



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

IN REPLY PLEASE
REFER TO OUR FILE

June 5, 2017

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

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:

Enclosed please find the Bureau of Investigation and Enforcement's (I&E) **Answer to the Petition for Reconsideration of the Office of Small Business Advocate** in this proceeding.

Copies are being served on all active parties of record as evidenced in the attached Certificate of Service. If you have any questions, please contact me at (717) 783-6156.

Sincerely,

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

CBW/sea
Enclosure

cc: Certificate of Service
Cheryl Walker-Davis

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

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Answer to the Petition for Reconsideration of the Office of Small Business** dated June 5, 2017, in the manner and upon the persons listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party):

Served via First Class and Electronic Mail

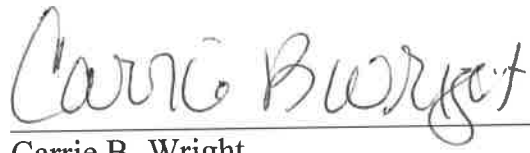
Jessica R. Rogers, Esquire
David B. MacGregor, Esquire
Post & Schell PC
17 North Second Street
12th Floor
Harrisburg, PA 17101-1601

Darryl A. Lawrence, Esquire
Erin L Gannon, Esquire
Office of Consumer Advocate
555 Walnut Street
5th Floor Forum Place
Harrisburg, PA 17101-1923

Steven C. Gray, Esquire
Office of Small Business Advocate
300 North Second Street
Suite 202
Harrisburg, PA 17101

Mark C. Morrow, Esquire
Danielle Jouenne, Esquire
UGI Corporation
460 North Gulph Road
King of Prussia, PA 19406

Pamela C. Polacek, Esquire
Vasiliki Karandrikas, Esquire
Alessandra L. Hylander, Esquire
McNees Wallace & Nurick, LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166

A handwritten signature in cursive script that reads "Carrie B. Wright". The signature is written in black ink and is positioned above a horizontal line.

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

**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 | : | Docket No. P-2016-2537609 |
| Billed Distribution Revenues and | : | |
| Approval to Increase the Maximum | : | |
| Allowable DSIC to 10% of Billed | : | |
| Distribution Revenues | : | |

**BUREAU OF INVESTIGATION AND ENFORCEMENT ANSWER
TO THE PETITION FOR RECONSIDERATION OF THE OFFICE OF SMALL
BUSINESS ADVOCATE**

I. INTRODUCTION

On March 31, 2016, UGI Central Penn Gas, Inc. (“CPG” or “Company”) filed, pursuant to Section 1358(a) of the Public Utility Code, a Petition requesting (1) waiver of the Distribution System Improvement Charge (“DSIC”) cap of 5% of billed distribution revenues, and (2) approval to increase the maximum allowable DSIC to 10% of billed distribution revenues.

Pursuant to a Prehearing Conference Order Administrative Law Judge Angela Jones (the “ALJ”) was assigned to develop an evidentiary record and Recommended Decision in this proceeding, and the ALJ conducted a Prehearing Conference on June 17, 2016. Counsel for I&E attended the Prehearing Conference and other active participants included the Office of Consumer Advocate (“OCA”) and the Office of Small Business Advocate (“OSBA”). At the hearing a procedural schedule and the procedures applicable

to this proceeding were set forth and subsequently memorialized in a Prehearing Order. Later in the proceeding the Central Penn Gas Large Users Group (“CPGLUG”) intervened in this proceeding. After the Prehearing Conference, I&E, OCA, OSBA, and CPGLUG engaged in a substantial amount of discovery.

In accordance with the procedural schedule outlined in Prehearing Order #1, the parties exchanged direct, rebuttal, and surrebuttal testimony. I&E served the following statements of testimony:

- I&E Statement No. 1, the Direct Testimony of Sunil R. Patel, in both Proprietary and Non-Proprietary format.
- I&E Exhibit No. 1, the Exhibit to Accompany the Direct Testimony of Sunil R. Patel in both Proprietary and Non-Proprietary format;
and
- I&E Statement No. 1-SR, the Surrebuttal Testimony of Sunil R. Patel.

During the course of litigation the parties were unable to amicably resolve the issues presented CPG’s Petition. On September 8, 2016, at the time and place set for the evidentiary hearing, the parties appeared before ALJ Jones and cross-examination and entered testimony into evidence. At that time, I&E moved into evidence the pieces of I&E testimony and exhibits identified above.

On December 5, 2016, the ALJ issued a Recommended Decision (“RD”) that permitted the Company to increase its DSIC cap to 7.5% in lieu of the originally

requested 10%. On April 20, 2017, the Commission entered an Order setting the DSIC cap at 7.5%. OSBA filed the instant Petition for Reconsideration on May 25, 2017.

Pursuant to 52 Pa. Code Section 5.572(e), the Bureau of Investigation and Enforcement (“I&E”) hereby files this timely Answer requesting that the Commission deny the requested relief put forth in the OSBA’s Petition. Specifically, I&E requests that the Commission deny the OSBA’s request to reconsider its April 20 Order which grants CPG’s request of a waiver of the 5% DSIC cap and raises that cap to 7.5%. As grounds for reconsideration, the Petition largely cites to argument raised in briefs and exceptions that were found to be unpersuasive by the Commission.

The standards for granting a Petition for Reconsideration are set forth in *Duick v. Pennsylvania Gas and Water Company*:

A Petition for Reconsideration, under the provisions of 66 Pa. C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part.

Parties...cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically decided against them . . . 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 by the Commission.¹

Under *Duick*, a Petition for Reconsideration will succeed only when it raises “new and novel arguments” not previously heard or considerations which appear to have been

¹ *Duick v. Pennsylvania Gas and Water Company*, 56 Pa. P.U.C. 553 (1982).

overlooked or not addressed by the Commission.² Further, OSBA has failed to allege any errors of law, changes in circumstances, or newly discovered evidence as required by *Jackson Sewer*.³

II. ANSWER TO PETITION

As further support to deny this Petition I&E offers the following comments in enumerated fashion:

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted. For purposes of clarification, it is also noted that I&E served the Direct Testimony of Sunil R. Patel on August 19, 2016 and the Surrebuttal Testimony of Sunil R. Patel on August 29, 2016.
5. Admitted.
6. Admitted.
7. Admitted. I&E also served its Main Brief on September 22, 2016.
8. Admitted. I&E served its Reply Brief on September 30, 2016.
9. Admitted.
10. The averment set forth in this paragraph represents a legal conclusion to which no response is required.
11. Admitted.

² *Id.* at 599.

³ *Pennsylvania Pub. Util. Comm'n v. Jackson Sewer Corp*, R-00005997, 2001 WL 1739169 (Jan. 11, 2001).

12. Admitted. On January 4, 2017, I&E also filed exceptions to the ALJ's RD.
13. Admitted. On January 11, 2017, I&E also filed reply exceptions to the ALJ's RD.
14. Admitted.
15. The averment set forth in this paragraph represents a legal conclusion to which no response is required.
16. The averment set forth in this paragraph represents a legal conclusion to which no response is required.
17. Denied. It is denied that this Petition for Reconsideration satisfies either the *Duick* or *Jackson Sewer* standards as the OSBA has simply restated the same arguments it presented throughout this case that the ALJ and Commission found unpersuasive.
18. Admitted. It is admitted that the OSBA is seeking reconsideration of the Commission's decision that CPG met its burden proof and satisfied the standard for granting a DSIC cap waiver.
19. The averments of this paragraph represent the findings of the Commission's Order, which speaks for itself.
20. The averments of this paragraph represent the findings of the Commission's Order, which speaks for itself.
21. Admitted in part, denied in part, without sufficient knowledge in part. The averments of this paragraph in part directly quote the findings of the Commission's Order, which speaks for itself. I&E would also agree that the legal standard set forth by

the Commission should be adopted and followed. However, I&E disagrees that there need be a finding only of extraordinary circumstances for the Commission to grant a DSIC waiver. As noted in the Order “the Commission’s approval of PGW’s waiver request was not limited to the presence of 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.”⁴

Without the benefit of reviewing the financial and safety information for the other Pennsylvania fixed utilities, I&E is without sufficient knowledge at this time to determine whether most Pennsylvania utilities are able to meet their service obligations without a DSIC waiver.

22. Admitted in part, denied in part. The averments of this paragraph in part directly quote the findings of the Commission’s Order, which speaks for itself. I&E agrees that a case-by-case review of a DSIC cap waiver is of greatest importance. However, I&E would note that the standard for granting a DSIC cap waiver is that the waiver be necessary for the utility to provide adequate, efficient and reasonable service. The statute clearly states that the waiver must be necessary, not that there must be extraordinary circumstances demonstrated.

⁴ Order at 22.

23. Admitted in part, denied in part. It is admitted OSBA disagrees with the Commission's determination. However, it is denied that there was no record evidence to support the DSIC cap waiver.

The Commission took note of the fact that the predominate focus of the Company's modified Long-term Infrastructure Improvement Plan ("LTIIIP") was on installing or upgrading regulator stations and higher pressure pipelines to increase system pressure noting that noted that problems with low pressure qualify as both a reliability and safety issue.⁵ One other factor identified by the Commission was the Company's efforts to comply with the Commission's meter relocation requirements which require that meters be located outside rather than indoors.⁶ In addition, the Commission noted the testimony of gas safety expert Patel that showed the risks for steel mains were trending upwards.⁷ This presents a clear picture of safety measures that need to be undertaken to ensure the customers of this utility continue to receive safe and reliable service.

As to the financial status of the Company, the record evidence shows that CPG has already met its 5% DSIC cap and pursuant to the modified LTIIIP, would exceed this cap through the remaining three years of the LTIIIP.⁸

24. Admitted in part. It is admitted that the Commission relied on Mr. Patel's expertise as a pipeline safety engineer in support of its grant of CPG's DSIC cap increase. It is also admitted that some of the metrics employed in this case indicate that CPG is

⁵ Order at 42.

⁶ *Id.*

⁷ Order at 40.

⁸ Order at 21.

increasing the safety of its distribution system in certain aspects. That is what we would expect to see from most, if not all, natural gas distribution companies (“NGDCs”).

Depending on how the NGDC is utilizing its resources, certain safety metrics will tend toward making the system safer, while others areas where resources are not devoted may tend toward making the system less safe. This is why it is so important that these DSIC cap increase cases be reviewed on a case-by-case basis. The safety metrics vary from company to company and need to be evaluated by gas safety experts to determine how quickly the safety issue must be addressed.

25. Denied. First, I&E would note that inside meters, whether a company has only one or all of its meters inside, presents a safety issue. Second, having meters relocated outside is a Commission mandate.⁹ Further, it appears OSBA is attempting to imply that I&E indicated that CPG is moving meters indoors. The actual truth is far simpler than that. As indicated by Company witness Mr. Bell at the evidentiary hearing, the data that I&E provided in its exhibit regarding the number of inside meters is data that was provided by CPG to I&E, so it is true that this data is “accurate to the extent that the underlying records upon which the figures were prepared is accurate.”¹⁰ However, as noted by Mr. Bell those records have to be updated to reflect what is observed in the field. Simply put, sometimes CPG personnel observe that a meter that is reflected in their records as being outside is actually inside and vice versa. When this occurs CPG updates its records to reflect that observation. I&E never indicated that CPG was moving meters

⁹ 52 Pa. Code §59.18.

¹⁰ Tr. at 84.

indoors, and the Commission never indicated in its Order that it thought this was the case. Mr. Patel simply restated the data that CPG had provided to him regarding the number of meters CPG's records reflected as being indoors.

Further, this argument as set forth by OSBA was already presented in OSBA's Main Brief.¹¹ It is further clear that this argument was considered by the Commission because in its final Order, the Commission identified the positive impact of the Company's meter relocation program as one potential positive to granting the DSIC cap increase.¹²

26. Admitted in part, denied in part. It is admitted that increasing steel pipeline risks were a part of the Commission's determination that a DSIC waiver be granted in this proceeding. Further, it is admitted that cathodically unprotected steel pipelines pose a safety risk. However, it is denied that the Commission determined a DSIC cap waiver was necessary to address solely this issue. While it is certainly within the Commission's purview to determine that a DSIC cap waiver is necessary based only on risks resulting from cathodically unprotected steel pipelines that was not the Commission's decision in this proceeding. The Commission noted that under the Company's modified LTIP, the predominate focus was on installing or upgrading regulator stations and higher pressure pipelines to increase system pressure. The Commission further noted that problems with low pressure qualify as both a reliability and safety issue.¹³ One other factor identified

¹¹ OSBA Main Brief at 19.

¹² Order at 42.

¹³ Order at 42.

by the Commission was the Company's efforts to comply with the Commission's meter relocation requirements.¹⁴

Therefore, the question posed by OSBA as to whether steel risks alone are enough to grant a DSIC waiver is based on a false premise. Further, I&E would note that, as with any DSIC waiver proceeding, the answer to this question would have to be determined on a case-by-case basis.

27. Admitted in part, denied in part. It is admitted that the Commission cited I&E for the proposition that a DSIC waiver would allow CPG to make the necessary replacements and repairs. Further it is admitted that Mr. Bell indicated the Company will continue with its LTIP as approved and that the granting of a DSIC waiver does not make a utility materially safer.

First, granting a DSIC waiver does not automatically make any utility materially safer because it is not the money which makes the utility safer but the replacement of at risk pipe, removal of inside meters and various other undertakings to improve the safety of the system that make the utility safer. The DSIC is simply a mechanism to recover the costs incurred to make these important improvements. Further, as regards the Company's LTIP, once approved an NGDC should comply with that LTIP no matter the status of any DSIC waiver request because approval of that LTIP by the Commission creates an obligation for the Company to do so. Once that obligation is created, it merely makes sense that the Company would, to the best of its ability, satisfy that obligation. Simply,

¹⁴

Id.

the ideas put forth by Mr. Bell are not quite as shocking as the OSBA would like you to believe.

The DSIC waiver “allows” the Company to do this because, absent a waiver, they would need to file a base rate case to recover these costs. Recovery through the DSIC ensures the funds are used specifically for the projects identified in the LTIIP and nothing else. In a base rate case, the control over where and how the money is ultimately spent is generally in the hands of the utility. Further, an increase in the DSIC generally represents a more modest increase than found in a base rate case. Lastly, for the Company, it allows for a quicker recovery of the money spent, thereby, encouraging expeditious attention to safety issues.

Further, the standard for reconsideration under *Duick* is once again not met. In OSBA’s Reply Brief¹⁵ it previously argued the same point it attempts to argue in this paragraph. The Commission, in fact, in its Order addressed that while the timeline of the Company’s replacement of legacy facilities remained unchanged, the increased spending allowed for in the LTIIP related to installing or upgrading regulator stations and higher pressure pipelines to increase system pressure.¹⁶ Clearly, the Commission has already considered the argument set forth by OSBA.

28. The averments in this paragraph quote the findings of the Commission’s Order, which speaks for itself. However, it is denied that the Commission erred by relying on Mr. Patel’s expert testimony. As noted in the Commission’s Order, the 5% DSIC cap

¹⁵ OSBA Reply Brief at 17.

¹⁶ Order at 42.

would not be sufficient to support CPG's modified LTIP. As noted above, once approved the LTIP creates an obligation that the plan will be followed. So, while the Company has indicated it plans to follow through with that obligation regardless of whether the DSIC increase is granted or not, this is not unexpected given the obligation created. However, in the event that the Company needed to file a base rate case to satisfy this obligation, the processes outlined in the LTIP could be slowed down.

Once again, the standard for reconsideration under *Duick* is not met. In OSBA's Reply Brief¹⁷ it previously argued that the risk analysis presented by I&E should not be relied upon.¹⁸ However, the Commission clearly addressed this argument when it stated that I&E was "the only Party with the requisite qualification and expertise to make an assessment of UGI-CPG's system."¹⁹

29. Denied. It is denied that the Commission's Order indicates that CPG is "on the brink of 'disastrous consequences.'" However, with regard to gas pipeline safety, the most prudent course of action is to take steps to prevent an explosion, which in this arena could be disastrous. A proactive approach to safety, rather than a reactive response to an explosion is always the preferred approach. Giving CPG the ability to proactively address safety issues through the use of the DSIC is an important tool to prevent harm to life or property.

Further, it is not unfounded to assert that the granting of a DSIC waiver would serve to prevent these consequences. This is, in fact, the premise of the Commission's

¹⁷ OSBA Reply Brief at 17.

¹⁸ OSBA Reply Brief at 16-17.

¹⁹ Order at 40.

Order in the PGW DSIC cap waiver proceeding²⁰ and, frankly, in any other DSIC cap waiver proceeding. To be clear, the DSIC cap can be waived when it is necessary to provide **adequate, efficient, safe, reliable and reasonable** service. The foundation of granting a DSIC cap waiver is, at its most basic level, to ensure the continued provision of safe service.

30. Denied. This paragraph is largely comprised of OSBA's speculation that the Commission has doomed CPG to financial disaster based on the Order in this proceeding. OSBA's argument is based on the premise that the Commission determined that CPG was "...prone to disastrous consequences." In fact, the Commission never implied this at all. As previously discussed, the Commission's Order was aimed at taking a proactive rather than reactive approach to infrastructure improvements.

31. Denied. As noted in the Commission's Order, I&E is "...the only Party in this proceeding with an obligation and authority to inspect UGI-CPG's pipelines for safety-related issues and enforcement of safety regulations..."²¹ In contrast, OSBA's witness is not a pipeline safety engineer, OSBA has no role inspecting CPG's pipelines for safety and it does not have any enforcement powers when a safety-related issue is identified.

32. Admitted in part, denied in part. It is admitted that the Company reached the 5% DSIC cap and was unable to recover DSIC eligible investments through the DSIC because of that cap. It is further admitted that CPG could file a base rate case to recover

²⁰ *Petition of Philadelphia Gas Works for Waiver of Provision 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).

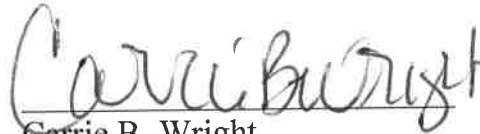
²¹ Order at 16

DSIC eligible costs that it would be prevented from recovering through the DSIC based on the cap. However, it is denied that the fact that CPG met the cap is irrelevant. The DSIC provides NGDCs the opportunity to recover costs of infrastructure improvements to make their systems more reliable and safe faster than what would occur in a base rate filing. The DSIC is an important tool for utilities because the DSIC can serve to improve service quality, improve rate stability, reduce the number of main breaks, lower the amount of service interruptions, increase safety, and for an NGDC, lower the levels of lost and unaccounted for gas. In addition, the DSIC can reduce the number of lengthy and time consuming base rate proceedings a company files. In contrast, base rate cases can slow the repair and replacement process and generally are more costly for rate payers. While I&E agrees that base rate cases are important, such proceedings do not provide for the efficient and timely recovery of capital as accomplished through the DSIC.

III. CONCLUSION

For the reasons stated above, I&E respectfully requests that the Commission deny the Petition for Reconsideration of the Office of Small Business Advocate. No new or novel arguments have been raised. Nor has the OSBA presented considerations which appear to have been overlooked or not address by the Commission. The instant Petition is merely a recitation of the positions the OSBA set forth in testimony, briefs, and exceptions. Therefore, the standard required for a Petition for Reconsideration under *Duick* has not been met.

Respectfully submitted,



Carrie B. Wright

Prosecutor

Attorney I.D. 208185

Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265
(717) 787-1976

Dated: June 5, 2017