

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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February 7, 2013

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17101

RE: Petition of Philadelphia Gas Works
for Approval of a Distribution System
Improvement Charge
Docket No. P-2012-2337737

Dear Secretary Chiavetta:

Attached for electronic filing is the Answer of the Office of Consumer Advocate to the Petition of Philadelphia Gas Works for Approval of a DSIC in the above-referenced proceeding.

Copies have been served on the parties listed on the attached Certificate of Service.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Erin L. Gannon".

Erin L. Gannon
Assistant Consumer Advocate
PA Attorney I.D. #83487

Attachment

cc: Commissioner Robert F. Powelson, Chairman
Commissioner John F. Coleman, Jr., V. Chairman
Commissioner James H. Cawley
Commissioner Wayne E. Gardner
Commissioner Pamela A. Witmer
Bohdan Pankiw, Law Bureau
David Screven, Law Bureau
Paul Diskin, Bureau of Technical Utility Services
Erin Laudenslager, Bureau of Technical Utility Services

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of Philadelphia Gas Works for :
Approval of a Distribution System : Docket No. P-2012-2337737
Improvement Charge :

ANSWER OF THE OFFICE OF CONSUMER ADVOCATE
TO THE
PETITION OF PHILADELPHIA GAS WORKS

I. INTRODUCTION

Pursuant to Section 5.61 of the Pennsylvania Code, 52 Pa. Code § 5.61, the Office of Consumer Advocate (OCA) provides the following Answer to the Petition of Philadelphia Gas Works for Approval of a Distribution System Improvement Charge (DSIC). Through its Petition, Philadelphia Gas Works (PGW or Company) seeks permission to implement a surcharge of up to 5% on all customers, under Section 1353 of the Public Utility Code, 66 Pa. C.S. § 1353. This surcharge would recover return and depreciation on certain plant placed in service between base rate filings. As set forth more fully below, the Company's proposed Tariff Supplement No. 58 to Tariff-Gas Pa. P.U.C. No. 2 attached to the Petition is contrary to Pennsylvania statute, case law and established Public Utility Commission policy. The Commission should deny PGW's Petition as filed. The OCA requests that the Commission suspend the Company's proposed Tariff Supplement No. 58 and order a full hearing and investigation pursuant to the OCA complaint filed at this docket against the Tariff Supplement.

II. THE OCA'S ANSWER

This is the third request by a utility to implement a DSIC under a new statute and the Commission's Final Implementation Order.¹ PGW's proposed DSIC will increase rates for service and presents several important issues. The Petition should be denied, and Tariff Supplement No. 58 should be rejected as filed. This matter should be referred to the Office of Administrative Law Judge for development of an evidentiary record.

While the OCA continues to review PGW's filing, the OCA has identified the following preliminary concerns with the proposed surcharge:

1. PGW's proposal to recover an annualized amount for DSIC-eligible costs rather than recovering the costs of eligible property that has been placed in service during the prior three-month period may violate Section 1357 and the used and useful requirement for rate recovery.
2. The Company's proposal to recover the costs of eligible property placed in service in November 2012 in a DSIC charge established March 1, 2013 may violate Section 1357 and the prohibition against retroactive ratemaking.
3. The proposal to apply the surcharge as a volumetric charge per Ccf is not consistent with the Section 1357 requirement that the DSIC be expressed as a percentage.
4. The proposal to provide the Commission, OCA and the Office of Small Business Advocate with a minimum of one (1) day's notice before quarterly updates take effect is not consistent with the ten (10) day minimum notice required by Section 1357.

¹ Implementation of Act 11 of 2012, Docket No. M-2012-2293611, Order (Aug. 2, 2012) (Final Implementation Order).

5. PGW's proposed tariff is not consistent with the model tariff language regarding the 5% bill limitation and requires further review to ensure that this provision is consistent with Act 11 and the Commission's Final Implementation Order.
6. PGW's request that the Commission waive the statutory 60-day notice requirement should be considered to determine whether it is warranted and appropriate.
7. PGW's proposal that the Commission put DSIC rates into effect prior to conclusion of its investigation and any evidentiary hearings requires further consideration.

Each of these concerns is discussed more fully below.

The OCA's first concern is PGW's proposed DSIC calculation. Act 11 requires that the DSIC be calculated to recover the fixed cost of eligible property that has "been placed in service during the three-month period ending one month prior to the effective date of the distribution improvement system charge." 66 Pa. C.S. § 1357(a)(1)(ii). PGW proposes to calculate the DSIC to recover an annualized amount for DSIC-eligible costs. PGW Petition at 9-10; PGW St. 1 at 7-9. Specifically, PGW's proposed tariff provides:

To calculate the DSIC, the *projected annual* recoverable costs associated with all property eligible for cost recovery under the DSIC will be divided by the Utility's *projected* sales volumes for distribution services for the *annual period* during which the charge will be collected.

Supplement 58 at 151. Act 11 authorizes utilities to recover the costs of property that has already "been placed into service." 66 Pa. C.S. § 1357(a)(1)(ii). Moreover, the plant must have been placed into service "during the three-month period ending one month prior to the effective date of the distribution improvement system charge." *Id.* PGW's proposal would allow recovery of costs associated with improvements the utility plans to make in the future, *i.e.* are not used and

useful. This is not consistent with Act 11 or the longstanding principle that plant must be used and useful prior to recovery in rates. 66 Pa. C.S. § 102; see e.g., Barasch v. Pa. P.U.C., 507 Pa. 496, 491 A.2d 94 (1985).

In addition, the Company seeks approval to recover the costs of eligible property placed in service *prior* to the three-month period provided by Section 1357. Specifically, PGW proposes that its initial DSIC would recover costs for DSIC-eligible property placed in service from November 1, 2012 to August 31, 2013. PGW St. 1 at 11. November 2012 is outside the historic three-month window proscribed by statute for a DSIC rate that is proposed to take effect on March 1, 2013. 66 Pa. C.S. § 1357(a)(1)(ii). This proposal may also violate the prohibition against retroactive ratemaking.

The third concern identified by the OCA is the Company's proposal to express the surcharge as a volumetric charge per Ccf carried to five (5) decimal places. PGW Petition at 9; Supplement 58 at 151. Section 1357(d)(1) requires that the DSIC "shall be expressed as a percentage carried to two decimal places." 66 Pa. C.S. § 1357(d)(1). PGW's proposal is not consistent with the specific statutory requirement that the DSIC rate be a percentage. Moreover, by reflecting the surcharge as a volumetric rate, the Company obscures the connection between the DSIC rate and the statutory 5% bill limitation.

The OCA's fourth concern is that PGW's tariff provides that the Company will file supporting data for each quarterly update with the Commission and serve upon the OCA and Small Business Advocate "at least one (1) day prior to the effective date of the update." Supplement 58 at 152. Section 1357(d)(3) requires utility's file and serve this information "at least ten days prior to the effective date of the update." 66 Pa. C.S. § 1357(d)(3). The OCA submits that one day's notice is unreasonable and inconsistent with statutory requirements.

The OCA's fifth concern is that the Company's proposed tariff is not consistent with the model tariff in several respects. In its Final Implementation Order, the Commission determined that the 5% cap is a *bill* limitation as applied to the distribution rates of each customer, not to aggregated billing revenue. Final Implementation Order at 42. The Commission's model tariff provides:

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.

Final Implementation Order, App. A at 7.

PGW's proposed tariff adds the following language (underlined for emphasis):

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 in the Company's most recent base rate on a customer class basis.

Supplement 58 at 152.

There are several other provisions in the Company's proposed Tariff, which are not consistent with the model tariff – some of which are discussed *supra* in this Answer. The OCA continues to consider whether these proposed tariff provisions are consistent with Act 11 and the Commission's directives.

The OCA's sixth concern is PGW's request that the Commission waive the 60-day notice requirement for any rate change filing. PGW Petition at 8; 66 Pa. C.S. § 1308(a). The Company requests a March 1, 2013 implementation date for its initial DSIC. PGW Petition at 8. It notes that this date will coordinate with its fiscal year ending August 31, 2013. PGW Petition at 10; PGW St. 1 at 10. Based on the OCA's initial review, it is not clear why the charge could not begin on June 1, 2013 (or September 1, 2013), which would also coordinate with the Company's fiscal year and quarterly GCR schedule. Further questions regarding the need for a March 1

implementation date are raised by PGW's proposal (discussed *supra*) to determine DSIC cost recovery in the initial year based on DSIC-eligible property placed in service between November 1, 2012 and August 31, 2013. PGW St. 1 at 11.

The OCA's concern is compounded by PGW's statement that it will notify customers about its DSIC filing in a bill insert during the February 2013 billing cycle. PGW St. 1 at 12. It is possible that some customers may not receive notice before March 1 and, in any case, will have very limited time to review and contact the Company or Commission with questions or complaints. For these reasons and in light of the concerns the OCA has identified with regard to PGW's proposed tariff and its substantial deviation from the Commission's model tariff, the OCA submits that a waiver of the 60-day notice requirement is not appropriate.

The seventh concern identified by the OCA is the Company's proposal to put DSIC rates into effect subject to refund. PGW Petition at 8. The OCA submits that PGW's request should be fully examined to ensure that it complies with Act 11. As discussed above, the OCA has raised fundamental concerns with PGW's proposed DSIC computation, which deviates from the model tariff adopted by the Commission for non-jurisdictional gas utilities, *i.e.* PGW. Final Implementation Order, App. A. There is substantial cause to wait to implement rates until all issues identified by the OCA and any other parties participating in the proceeding can be fully investigated.

III. CONCLUSION

The surcharge proposed by PGW is contrary to Pennsylvania case law, as well as several well-established principles of sound ratemaking and may be contrary to statute and the Commission's Act 11 Final Implementation Order. The surcharge as proposed would also constitute bad regulatory policy. The OCA respectfully requests that the Commission reject the proposed surcharge, for the reasons set forth above.

Respectfully submitted,



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Dated: February 7, 2013
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CERTIFICATE OF SERVICE

Petition of Philadelphia Gas Works :
for Approval of a Distribution System : Docket No. P-2012-2337737
Improvement Charge :

I hereby certify that I have this day served a true copy of the foregoing document, Answer of the Office of Consumer Advocate to PGW's Petition for Approval of a DSIC, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code §1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 7th day of February 2013.

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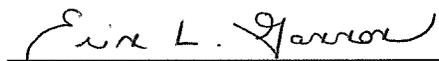
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