP, UGI CPG will “execute the LTIP Plans as approved” regardless of whether a DSIC rate cap waiver was approved (Transcript, at 88-89);<sup>2</sup> and
- The granting of a DSIC rate cap waiver will not make UGI CPG materially safer (Transcript, at 87).

Thus, granting a DSIC rate cap waiver does not *allow* UGI CPG anything. Granting the DSIC rate cap waiver does, as Mr. Bell stated, help support the Company financially. Transcript, at 88.

28. Second, the Commission stated:

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*.

*May 10<sup>th</sup> CPG Order*, at 40. The OSBA respectfully submits that the Commission erred by relying on Mr. Patel’s unsubstantiated opinion in its *May 10<sup>th</sup> CPG Order*. Mr. Bell, as set forth above, has unequivocally testified that UGI CPG will not be deterred from replacing its at-risk mains if the DSIC rate cap waiver is not granted.

29. There is no record evidence that UGI CPG is on the brink of “disastrous consequences,” up to and including gas explosions. And it is unfounded to assert that the granting of a DSIC rate cap waiver would prevent such “consequences.” This is clearly true in light of Mr. Bell’s testimony, set forth above, that UGI CPG will not replace and repair its distribution system any differently if the DSIC rate cap waiver is granted. Even the Commission

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<sup>2</sup> The Commission claimed that UGI CPG’s modified LTIP “supports the Company’s case for granting the waiver of the 5% DSIC cap.” *May 10<sup>th</sup> CPG Order*, at 42. Not only does a modified LTIP have nothing to do with a DSIC rate cap waiver, the Commission has now invited every NGDC in the Commonwealth to file a modified LTIP in order to obtain that waiver.

acknowledged that “UGI-CPG did not commit to increasing its pipeline replacement schedule” if a DSIC rate cap waiver was granted. *May 10<sup>th</sup> CPG Order*, at 42.

30. Suggesting in a Commission Order that UGI CPG is prone to disastrous consequences, including gas explosions, could seriously harm the financial health of UGI. At the time of this writing, UGI stock (NYSE: UGI) is trading at \$49.91 per share. If the *New York Times*, *Wall Street Journal*, or Jim Cramer’s *Mad Money* cited the *May 10<sup>th</sup> CPG Order* for the proposition that UGI is prone to “disastrous consequences,” arguing over a DSIC rate cap waiver will be the least of the Company’s worries.

31. The OSBA respectfully disagrees with the Commission that the “safety and reliability concerns” of UGI CPG are similar to those of Philadelphia Gas Works (“PGW”). *May 10<sup>th</sup> CPG Order*, at 40-41. Mr. Knecht’s unrebutted evidence stated, as follows:

Prior to the proceeding in which the waiver to PGW’s DSIC was approved, PGW’s LTIP called for replacement of cast iron and unprotected steel mains over an 86 year period. Even with the waiver, PGW’s goal is to reduce the cast iron mains replacement period to a 48 years and unprotected steel to 66 years. By way of contrast, both of the Companies’ LTIPs anticipate replacing cast iron mains over a 13 year period and bare steel mains over a 28 year period. PGW’s need for replacement capital was obviously more extreme.

OSBA Statement No. 1 at 14.

32. The Commission also addressed the financial aspect of this DSIC rate cap waiver proceeding. The Commission observed that UGI CPG “indicated that it can no longer recover DSIC-eligible investments through the DSIC due to the cap.” *May 10<sup>th</sup> CPG Order*, at 43. This is because the Company “indicated that . . . it has reached the 5% DSIC cap as of July 1, 2016.” *Id.* However, the fact that UGI CPG has “reached” its DSIC cap is irrelevant, as the Company has many options to finance both its original and modified LTIPs through “traditional

distribution rates, shareholder equity, retained earnings, the DSIC, or debt.” *Statement of Chairman Gladys M. Brown*, at 3. The Commission itself observed:

The record evidence in this case shows that UGI-CPG has not filed a base rate case for almost seven years and has also not utilized the FPFTY mechanism that Columbia effectively used to address its main replacement efforts.

*May 10<sup>th</sup> CPG Order*, at 44. Simply put, UGI CPG has options available to it to finance both LTIPs.

#### IV. Conclusion

The Commission has stated a clear standard for the granting of a DSIC rate cap waiver in this proceeding:

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.’

*May 10<sup>th</sup> CPG Order*, at 38-39 (emphasis added).

The OSBA also participated in the companion case, *Petition of UGI Penn Natural Gas, Inc. for a 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*, Docket No. P-2016-2537594 (Order entered May 10, 2017) (“*May 10<sup>th</sup> PNG Order*”). In the *May 10<sup>th</sup> PNG Order*, the Commission identified serious safety and reliability issues in the UGI Penn Natural Gas (“PNG”) distribution system. The Commission observed that “UGI-PNG has the highest number of total leaks per mile” and “corrosion-related leaks have also increased by 64% from 2013 to 2015.” *May 10<sup>th</sup> PNG Order*, at 36.

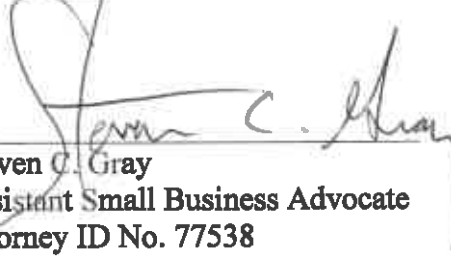
No such safety issues exist on the UGI CPG system. In fact, certain evidence indicates that UGI CPG is the safest natural gas utilities in the Commonwealth, while one metric indicates that UGI CPG’s risk factor increased only modestly between 2012 and 2015.

Furthermore, the Commission’s conclusions that these risk factors could result in “disastrous consequences” and “explosions” are unsupported.

Nothing in the record evidence supports the conclusion that a DSIC rate cap waiver is necessary for UGI CPG to meet its service obligations.

Wherefore, the OSBA respectfully requests that the Commission reverse its decision to grant any waiver of the 5% DSIC rate cap to UGI CPG.

Respectfully submitted,



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Dated: May 25, 2017

**VERIFICATION**

I, Steven C. Gray, hereby state that the facts set forth herein above are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. §4904 (relating to unsworn falsification to authorities).

Date: May 25, 2017

  
\_\_\_\_\_  
(Signature)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, via email and US Mail (*unless otherwise indicated*), in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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Date: May 25, 2017

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