

DEL SOLE CAVANAUGH STROYD LLC

The Waterfront Building Suite 300
200 First Avenue Pittsburgh, PA 15222

TEL 412.261.2393
FAX 412.261.2110
www.dsclsaw.com

July 5, 2012

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

RECEIVED
2012 JUL -9 AM 10:44
PENNSYLVANIA
SECRETARY'S BUREAU

Re: Pettko vs. Pennsylvania American Water Company
Docket No.: C-2011-2226096

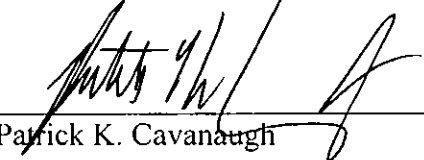
Dear Ms. Chiavetta:

Enclosed for filing is an original and three copies of Complainant's Supplemental Opposition to Respondent's Motion for Summary Judgment. I have also enclosed a copy of the cover sheet of the Supplemental Opposition. Kindly date-stamp the copy and return it to me in the self-addressed, stamped envelope I have provided.

Thank you for your prompt attention to this matter.

Very truly yours,

DEL SOLE CAVANAUGH STROYD LLC

By: 
Patrick K. Cavanaugh

Enclosures

cc: The Honorable Joel H. Cheskis (w/ enc.) via electronic and first class mail
Anthony C. DeCusatis, Esquire (w/ enc.) via electronic and first class mail

IN THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

C. LESLIE PETTKO,)	Docket No. C-2011-2226096
)	
Complainant,)	
)	
vs.)	
)	
PENNSYLVANIA AMERICAN WATER)	
COMPANY,)	
)	
Respondent.)	
)	
)	

RECEIVED
 2012 JUL -9 AM 10:45
 PENN. P.U.C.
 SECRETARY'S BUREAU

COMPLAINANT'S SUPPLEMENTAL OPPOSITION TO RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

Complainant C. Leslie Pettko, by and through his attorneys, Del Sole Cavanaugh Stroyd LLC, submits this Supplemental Opposition to Motion for Summary Judgment, averring as follows:

I. INTRODUCTION

Respondent Penn American has filed a Motion for Summary Judgment which asserts that there is no genuine issue of material fact that it was permitted to charge increases of the DSIC on a "bills rendered" basis and that that can be defined to permit it to charge the increased rate prior to the PUC-approved effective date of the increase. Likewise, Penn American argues that the STAS charge, described in the PUC-approved Tariff as a "services rendered" charge, can also be collected on a "bills rendered" basis. On June 22, 2012, Complainant C. Leslie Pettko filed his opposition to Summary Judgment, arguing, *inter alia*, that Penn American is not entitled to summary judgment in that it has not produced a single document from the PUC which would demonstrate that its self-serving proffered definition of "bills rendered" is accurate. Since that Opposition was filed, Complainant has discovered recent PUC documents that hold just the

opposite. Indeed, the May 11, 2012 Tentative Implementation Order of the PUC, M-2012-2293611, specifically demonstrates that rate increases of the DSIC *may not* be charged to the customer until after the PUC-approved effective date. This dispels Penn American's argument to the contrary. At the very least, it demonstrates that there is a genuine issue of material fact as to whether it was permitted to bill Mr. Pettko the increased DSIC rates prior to the PUC-approved date of increase. As such, summary judgment is not warranted.

II. ARGUMENT

The May 11 Tentative Implementation Order (attached as Exhibit A) is intended to broaden and extend the DSIC to additional utilities and to implement Act 11 of 2012, permitting "water and wastewater utilities, electrical distribution companies (EDCs), and natural gas distribution companies (NGDCs) or a city natural gas distribution operation to petition for a distribution system improvement charge (DSIC)." (Implementation Order, p. 1)

The Implementation Order states that the expansion of the DSIC under Act 11 is "***based on the existing DSIC*** that has been used for over 15 years in the water utility industry to accelerate the pace of water pipeline replacement and improvements." (Id. at p.3)(emphasis added). The Implementation Order discusses the calculation and billing of the DSIC, including sample Tariff language: "The Model tariff in Appendix A reflects that a DSIC tariff must specify an effective date, as approved by the Commission. ***The DSIC then becomes effective and applicable to rates for services rendered on or after the effective date.***" (Id. at p. 13)(emphasis added). It is significant that the Model Tariff provided by the Implementation Order is ***identical*** to Penn American's Tariff regarding the DSIC and, significantly, the language on effective date of the DSIC. (Appendix A to Implementation Order, p. 4)

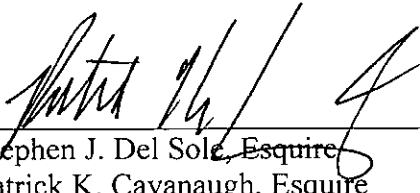
It is significant that the Implementation Order states that it is based on the existing practice of the DSIC and also explains that the DSIC “becomes effective and applicable to rates for services rendered on or after the effective date.” This is the only PUC document in this case which specifically states the method by which the DSIC is to be charged to customers. If Penn American’s unsupported and self-serving definition were accurate, the Implementation Order would permit the utility to charge the rate increase for the entire billing period straddling the PUC-approved effective date. It does not. It specifies that the DSIC is effective for the period of the bill *following* the effective date.

Penn American’s position does not simply require that Mr. Pettko’s position be wrong, it now requires the PUC’s own language regarding the DSIC and the meaning of “effective date” be wrong as well. Penn American can offer nothing, however, from the PUC which would establish its desired definition of “bills rendered” or which definitively shows that it was permitted to charge Mr. Pettko the increased DSIC charge prior to the PUC effective date. Penn American’s position is tenuous, at best, and surely does not warrant the grant of Summary Judgment.

III. CONCLUSION

The May 12, 2012 Implementation Order of the PUC gives specific guidance as to how the DSIC is to be billed in relation to the PUC-approved effective date set forth in the Tariff. This guidance is directly contrary to Penn American’s position. At the very least, it demonstrates that there are genuine issues of material fact as to whether Penn American wrongfully charged Mr. Pettko increased DSIC rates prior to the PUC-approved effective date. As such, Penn American’s Motion for Summary Judgment should be denied.

DEL SOLE CAVANAUGH STROYD LLC

By: 

Stephen J. Del Sole, Esquire
Patrick K. Cavanaugh, Esquire
Counsel for Complainant

RECEIVED

2012 JUL -9 AM10:45

PAR.U.C.
SECRETARY'S BUREAU

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

RECEIVED
2012 JUL -9 AM 10:45
P.U.C.
SECRETARY'S BUREAU

Public Meeting held May 10, 2012

Commissioners Present:

Robert F. Powelson, Chairman
John F. Coleman, Jr., Vice Chairman
Wayne E. Gardner
James H. Cawley
Pamela A. Witmer

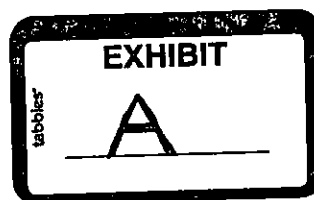
Implementation of Act 11 of 2012

M-2012-2293611

TENTATIVE IMPLEMENTATION ORDER

BY THE COMMISSION:

On February 14, 2012, Governor Corbett signed into law Act 11 of 2012 (Act 11), which amends Chapters 3, 13 and 33 of Title 66 of the Pennsylvania Consolidated Statutes (Code). In particular, Act 11 amends Chapters 3 and 13 to allow jurisdictional utilities to make rate case claims based on a fully projected future test year, to allow wastewater utilities to allocate a portion of their revenue requirement to the combined wastewater and water utility customer base and to allow water and wastewater utilities, electric distribution companies (EDCs), and natural gas distribution companies (NGDCs) or a city natural gas distribution operation to petition for a distribution system improvement charge (DSIC). Act 11 also increases the civil penalties in Chapter 33 for gas pipeline violations to be consistent with those under Federal pipeline safety laws. This Tentative Implementation Order proposes procedures and guidelines to carry out the ratemaking provisions of Act 11 in Chapters 3 and 13.



Background

On April 5, 2012, the Commission held a working group meeting for discussion and feedback from stakeholders regarding its implementation of Act 11. The purpose of the meeting was to address certain key implementation issues in advance of the issuance of a Tentative Implementation Order. The Commission requested input from the stakeholders on the following key topics at the working group meeting:

- Elements of a model DSIC tariff, including the necessary computation, reconciliation and consumer protection provisions (audits, reconciliations, percent caps and re-set to zero);
- Elements of and standards for approval of a long-term infrastructure improvement plan, ability to use previously approved plans, and subsequent periodic review parameters;
- Establishing a baseline for the current rate of infrastructure improvement;
- Examination of the relationship between the long-term infrastructure improvement plan under Act 11 and the NGDC pipeline replacement and performance plans required by Commission order at Docket No. M-2011-2271982;
- Determination of the equity return rate when more than 2 years have elapsed between the effective date of a final order in a base rate case and the effective date of the DSIC; and
- Standards to establish and ensure that DSIC work is performed by “qualified employees” of either the utility or an independent contractor.

The Commission received valuable input from stakeholders on the above topics at the working group meeting. Accordingly, this Tentative Implementation Order addresses those concerns and incorporates portions of that discussion. The purpose of this Tentative Implementation Order is to propose the procedures and guidelines necessary to implement Act 11, including a DSIC process for investor-owned energy utilities, city natural gas distribution operations, and wastewater utilities and to facilitate transition from Section 1307(g) water DSIC procedures to Act 11 DSIC procedures.

Discussion

Act 11 amends Chapters 3 and 13 of the Code in order to reduce regulatory lag due to the use of rate case inputs that are outdated by the time new base rates become effective and, further, to provide more ratemaking flexibility for the timely recovery of prudently incurred infrastructure costs. Specifically, Chapter 3 of the Code was amended to provide that utilities may use a “fully projected future test year” to attempt to meet their burden of proof in rate cases.

In terms of ratemaking flexibility, Act 11 amends Chapter 13 of the Code by exempting water and wastewater utilities from the prohibition on combining, for ratemaking purposes, different utility types and by allowing the Commission to allocate a portion of the wastewater utility’s revenue requirement to the combined water and wastewater utility. Additionally, Act 11 incorporates new statutory provisions in Chapter 13, based on the existing DSIC that has been used for over 15 years in the water utility industry to accelerate the pace of water pipeline replacement and improvements. Under Act 11, the DSIC mechanism will now also be available to EDCs, NGDCs, wastewater utilities, and city natural gas operations and will allow those utilities to recover the reasonable and prudently incurred costs related to the repair, improvement and replacement of utility infrastructure on a more timely basis, subject to reconciliation, audit and other consumer protections.

Chapter 3 – General Provisions

Chapter 3 of the Code contains general provisions regarding the Commission such as the make-up of the Commission and, in Section 315, the burden of proof a utility has in various proceedings before the Commission. *See* 66 Pa. C.S. § 315.

Previously, in rate case proceedings, in order to meet its burden of proof, a utility could only use a future test year that began the day after its historic test year ended. *See* 52 Pa. Code § 53.56(a). With the enactment of Act 11, the burden of proof standard for utilities in rate proceedings has been amended to permit use of either a future test year or a “fully projected future test year” in rate cases. The fully projected test year is defined as the 12-month period that begins with the first month that the new rates will be placed into effect, after application of the full suspension period permitted under Section 1308(d). *See* 66 Pa. C.S. § 1308(d). Under this approach, the risks associated with regulatory lag will be substantially reduced because the new rates will be consistent with the test year used to establish those rates for at least the first year.

The Commission expects that a utility that uses a fully projected future test year to satisfy its burden of proof in a rate case will provide detailed testimony and sufficient documentation to support the methods and assumptions used to develop the fully projected future test year data for all revenues, expenses, and rate base elements. Moreover, although there is no reconciliation of revenues and expenses between base rate cases, we expect that in subsequent base rate cases, the utility will be prepared to address the accuracy of the fully projected test year projections made in its prior base rate case.

Additionally, new language set forth in Section 315 exempts application of Section 1315 of the Code which, for electric utilities, requires projects to be “used and useful” before being included in the rate base. Accordingly, the Commission may now

permit facilities that are projected to be in service during the fully projected future test year to be included in the final determination of the rate base calculation.

Act 11 recognizes that in the context of a fully projected future test year that begins on the first date of new rates, the “used and useful” requirement for rate base inclusion cannot be met. Nevertheless, while the strict statutory bar has been removed, Act 11 now provides the Commission with discretion in this area. The Commission “may permit” facilities that are projected to be in service during the fully projected test year to be included in the rate base for ratemaking purposes. *See* 66 Pa. C.S. § 315(e).

Chapter 13 -Valuation Of And Return On The Property Of A Public Utility

Act 11 also amends Chapter 13 of the Code by revising the method used to fix the value of and the return on the property of utilities for utility ratemaking purposes. Act 11 establishes an exemption from the prohibition on utilities combining, for ratemaking purposes, different types of utility service.

Specifically, Section 1311(c) of the Code now provides that, upon petition of a utility that provides water and wastewater utility service, the Commission may, *after notice and opportunity to be heard*, allocate a portion of the wastewater utility’s revenue requirement to the combined water and wastewater customer base if deemed to be “in the public interest.” However, as set forth in newly incorporated Section 1311(e), the scope of this exemption applies only to those utilities that provide water and wastewater service as individually separate companies and are wholly owned by a common parent company.

The benefits of this provision are that the costs of necessary upgrades to wastewater systems to maintain safe and reliable service, which can be substantial on a stand-alone basis, can be spread among the common customer base of the water and wastewater utilities. However, in accordance with new Section 1311(c), we expect that

before any wastewater costs can be so allocated to the combined customer base, the wastewater utility must provide notice and opportunity to be heard to all affected customers as part of its initial rate case notices.

Establishment of Distribution System Improvement Charge For Utilities

Act 11 further amends Chapter 13 by incorporating a new Subchapter B, Sections 1350 through 1360 of the Code, which deals with distribution (and collection) systems and allows the specified utility types to petition the Commission for an additional rate mechanism, known as a DSIC. *See* 66 Pa. C.S. §§ 1350-1360. As noted above, the DSIC mechanism will now be applicable to EDCs, NGDCs, wastewater utilities, and city natural gas operations in addition to water utilities and will allow those utilities to recover the reasonable and prudently incurred costs related to the repair, improvement, and replacement of utility infrastructure.¹

Act 11 also includes directives regarding the specific property eligible for DSIC recovery, the necessary elements of a DSIC filing before the Commission, the necessary elements of a long-term infrastructure improvement plan, the elements of an asset optimization plan, customer notice requirements, computation of the DSIC, and various consumer protection provisions. The consumer protections include limitations on the DSIC rate, resets to zero, and rate structure protections. Lastly, Act 11 requires that the infrastructure improvements be performed by qualified employees or contractors in a manner that protects system reliability and safety of the public.

Section 1350 – Scope of Subchapter

Section 1350 establishes a DSIC mechanism that allows certain utility types (*i.e.*, EDCs, NGDCs, city natural gas operations, and water and wastewater utilities) with

¹ The separate DSIC provisions in Section 1307(g) providing for a sliding scale of rates for water utilities have been deleted in lieu of the general DSIC provisions established in Act 11.

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 – Definitions

Section 1351 defines the terms set forth in new subchapter. The term “distribution system” is defined to include “a natural gas distribution company, a city natural gas distribution operation, an electric distribution company, a water utility and a collection system for a wastewater utility,” 66 Pa. C.S. § 1351. Also, the term “eligible property” is defined for each utility type above.

The model tariff, attached as **Appendix A**, lists the types of eligible property for each industry type by account number, and includes “other related capitalized costs.” We view this statutory provision to allow for the recovery of a capitalized cost not specified on the list provided that the capitalized cost is an essential part of or necessarily related to the DSIC project for which recovery is sought. At the same time, and consistent with the definition of “capitalized cost” in Act 11, only those costs that are permitted to be capitalized pursuant to the Uniform System of Accounts and Generally Accepted Accounting Principles will be eligible for DSIC recovery.

Section 1352 – Long-Term Infrastructure Improvement Plan

In order to qualify for DSIC recovery, Section 1352 requires that a utility submit a long-term infrastructure improvement plan that is approved by the Commission. *See* 66 Pa. C.S. § 1352(a). This provision ensures that the quarterly DSIC repairs, improvements, and replacements to eligible property are being made consistent with a long-term plan that has carefully examined the utility’s current distribution infrastructure, including its elements, age, and performance and that also reflects reasonable and prudent planning of expenditures over the course of many years to replace and improve aging infrastructure in order to maintain the safe, adequate, and reliable service required by law.

See 66 Pa. C.S. § 1501. The following six elements must be included in the long-term *infrastructure improvement plan*:

- (1) Types and age of eligible property;
- (2) Schedule for its planned repair and replacement;
- (3) Location of the eligible property;
- (4) Reasonable estimate of the quantity of property to be improved;
- (5) Projected annual expenditures and measures to ensure that plan is cost effective; and
- (6) Manner in which replacement of aging infrastructure will be accelerated *and* how repair improvement or replacement will maintain safe and reliable service.

The long-term plan must include the types and age of eligible property. *See* 66 Pa. C.S. § 1352(a)(1). In the Commission’s view, this necessarily includes a review of all distribution plant, including its inventory, age, functionalities, reliability and performance. The long-term plan must also include a schedule for the planned repair and replacement of eligible property. *See* 66 Pa. C.S. § 1352(a)(2).² This schedule must be long-term and forward-looking, based on a utility’s analysis of equipment failures, their nature, causes, locations, analysis of reliability performance indicators, and forecasts of future reliability concerns. For EDCs, we expect this analysis to include consideration of reliability metrics such as SAIDI, SAIFI and CAIDI.³ For NGDCs, we expect this analysis to include consideration of and consistency with the Distribution Integrity

² Parties are invited to address how the utility will comply with Section 59.38 of our regulations while implementing the long-term plan. *See* 52 Pa. Code § 59.38.

³ Pursuant to the Commission’s electric reliability regulations at 52 Pa. Code §§ 57.191 – 57.198, EDCs are required to maintain safe, adequate and reliable service and to monitor system reliability metrics that include Customer Average Interruption Duration Index (CAIDI), System Average Interruption Duration Index (SAIDI), and System Average Interruption Frequency Index (SAIFI).

Management Program (DIMP) plans filed pursuant to Federal natural gas pipeline standards.⁴

The long-term plan must also include a general description of the location of the eligible property and a reasonable estimate of the quantity of eligible property to be improved. *See* 66 Pa. C.S. § 1352(a)(3) and (a)(4). The long-term plan must include the utility's "projected annual expenditure" to implement the plan and measures taken to ensure that the plan is "cost effective." 66 Pa. C.S. § 1352(a)(5).

Finally, the legislation requires that the long-term plan demonstrate the "manner in which replacement of aging infrastructure will be accelerated *and* how repair improvement or replacement will maintain safe and reliable service."

66 Pa. C.S. § 1352(a)(6) (emphasis added). In the Commission's judgment, this is the core element of the long-term plan. The Commission expects the utility's long-term plan to set forth a comprehensive strategy for capital replacement and improvement that will address aging infrastructure, system integrity, reduce reliability risks, and maintain safe, adequate and reasonable service.

Moreover, the Commission expects that the long-term plan will reflect and maintain an *acceleration* of infrastructure replacement over the utility's historic level of capital improvement. We recognize that some utilities have already taken substantial steps recently to increase prudent capital investment to address their aging infrastructure; those utilities should indicate in their long-term plan how the DSIC will maintain or augment acceleration of infrastructure replacement and prudent capital investment.

⁴ Pursuant to Federal pipeline safety laws, NGDCs were required to file and implement, by August 2, 2011, a DIMP plan. *See* 49 C.F.R. § 192.1005. The plan elements must include, *inter alia*, risk evaluation and ranking, performance measurement and monitoring, and periodic evaluation and improvement. *See* 49 C.F.R. § 192.1007.

Subsection (a)(7) empowers the Commission to order a new or revised plan if the utility's proposed long-term plan is not adequate. *See* 66 Pa. C.S. § 1352(a)(7). Further, subsection (b) provides for the Commission to promulgate regulations for periodic review of the plan at least once every 5 years, and that the DSIC will terminate if the utility is not in compliance with its approved long-term plan. *See* 66 Pa. C.S. § 1352(b).

In regard to timing for the filing of a long-term infrastructure improvement plan, we note that, unlike Section 1353(a), which provides that a utility may not petition for approval of a DSIC before January 1, 2013, there is no such time bar in Section 1352 for filing a petition for Commission approval of a utility's long-term infrastructure plan. The long-term plan is a necessary element of a DSIC petition. *See* 66 Pa. C.S. § 1353(b)(3). Thus, if the long-term plan is filed and approved in advance of the DSIC petition, it will reduce the scope of issues to be resolved as part of the DSIC petition process and can make review of the DSIC petition more efficient. Accordingly, since there is no statutory time bar to file for approval of a utility's long-term plan, the Commission will accept and encourage those filings to be made, if a utility is prepared to do so, prior to filing for DSIC approvals on and after January 1, 2013.

Finally, we note that if any of the information contained in the long-term infrastructure improvement plan is deemed proprietary and confidential, or if the utility believes that the information qualifies as Confidential Security Information under 35 P.S. § 2141, the plan can be submitted with a request for proprietary treatment pursuant to a protective order. *See* 52 Pa. Code § 5.423 (Propriety Information) and 52 Pa. Code §§ 101.1 – 101.7 (Confidential Security Information).

Section 1353 — Distribution System Improvement Charge

Section 1353 permits a utility, on and after January 1, 2013, to petition the Commission for approval to establish a DSIC. The DSIC is intended to provide for

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). The petition for DSIC must contain the following elements:

- (1) Initial tariff;
- (2) Testimony, affidavits, exhibits or other support;
- (3) Long-term infrastructure plan;
- (4) Certification that a rate case had been filed within the past 5 years; and
- (5) Any other information required by the Commission.

The initial tariff should be consistent with the model tariff attached to this order as **Appendix A** and, consistent with the statute, must contain a description of the eligible property, the effective date of the DSIC, a description of how the DSIC will be computed, a method for quarterly updates and a description of the consumer protections. *See* 66 Pa. C.S. § 1353(b)(1).

The Commission previously provided a draft model DSIC tariff to interested parties, and it was discussed at the April 5, 2012, working group meeting. The model tariff, attached as **Appendix A**, builds on many of the elements in existing water DSIC tariffs and incorporates many, but not all, of the informal comments and language suggested by working group participants. Nevertheless, parties are free to revisit any informal suggestions not reflected in the model tariff in formal comments to this tentative order.

The model tariff provides language for EDCs, NGDCs, and water and wastewater utilities. The model tariff provides alternate language for city natural gas distribution operations to reflect different ratemaking methods used for investor-owned utilities (rate

base/rate of return) and for a city operated natural gas utility (cash flow). Additionally, the draft model tariff provides alternate language for water (*e.g.*, reflecting existing DSICs and total service applicability) and wastewater (*e.g.*, total service applicability) utilities. Informal comments suggested that the account numbers for eligible property be eliminated from the draft model tariff. The revised draft model tariff retains the provision for account numbers because of the specificity that account numbers provides. Parties may provide further comment on the revised draft model tariff.

A utility's DSIC filing must also include testimony, affidavits, exhibits or other relevant evidence that demonstrates that a DSIC is in the public interest and will facilitate compliance with Section 1501, Commission regulations, and any other requirement under State or Federal law relating to the provision and maintenance of "adequate, efficient, safe, reliable and reasonable service." 66 Pa. C.S. § 1353(b)(2).

Further, the DSIC filing must include a long-term infrastructure improvement plan under Section 1353. *See* 66 Pa. C.S. § 1353(b)(3). As noted herein, the long-term infrastructure improvement plan is intended to provide the Commission and the public with information regarding the utility's long-term plans for infrastructure improvement. This must include both the manner in which replacement of aging infrastructure will be accelerated *and* how the repair, improvement or replacement will maintain safe and reliable service. Inasmuch as acceleration of infrastructure replacement is a statutory element of the long-term plan required for DSIC approval, it is also a necessary element to be demonstrated to secure Commission approval a utility's proposed DSIC.

The DSIC filing must also include certification that a Section 1308(d) base rate case has been filed within the past 5 years. *See* 66 Pa. C.S. § 1353(b)(4). This ensures that a full presentation of the utility's current revenues, expenses, rate base, and rate of return has been provided to the Commission and the public for review, potential

challenge, and settlement or adjudication. If no rate base case has been filed within five years prior to the date the DSIC petition is filed, the utility must file a Section 1308(d) base rate case to become DSIC eligible. *See* 66 Pa. C.S. § 1353(b)(5). These provisions ensure that the DSIC process is not used to avoid the comprehensive financial review that takes place in the context of a base rate case.

Lastly, the legislation allows the Commission discretion and authority to require additional information as it may deem necessary. *See* 66 Pa. C.S. § 1353(b)(6). At this time the Commission has no additional information requirements for a DSIC filing.

Section 1354 – Customer Notice

Section 1354 requires utilities to provide notice of the DISC's effective date to customers via bill inserts or other means directed by the Commission such as the following: (1) submission of the DSIC petition, (2) the Commission's disposition of the DSIC petition, (3) any quarterly changes to the DSIC rate, and (4) any other information required by the Commission.

The model tariff in **Appendix A** reflects that a DSIC tariff must specify an effective date, as approved by the Commission. The DSIC then becomes effective and applicable to rates for service rendered on and after the effective date.

Section 1355 – Commission Review

Section 1355 provides that the Commission shall, after notice and opportunity to be heard, approve, modify or reject the utility's proposed DSIC and initial tariff. *See* 66 Pa. C.S. § 1355. The Commission expects that the DSIC filings will be subject to answers and/or complaints, consistent with our procedural rules of practice and procedure in Chapters 1, 3, and 5 of our regulations. *See* 52 Pa. Code Chapters 1, 3, and 5. If the answers or complaints raise relevant and material factual issues, the matter will be

referred to the Office of Administrative Law Judges (OALJ) for hearing and decision. Otherwise, the DSIC petition will be reviewed by technical staff, who will make a recommendation to the Commission to approve, modify, or reject the petition.

Section 1356 – Asset Optimization Plan

Section 1356 requires a utility with an approved DSIC to file an annual asset optimization plan (AAO plan). The AAO plan elements are as follows: (1) a description of all eligible property repaired, improved and replaced in the preceding 12 months and (2) a detailed description of all facilities to be improved in the upcoming 12 months.

In our view, the AAO plan is intended to provide the Commission and the public an overall status report regarding a utility's progress in making infrastructure improvements pursuant to its Commission-approved long-term infrastructure improvement plan. The Commission expects the AAO plan to demonstrate compliance and progress in meeting the long-term plan and to identify a utility's near-term construction projects that will be funded by the DSIC, consistent with the long-term plan.

Section 1357 – Computation of Charge

Section 1357 addresses, in detail, the elements of the DSIC computation. *See* 66 Pa. C.S. § 1357. An investor-owned utility, whose rates are based on the rate base/rate of return method of ratemaking, may claim the "fixed costs" of eligible property not previously included in rate base. These fixed costs shall consist of the depreciation and pretax return applicable to the eligible property that has been placed into service during the prior three-month period. *See* 66 Pa. C.S. § 1357(a).

The depreciation rates shall be those from a utility's most recent base rate case. The pre-tax return shall be calculated using the Federal and State income tax rates, the utility's actual capital structure and actual cost rates for long-term debt and preferred stock, and the cost of equity from the utility's most recent fully litigated base rate case. A

fully litigated base rate case is one in which all revenue requirement issues were addressed and adjudicated by the Commission in a final rate order. As such, a full or partial settlement of a base rate case would not qualify.⁵ If more than two (2) years have elapsed between the entry of a final order in the utility's most recent fully litigated base rate case and the effective date of the quarterly DSIC, then the cost of equity in the Commission's most recent quarterly report on the earnings of jurisdictional utilities is to be used for the cost of equity component of pretax return. *See* 66 Pa. C.S. § 1357(b).

In developing the quarterly report on earnings and cost of equity referenced in Section 1357(b), the Commission uses a variety of barometer groups and cost of equity models to develop an appropriate range of reasonableness for the equity cost rates for each industry group that is reflective of current market and industry conditions and is consistent with the analysis used by the Commission to determine the cost of equity in litigated rate cases. The range of reasonable common equity cost rates calculated by staff is reviewed by the Commission in setting the common equity cost rate used to set the DSIC rate. These reports are released to the public on a quarterly basis.

However, a city natural gas distribution operation (*i.e.*, PGW), whose rates are established using the cash flow method of ratemaking, may claim amounts reasonably expended or incurred to purchase and install eligible property and associated financing costs, if any, including debt service, debt service coverage and issuance costs. *See* 66 Pa. C.S. § 1357(c). These provisions reflect the fact that PGW's rates are established using the cash flow method of ratemaking. 66 Pa. C.S. § 2212(e).

The model tariff in **Appendix A** reflects some of the informal comments received by staff relative to the formulas for calculating a DSIC and to reflect differences among

⁵ Comments are invited on whether a stipulated cost of equity from a settled rate case, agreed to or unopposed by all parties, can be used consistent with Section 1357 (b)(2).

the various utility types. Regarding original cost, the model tariff adopts the deduction for accumulated depreciation associated with the eligible property placed in service during the prior three-month period. However, the model tariff does not include a provision for accumulated deferred income taxes. While credits for accumulated deferred income taxes are accounted for in the normal base rate case process, a number of additional items, including working capital and taxes associated with DSIC-eligible property, are also accounted for in the normal base rate case process. The Commission views these items as unnecessary complexities to the DSIC and will maintain the current calculation. Nevertheless, the Commission will accept further comments on this issue.

The model tariff also reflects that not all utilities will elect to commence a DSIC as of January 1, 2013. As such, the quarterly effective dates for DSIC changes and DSIC-eligible property are left blank in the model tariff. Further, the Commission recognizes that some utilities' revenue streams are seasonal in nature. Therefore, to account for seasonality, the model tariff language would allow such utilities the option of basing quarterly revenues on either the summation of projected revenues for the applicable three-month period or one-fourth of the projected annual revenues. In any event, the DSIC recovery will be subject to annual reconciliation and audit. Comments are invited on whether the projected revenue approach to account for seasonality is consistent with Act 11.

The DSIC formulae also reflect the informal comment that the annual reconciliation factor, or "e" factor, should include the results of any Commission audit, unless the audit result is contested. In that event, the audit adjustment, if any, would not be applied unless and until the matter was adjudicated and a final decision is adopted by the Commission. Lastly, we note that recovery of any associated annual operating expenses or removal costs for infrastructure being replaced or retired is not allowed through DSIC.

Section 1358 – Customer Protections

Section 1358 establishes a number of customer protections.

General Rate Cap – Section 1358(a)(1) provides that a DSIC may not exceed 5% of amounts billed (wastewater utility) or 5% of distribution rates billed (electric and natural gas utilities); however, upon petition, the Commission may grant a waiver of the 5% limit if necessary to ensure and maintain safe and reliable service.

66 Pa. C.S. § 1358(a)(1). Act 11 makes clear that the DSIC cap for energy utilities is to be applied to *distribution* revenues only. While the Commission does have authority to increase the cap above 5% upon petition, the Commission does not expect to exercise its discretion to do so absent some experience with actual operation of the DSIC for energy utilities under the present 5% cap.

Water Rate Cap – Section 1358(a)(2) provides that a DSIC previously granted under Section 1307(g) or subsequently granted under Act 11 to a water utility may not exceed 7.5%. *See* 66 Pa. C.S. § 1358(a)(2). This section recognizes that the Commission has previously granted, upon petition, DSIC caps up to 7.5% for certain water utilities.⁶

Reset to Zero – Under certain circumstances, Section 1358(b) requires that a DSIC rate reset to zero. After a reset, only fixed costs of new eligible property not previously reflected in base rates may be reflected in a quarterly DSIC update.

The DSIC rate is reset to zero if new base rates are established. *See* 66 Pa. C.S. § 1358(b)(1). For investor-owned utilities, reset is also required if, in any

⁶ Those water utilities had operated for many years under a 5% DSIC cap, had accelerated their rate of infrastructure replacement, and had demonstrated that an increase over the then-current DSIC cap was necessary and in the public interest.

quarter, data filed with the Commission in the utility's most recent quarterly earnings report show that the utility will earn a rate of return that would exceed the allowable rate of return used to calculate its fixed costs under the DSIC. *See* 66 Pa. C.S. § 1358(b)(3). For city natural gas distribution operations, the Commission will monitor interest levels and cash flows on a quarterly basis to determine whether a reset is required.

Construction – Section 1358(c) provides that absent an express limitation on existing ratemaking authority, the Commission retains its full and existing ratemaking authority. *See* 66 Pa. C.S. § 1358(c). Accordingly, the Commission has full power and authority under the Public Utility 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.

Commission – Section 1358(d) of the Code provides that the Commission may establish procedures for DSIC approval by order or regulation. In particular the following rate structure protections are established by Act 11.

Section 1358(d)(1) provides that a DSIC rate is to be “applied equally to all customer classes as a percentage of each customers billed revenue” relative to distribution or service rates. Several informal comments were made on this point during the working group meeting suggesting that application of a uniform DSIC rate to every customer class may not be appropriate where, for example, a natural gas customer is the beneficiary of a lower rate designed to retain load or where the electric customer takes service at the transmission level of service. In our tentative view, the statutory language does not appear to permit a utility to have variances in its DSIC rates based on customer class, whether that difference is based on the calculation of the DSIC percentage or on the underlying DSIC-eligible property. While the model tariff in **Appendix A** retains this

equal application provision, parties may file formal comments proposing an alternative interpretation.

Section 1358(d)(2) requires a process for customer credits for over collections and collections for ineligible projects and charges to customers for under collections. This is standard practice for automatic adjustment clauses under Section 1307 of the Public Utility Code and will be applicable to the DSIC as well. *See* 66 Pa. C.S. § 1307.

Section 1358(d)(3) of the Code relates to the cap on DSIC collections. The cap is included in the model tariff and will be required for every DSIC.

Section 1358 (e) mandates audits and reconciliations consistent with Section 1307(e) procedures. The provision for audits and reconciliation is included in the model tariff and will be required for every DSIC.

Complaints: Section 1358(f) provides that customers may file complaints with the Commission pursuant to Section 701 of the Public Utility Code regarding DSIC charges. *See* 66 Pa. C.S. § 1358(f). This provision makes certain that any quarterly DSIC filing or rates charged thereunder, may be challenged by complaint.

Section 1359 – Projects

Section 1359 (a) of the Code requires the Commission to establish standards to ensure that work to repair, improve, or replace eligible property is performed by qualified employees of the utility or independent contractors to protect system reliability and public safety. Section 1359(b) provides that work performed by independent contractors is subject to inspection by utility employees. Section 1359(c) provides that work not performed by qualified employees is not eligible for DSIC recovery, even if the work is performed on DSIC-eligible projects.

The Commission expects that a utility's plans for the acquisition and use of qualified employees and contractors to comply with this section will be included as part of its long-term infrastructure improvement plan filed pursuant to Section 1352. Acquisition of an adequate and qualified workforce is essential to successful implementation of any long-term plan to improve infrastructure.

Further, the Commission expects that each quarterly DSIC filing will include a verification, (*see* 52 Pa. Code § 1.36), by the utility that qualified employees or contractors were used, and that work performed by independent contractors were inspected by utility employees, in compliance with Section 1359, for the work to repair, improve, or replace eligible property placed in service during the prior three-month period. The utility's compliance with this section shall also be subject to audit.

Section 1360 – Applicability

Section 1360 (a) provides that the Commission may accept a prior long-term infrastructure plan filed by a water utility or may require submission of a new long-term plan pursuant to Section 1360(b). At this time, the Commission does not anticipate establishment of a due date for water utilities with previously approved DSICs to file long-term infrastructure improvement plans. The Commission is aware of the substantial progress made in the water industry over the past 15 years in accelerating the rate of main replacements and other infrastructure improvements. The Commission, therefore, will revisit this issue after the initial DSICs are addressed in early 2013.

Conclusion

The enactment of Act 11 provides utilities with an additional rate mechanism to recover the capitalized costs related to repair, improvement and replacement utility infrastructure. A DSIC can reduce regulatory lag, improve access to capital at lower

rates, and accelerate infrastructure improvement and replacement. The purpose of this Tentative Implementation Order is to propose the procedures and guidelines necessary to implement Act 11 and to solicit public comment. Upon review of those comments and further meetings with stakeholders as appropriate, the Commission will issue a final implementation order to set forth its interpretations, procedures and guidelines. The final implementation order will also contain a Model DSIC Tariff.

In addition to this Tentative Implementation Order process, we will continue to respond to informal inquiries made to the Commission's Act 11 resource account at ra-Act11@pa.gov, update frequently asked questions (FAQs) as appropriate, and, as needed, issue Secretarial Letters to provide guidance on further issues that may arise regarding the implementation of Act 11. The contact persons for this proceeding are David Screven, dscreven@pa.gov, and Louise Fink Smith, finksmith@pa.gov, in the Commission's Law Bureau, and Erin Laudenslager, elaudensla@pa.gov, in the Commission's Bureau of Technical Utility Services; **THEREFORE,**

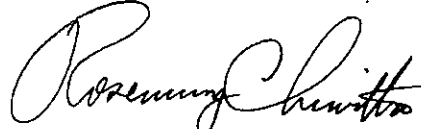
IT IS ORDERED:

1. That the Commission hereby tentatively adopts the procedures, guidelines, and model tariff for implementation of Act 11 of 2012, as set forth herein.
2. That any interested party may submit comments regarding this Tentative Implementation Order within twenty (20) days of entry of this Order.
3. That all pleadings, comments, or other filings shall also be submitted to the Commission's Act 11 Resource Account at ra-Act11@pa.gov and provided electronically in Word-compatible format to David Screven, dscreven@pa.gov, and Louise Fink Smith,

finksmith@pa.gov, in the Commission's Law Bureau, and to Erin Laudenslager, elaudensla@pa.gov, in the Commission's Bureau of Technical Services.

4. That a copy of this Tentative Implementation Order shall be published in the Pennsylvania Bulletin and posted on the Commission's website at www.puc.state.pa.us. That a copy of this Tentative Implementation Order be served on all jurisdictional water and wastewater companies, electric distribution companies, natural gas distribution companies and Philadelphia Gas Works, and the statutory advocates.

BY THE COMMISSION



Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: May 10, 2012

ORDER ENTERED: May 11, 2012

[UTILITY NAME]

DISTRIBUTION SYSTEM IMPROVEMENT CHARGE
(DSIC)

In addition to the net charges provided for in this Tariff, a charge of ___% will apply consistent with the Commission Order dated _____ at Docket No. _____, approving the DSIC.

[NOTE: THIS MODEL TARIFF IS EXPRESSED IN TERMS OF "DISTRIBUTION SYSTEMS." FOR WASTEWATER UTILITIES, THIS REFERS TO THEIR COLLECTION SYSTEMS.]

May 10, 2012 DRAFT

[UTILITY NAME]

DISTRIBUTION SYSTEM IMPROVEMENT CHARGE
(DSIC)

1. General Description

A. Purpose: To recover the reasonable and prudent costs incurred to repair, improve, or replace eligible property which is completed and placed in service and recorded in the individual accounts, as noted below, between base rate cases and to provide the Utility with the resources to accelerate the replacement of aging infrastructure, to comply with evolving regulatory requirements and to develop and implement solutions to regional supply problems.

The costs of extending facilities to serve new customers are not recoverable through the DSIC. [NOTE FOR WATER/WASTEWATER: Utility projects receiving PENNVEST funding or using PENNVEST surcharges are not DSIC-eligible property.]

B. Eligible Property: The DSIC-eligible property will consist of the following:
[CHOOSE UTILITY TYPE]

[ELECTRIC DISTRIBUTION COMPANIES]

- Poles and towers (account 364);
- Overhead conductors (account 365) and underground conduit and conductors (accounts 366 and 367);
- Line transformers (account 368) and substation equipment (account 362);
- Any fixture or device related to eligible property listed above including insulators, circuit breakers, fuses, reclosers, grounding wires, crossarms and brackets, relays, capacitors, converters and condensers;
- Unreimbursed costs related to highway relocation projects where an electric distribution company must relocate its facilities; and
- Other related capitalized costs.

[NATURAL GAS DISTRIBUTION COMPANIES AND CITY NATURAL GAS DISTRIBUTION OPERATIONS]

- Piping (account 376);
- Couplings (account 376);
- Gas services lines (account 378) and insulated and non-insulated fittings (account 378);
- Valves (account 376);
- Excess flow valves (account 376);
- Risers (account 376);
- Meter bars (account 382);
- Meters (account 381);

Issued: (ISSUED DATE)

Effective: (EFFECTIVE DATE)

[UTILITY NAME]

DISTRIBUTION SYSTEM IMPROVEMENT CHARGE
(DSIC)

- Unreimbursed costs related to highway relocation projects where a natural gas distribution company or city natural gas distribution operation must relocate its facilities; and
- Other related capitalized costs.

[WATER UTILITIES]

- Services (account 333000), meters (account 334100) and hydrants (account 335000) installed as in-kind replacements for customers;
- Mains and valves (account 331800) installed as replacements for existing facilities that have worn out, are in deteriorated condition, or are required to be upgraded to meet under 52 Pa Code § 65 (relating to water service);
- Main extensions (account 331800) installed to eliminate dead ends and to implement solutions to regional water supply problems that present a significant health and safety concern for customers currently receiving service from the water utility;
- Main cleaning and relining (account 331800) projects; and
- Unreimbursed costs related to highway relocation projects where a water utility must relocate its facilities; and
- Other related capitalized costs.

[WASTEWATER UTILITIES]

- Collection sewers (account 360), collecting mains (account 360), and service laterals (account 361), including sewer taps, curbstops, and lateral cleanouts installed as in-kind replacements for customers;
- Collection mains (account 361) and valves (account 367) for gravity and pressure systems and related facilities such as manholes, grinder pumps, air and vacuum release chambers, cleanouts, main line flow meters, valve vaults, and lift stations installed as replacements or upgrades for existing facilities that have worn out, are in deteriorated condition, or are required to be upgraded by law, regulation, or order;
- Collection main extensions (account 381) installed to implement solutions to wastewater problems that present a significant health and safety concern for customers currently receiving service from the wastewater utility;
- Collection main rehabilitation (account 360) including inflow and infiltration projects;
- Unreimbursed costs related to highway relocation projects where a wastewater utility must relocate its facilities; and
- Other related capitalized costs.

Issued: (ISSUED DATE)

Effective: (EFFECTIVE DATE)

[UTILITY NAME]

DISTRIBUTION SYSTEM IMPROVEMENT CHARGE
(DSIC)

C. **Effective Date:** The DSIC will become effective (**EFFECTIVE DATE**).

2. Computation of the DSIC

A. **Calculation:** The initial DSIC, effective (**EFFECTIVE DATE**), shall be calculated to recover the fixed costs of eligible plant additions that have not previously been reflected in the Utility's rates or rate base and will have been placed in service between (**THREE-MONTH PERIOD ENDING ONE MONTH PRIOR TO EFFECTIVE DATE**). Thereafter, the DSIC will be updated on a quarterly basis to reflect eligible plant additions placed in service during the three-month periods ending one month prior to the effective date of each DSIC update. Thus, changes in the DSIC rate will occur as follows:

Effective Date of Change	Date to which DSIC-Eligible Plant Additions Reflected
<u>(CHART TO BE FILLED IN BY UTILITY)</u>	

[THE FOLLOWING PARAGRAPHS PERTAIN TO WATER, WASTEWATER, ELECTRIC DISTRIBUTION, AND NATURAL GAS DISTRIBUTION UTILITIES ONLY. FOR CITY NATURAL GAS DISTRIBUTION OPERATIONS, SEE BELOW.]

B. **Determination of Fixed Costs:** The fixed costs of eligible distribution system improvements projects will consist of depreciation and pre-tax return, calculated as follows:

1. **Depreciation:** The depreciation expense shall be calculated by applying the annual accrual rates employed in the Utility's most recent base rate case for the plant accounts in which each retirement unit of DSIC-eligible property is recorded to the original cost of DSIC-eligible property.

2. **Pre-tax return:** The pre-tax return shall be calculated using the statutory state and federal income tax rates, the Utility's actual capital structure and actual cost rates for long-term debt and preferred stock as of the last day for the three-month period ending one month prior to the effective date of the DSIC and subsequent updates. The cost of equity will be the equity return rate approved in the Utility's last fully litigated base rate proceeding for which a final order was entered not more than two years prior to the effective date of the DSIC. If more

Issued: (**ISSUED DATE**)

Effective: (**EFFECTIVE DATE**)

DISTRIBUTION SYSTEM IMPROVEMENT CHARGE
(DSIC)

than two years shall have elapsed between the entry of such a final order and the effective date of the DSIC, then the equity return rate used in the calculation will be the equity return rate calculated by the Commission in the most recent Quarterly Report on the Earnings of Jurisdictional Utilities released by the Commission.

C. Application of DSIC: The DSIC will be expressed as a percentage carried to two decimal places and will be applied to the total amount billed to each customer for distribution service [WATER and WASTEWATER UTILITIES ONLY: for service] under the Utility's otherwise applicable rates and charges, excluding amounts billed for [WATER UTILITIES ONLY: public fire protection service] and the State Tax Adjustment Surcharge (STAS). To calculate the DSIC, one-fourth of the annual fixed costs associated with all property eligible for cost recovery under the DSIC will be divided by the Utility's projected revenue for distribution service (including all applicable clauses and riders) for the quarterly period during which the charge will be collected, exclusive of [WATER UTILITIES ONLY: revenues from public fire protection service and] the STAS.

D. Formula: The formula for calculation of the DSIC is as follows:

$$DSIC = \frac{(DSI * PTRR) + Dep + e}{PQR}$$

Where:

DSI = Original cost of eligible distribution system improvement projects net of accrued depreciation.

PTRR = Pre-tax return rate applicable to DSIC-eligible property.

Dep = Depreciation expense related to DSIC-eligible property.

e = Amount calculated under the annual reconciliation feature or Commission audit, as described below.

PQR = Projected quarterly revenues for distribution service (including all applicable clauses and riders) from existing customers plus revenue from any customers which will be acquired by the beginning of the applicable service period. [NOTE: UTILITY TO MAKE ELECTION AND STATE WHETHER SUCH QUARTERLY REVENUES WILL BE DETERMINED ON THE BASIS OF EITHER THE SUMMATION OF PROJECTED REVENUES FOR THE APPLICABLE THREE-MONTH PERIOD OR ONE-FOURTH OF PROJECTED ANNUAL REVENUES.]

[UTILITY NAME]

DISTRIBUTION SYSTEM IMPROVEMENT CHARGE
(DSIC)

[FOR CITY NATURAL GAS DISTRIBUTION OPERATIONS ONLY]

B. Recoverable Costs: The recoverable costs shall be amounts reasonably expended or incurred to purchase and install eligible property and associated financing costs, if any, including debt service, debt service coverage, and issuance costs.

C. Application of DSIC: The DSIC will be expressed as a percentage carried to two decimal places and will be applied to the total amount billed to each customer for distribution service under the Utility's otherwise applicable rates and charges. To calculate the DSIC, one-fourth of the annual recoverable costs associated with all property eligible for cost recovery under the DSIC will be divided by the Utility's projected revenue for distribution services (including all applicable clauses and riders) for the quarterly period during which the charge will be collected.

D. Formula: The formula for calculation of the DSIC is as follows:

$$DSIC = \frac{DSI + e}{PQR}$$

Where:

DSI = Recoverable costs (defined in Section B. directly above)
e = the amount calculated under the annual reconciliation feature or Commission audit, as described below.
PQR = Projected quarterly revenues for distribution service (including all applicable clauses and riders) including any revenue from existing customers plus revenue from any customers which will be acquired by the beginning of the applicable service period. [NOTE: UTILITY TO MAKE ELECTION AND STATE WHETHER SUCH QUARTERLY REVENUES WILL BE DETERMINED ON THE BASIS OF EITHER THE SUMMATION OF PROJECTED REVENUES FOR THE APPLICABLE THREE-MONTH PERIOD OR ONE-FOURTH OF PROJECTED ANNUAL REVENUES.]

3. Quarterly Updates: Supporting data for each quarterly update will be filed with the Commission and served upon the Commission's Bureau of Investigation and Enforcement, the Office of Consumer Advocate, and the Office of Small Business Advocate at least ten (10) days prior to the effective date of the update.

Issued: (ISSUED DATE)

Effective: (EFFECTIVE DATE)

[UTILITY NAME]

DISTRIBUTION SYSTEM IMPROVEMENT CHARGE
(DSIC)

4. Customer Safeguards

A. Cap: The DSIC is capped at 5.0% of the amount billed to customers for distribution service (including all applicable clauses and riders) as determined on an annualized basis.

[Note: Several water utilities have Commission-approved DSICs that are capped at 7.5% of the amount billed for service.]

B. Audit/Reconciliation: The DSIC is subject to audit at intervals determined by the Commission. Any cost determined by the Commission not to comply with any provision of 66 Pa C.S. §§ 1350, *et seq.*, shall be credited to customer accounts. The DSIC is subject to annual reconciliation based on a reconciliation period consisting of the twelve months ending December 31 of each year. The revenue received under the DSIC for the reconciliation period will be compared to the Company's eligible costs for that period. The difference between revenue and costs will be recouped or refunded, as appropriate, in accordance with Section 1307 (e), over a one-year period commencing on April 1 of each year. If DSIC revenues exceed DSIC-eligible costs, such over-collections will be refunded with interest. Interest on over-collections and credits will be calculated at the residential mortgage lending specified by the Secretary of Banking in accordance with the Loan Interest and Protection Law (41 P.S. §§ 101, *et seq.*) and will be refunded in the same manner as an over-collection.

C. New Base Rates: The DSIC will be reset at zero upon application of new base rates to customer billings that provide for prospective recovery of the annual costs that had previously been recovered under the DSIC. Thereafter, only the fixed costs of new eligible plant additions that have not previously been reflected in the Utility's rates or rate base will be reflected in the quarterly updates of the DSIC.

D. Customer Notice: Customers shall be notified of changes in the DSIC by including appropriate information on the first bill they receive following any change. An explanatory bill insert shall also be included with the first billing.

E. All customer classes: The DSIC shall be applied equally to all customer classes.

F. Earning Reports: The DSIC will also be reset at zero if, in any quarter, data filed with the Commission in the Utility's then most recent Annual or Quarterly Earnings reports show that the Utility would earn a rate of return that would exceed the allowable rate of return used to calculate its fixed costs under the DSIC as described in the pre-tax return section. [NOTE:

[UTILITY NAME]

DISTRIBUTION SYSTEM IMPROVEMENT CHARGE
(DSIC)

THIS PARAGRAPH IS NOT APPLICABLE TO CITY NATURAL GAS DISTRIBUTION OPERATIONS UTILITIES.]

G. Public Fire Protection: The DSIC of a water utility will not apply to public fire protection customers.

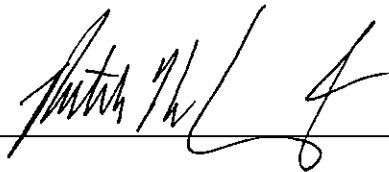
May 10, 2012 DRAFT

CERTIFICATE OF SERVICE

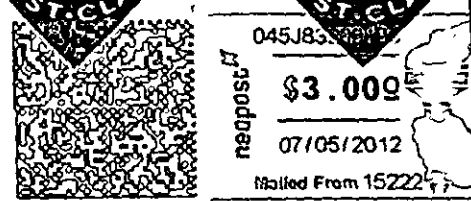
The undersigned hereby certifies that on the 5th day of July, 2012, a true and correct copy of the foregoing *Complainant's Supplemental Opposition to Respondent's Motion for Summary Judgment* was served on the following by electronic mail and first class, U.S. mail:

The Honorable Judge Joel H. Cheskis
P.O. Box 3265
Harrisburg, PA 17105

Anthony C. DeCusatis, Esquire
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103
Attorney for Respondent



RECEIVED
2012 JUL -9 AM 10:45
FBI, U.C.
SECRETARY'S BUREAU



FIRST CLASS MAIL

DEL SOLE CAVANAUGH STROYD LLC

The Waterfront Building Suite 300
200 First Avenue
Pittsburgh, PA 15222

**ROSEMARY CHIAVETTA
SECRETARY**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH KEYSTONE BUILDING
400 NORTH STREET
HARRISBURG, PA 17120**