

COMMONWEALTH OF PENNSYLVANIA



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April 25, 2013

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

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 are the Comments of the Office of Consumer Advocate 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
Certificate of Service

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

COMMENTS OF THE OFFICE OF CONSUMER ADVOCATE
ON THE RESPONSE OF PHILADELPHIA GAS WORKS
TO THE APRIL 4, 2013 COMMISSION ORDER

I. INTRODUCTION

On April 4, 2013, the Public Utility Commission (PUC or Commission) entered an Order approving and denying in part the Petition of Philadelphia Gas Works for Approval of a Distribution System Improvement Charge. Specifically, the Commission granted approval for PGW to use a DSIC mechanism but denied its proposed implementation of a Distribution System Improvement Charge (DSIC) pursuant to the proposed tariff. Order at 37. The Commission found that the proposed tariff provisions appeared to be inconsistent with Act 11, the Final Implementation Order¹ and the Model Tariff. The Commission directed Philadelphia Gas Works (PGW or Company) to file a revised proposed DSIC tariff addressing the inconsistencies and deficiencies noted in the Order. Order at 36-37. On April 15, 2013, PGW filed a Response to the Order, which contains 1) a “compliance tariff” that it states is compliant with Act 11, the Final Implementation Order and the Model Tariff, 2) a “modified DSIC tariff” that is virtually the same as the tariff PGW submitted in its original DSIC filing on January 18, 2013 and 3) a response to the issues raised in the Commission’s Order.

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

PGW asks the Commission to approve its modified DSIC tariff, subject to investigation and hearing to address any remaining issues, if necessary. In the alternative, PGW states the Commission has the option to approve its “compliance tariff” or direct PGW to file a modified tariff, different from either alternative submitted by PGW, that reflects the Commission’s final decision on the issues raised in its April 4, 2013 Order.

The Commission should not allow either of the tariffs appended to PGW’s Response to become effective. For the same reasons raised in the OCA’s Answer to the Company’s original filing and, as discussed further below, the DSIC mechanism proposed in the “modified DSIC tariff” is not consistent with the DSIC statute and PGW has not established that any waivers of the statute are reasonable or appropriate. The “compliance tariff” differs in material ways from the directives in the Final Implementation Order and should not be adopted as filed.

The OCA requests that the Commission refer the Company’s proposed Tariff Supplements (both labeled No. 61) and the contested aspects of the DSIC Petition to the Office of Administrative Law Judge, consistent with Ordering Paragraph 6. Order at 39. In the alternative, the Commission should direct PGW to modify its proposed “compliance tariff” as recommended herein to make it entirely compliant with Act 11 and the Final Implementation Order.

II. THE OCA’S COMMENTS ON PGW’S RESPONSE AND “MODIFIED TARIFF”

In its April 2013 Order, the Commission identified five issues of concern. In its response to these issues, PGW’s main defense is that PGW has unique circumstances and the Commission has the discretion to waive or suspend any requirements of Act 11 and any related regulations or orders in approving PGW’s DSIC. PGW Response at 2, 3-11. In other words, PGW would like the Commission to approve a DSIC pursuant to Act 11 but, otherwise, refrain from applying

many of the Act's limitations and requirements. The OCA submits that no waivers or suspension are warranted. The Legislature made clear its intent that PGW be subject to Sections 1357 (Computation of the Charge) and 1358 (Customer Protections) by specifically referencing city natural gas distribution operations. 66 Pa. C.S. §§ 1357, 1358. Moreover, in its Final Implementation Order, the Commission adopted Model Tariff provisions for PGW specifically, to reflect that PGW's rates are established using the cash flow method of ratemaking.² PGW has not shown that waiver of these statutory provisions is just, reasonable or in the public interest. Pa. P.U.C. v. Philadelphia Gas Works, 2008 PaPUC LEXIS 32.

With regard to PGW's specific responses to the issues raised in the Commission's Order, the OCA submits the following replies.

1. PGW's proposed method to recover an annualized amount of DSIC eligible cost rather than recovering the cost of eligible property that has been placed in service during the prior three-month period appears to violate Section 1357.

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. Exhibit B at 152; Response at 4-7. Specifically, PGW's proposed modified 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.

Exhibit B at 152 (emphasis added). 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

² PGW filed no Comments on the Model Tariff appended to the Commission's Tentative Order entered on May 11, 2012. The Model Tariff provisions applicable to PGW are substantively identical in the Tentative and Final Implementation Orders.

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.³ 66 Pa. C.S. § 102; see e.g., *Barasch v. Pa. P.U.C.*, 507 Pa. 496, 491 A.2d 94 (1985).

PGW argues that using an annualized amount of costs as the basis for establishing a charge is reasonable because it would allow the Company to avoid the reduction in cash flow that would result during slow construction periods. Response at 5. The OCA submits that the purpose of the DSIC is not to *eliminate* all lag between cost incurrence and recovery but to reduce lag by allowing recovery between base rate cases and without filing a base rate case.

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.

Implementation of Act 11 of 2012, Docket No. M-2012-2293611, Tentative Order at 3 (May 11, 2012) (emphasis added). One of the key protections embedded in the Act is the requirement that costs already be incurred to be eligible for recovery.

For city natural gas distribution operations, 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.

66 Pa. C.S. § 1357(c); see also 66 Pa. C.S. §§ 1351, 1353.

³ PGW argues that the used and useful principle does not apply to PGW because the Company does not earn a return on its rate base. Response at 7. The principle is ingrained in Act 11, however, and is an important limitation to the recovery of costs between base rate cases. 66 Pa. C.S. §§ 1351, 1353, 1357. Moreover, as noted above, the statute specifically provides that, for PGW, costs shall not be “recoverable” unless already spent or incurred. 66 Pa. C.S. § 1357(c).

PGW argues further that swings in the amount of recoverable costs will negatively impact cash flow. The OCA submits that some quarterly variation in recoverable costs is both reasonable and expected.⁴ While it will serve to make cost recovery more timely, the purpose of the DSIC is not to guarantee unvarying cash flow. 66 Pa. C.S. §§ 1350, 1353(a).

PGW's response to the Commission's Order does not provide legal or factual basis for the Commission to waive the applicable statutory provisions to allow the Company to recover forecasted, annualized costs through the DSIC. Implementation of a DSIC that complies with Act 11 and the Final Implementation Order will provide PGW timelier cost recovery of eligible costs incurred between base rate cases and support accelerated infrastructure improvement.

2. PGW's proposal to recover the costs of eligible property placed in service in November 2012 in a DSIC charge established March 1, 2013 appears to violate Section 1357.

In its original DSIC filing, the Company sought approval to recover the costs of eligible property placed in service *prior* to the three-month period provided by Section 1357. 66 Pa. C.S. § 1357(a)(1)(ii) (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"). Specifically, PGW proposed 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. The Commission questioned, thus, whether PGW's proposal to recover costs of eligible property placed in service in November 2012 in a DSIC charge established March 1, 2013 was consistent with Section 1357.

On page 8 of its Response, PGW states that it will not attempt to recover costs associated with projects earlier than the ninety days ending 30 days prior to the effective date of the DSIC,

⁴ The OCA notes that the effect of variability in recoverable costs on the DSIC rate is reduced by the use of one-fourth of projected annual revenues rather than projected quarterly revenues in the DSIC calculation. Model Tariff at 7; Final Implementation Order at 40.

which cannot be March 1, 2013. PGW clarifies that, whenever the initial DSIC takes effect, it will only seek to recover costs associated with projects placed in service in the ninety days ending 30 days prior to the effective date. Id. The recovery of November 2012 plant investment is, therefore, no longer an issue. As discussed above, PGW's proposal to recover forecasted costs through the initial and subsequent DSICs, rather than costs incurred for plant placed into service during the prescribed period, is inconsistent with the requirements and purpose of Act 11.

3. PGW's proposal to express the surcharge as a volumetric charge per Ccf carried to five decimal places does not appear to be consistent with the statutory requirement that the DSIC rate be expressed as a percentage.

In addition to its proposal to recover annualized projected costs associated with eligible plant, PGW also proposes to calculate the DSIC on a volumetric basis. Exhibit B at 152; Response at 5-9. Section 1357(d)(1) requires, however, that the DSIC "shall be expressed as a percentage." 66 Pa. C.S. § 1357(d)(1); see also 66 Pa. C.S. § 1358(d)(1) ("the distribution system improvement charge shall be applied equally to all customer classes as a percentage of each customer's billed revenue").

In its Response, PGW argues that this requirement of Act 11 should be waived because basing the DSIC on a percentage of billed revenues would result in under-collections where sales fall short of "weather normalized" sales. Response at 5-6. This argument fails for two reasons. First, Act 11 clearly envisions that utilities may experience under-collections, as it provides for their recoupment. 66 Pa. C.S. § 1358(d), (e). Second, waiving the percentage billing requirement would improperly afford PGW the opportunity to achieve a greater reduction in under-collections than the Act intends. This is particularly true because PGW's existing weather normalization clause already reduces revenue fluctuations due to changes in weather.

PGW also argues that volumetric billing will provide more consistent cash flow. Response at 6-7. This ignores that the DSIC itself is a mechanism to provide more timely recovery of costs. In addition, swings in DSIC revenues will be mitigated by the Commission providing PGW the option to calculate the quarterly DSIC using one-fourth of the projected annual distribution revenues rather than projected distribution revenues for the applicable three-month period. Final Implementation Order at 40; Model Tariff at 7.

In addition to the clear statutory intent that Section 1357 apply to PGW, these additional reasons weigh in favor of establishing a DSIC for PGW that provides the benefits and protections the statute envisioned. The Company's response does not support a waiver of Section 1357 to allow a volume-based DSIC.

If required to bill the DSIC as a percentage, the Company asks the Commission to allow it to apply the percentage to each element of the customer's distribution bill rather than presenting it as a separate line item, due to the limitations of its billing system. Response at 9. PGW avers that in order to list the DSIC as a separate line item on customer bills, it would have to make costly changes to its billing system that would take 12 to 18 months. Id. First, the OCA submits that these factual assertions should be supported with evidence at hearings. At that time, it should also be considered what other changes are planned for the billing system and whether it would be feasible and efficient to make changes for line-item DSIC billing at the same time. Second, reflecting the surcharge as a separate line-item percentage on bills provides a clear connection between the DSIC rate and the statutory 5% bill limitation. In addition, it avoids confusion regarding quarterly changes to PGW's distribution charges. For this reason, the OCA submits that PGW should be required to show the charge as a separate line item, within a reasonable time period. In the interim, if the Commission allows PGW to recover the DSIC as a

percentage charge to each element of the bill, the Commission should direct the Company to work with the OCA to develop customer communications – a bill insert, website information, etc. – that clearly explain the charges.

4. PGW’s proposals regarding quarterly updates and customer protections do not appear to be consistent with the Model Tariff.

PGW’s original tariff provided that the Company would 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 utilities to file and serve this information “at least ten days prior to the effective date of the update.” 66 Pa. C.S. § 1357(d)(3). In its Response, PGW agrees to comply with this requirement. Response at 9-10; Exhibit A at 152; Exhibit B at 152.

There remains an issue with regard to the 5% cap on recovery. Section 1358(a)(1) provides that the DSIC “may not exceed 5% of the amount billed to customers under the applicable rates of the . . . city natural gas distribution operation.” 66 Pa. C.S. § 1358(a)(1). The Commission’s Final Implementation Order provides 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.

Model Tariff at 7. Instead, PGW’s proposed modified tariff states:

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 [sic] on a customer class basis.

Exhibit B at 152. The Company does not provide any information in support of this proposal in its Response. The change should be rejected because it does not appear, on its face, to be consistent with the requirements of Act 11 and the Commission's Final Implementation Order. Further, the OCA submits that the amount billed to customers should be based on information more recent than a base rate case filed in November 2009.

The OCA also has three concerns regarding application of the Section 1358(d)(1) requirement that the DSIC be "applied equally to all customer classes." 66 Pa. C.S. § 1358(d)(1). In its April 4, 2013 Order, the Commission indicated that PGW's tariff should include a provision specifying that PGW "will reduce or eliminate the Rider DSIC to any customer with competitive alternatives or potential competitive alternatives and customers having negotiated contracts." Order at 31. PGW has not included this language in its proposed modified tariff but does include the language in its proposed compliance tariff. Exhibit B at 152; Exhibit A at 152.

First, the OCA respectfully request that the Commission clarify that, consistent with its Final Implementation Order, that utilities are permitted *but not required* to exclude customers with competitive alternatives or negotiated contracts from application of the DSIC. The Final Implementation Order states:

utilities should have the flexibility to *not* apply the DSIC surcharge to customers with competitive alternatives and customers having negotiated contracts from the utility.

Final Implementation Order at 46.

Second, the OCA submits that inclusion of customers with "potential" competitive alternatives is different than and broader than provided in the Final Implementation Order. Therein, the Commission stated that the DSIC need not be applied to customers "with

competitive alternatives and customers having negotiated contracts from the utility.” Final Implementation Order at 46. In its Order approving a DSIC for Columbia Gas of Pennsylvania, Inc., the Commission stated that it must review any future tariff changes that would exclude and/or include any customer class. Petition of Columbia Gas for Approval of a DSIC, Docket No. P-2012-2338282, Order at 40 (Mar. 14, 2013). This suggests that a customer would not be excluded from the DSIC until there was a showing that it had actual competitive alternatives or negotiated contracts. Accordingly, it does not seem that the term “potential competitive alternatives” should be included in PGW’s DSIC tariff.

Third, PGW states on page 10 of its Response that it will not apply the DSIC to its Rate IT and Rate GTS customers. The GTS customers’ rates are defined by contract with PGW. Supplement No. 60 to Gas Service Tariff – Pa. P.U.C. No. 2 at 118, 124. Rate IT customers, however, are charged tariff rates for service. Supplement No. 60 to Gas Service Tariff – Pa. P.U.C. No. 2 at 115. The Rate IT tariff states that commercial and industrial customers may qualify for the rate if the Company determines they can manage their business without gas during interruptions or curtailments, even without alternative fuel. Supplement No. 60 at 112. Thus, it is not clear that IT customers have “competitive alternatives” and should be exempt from the DSIC. These customers are simply interruptible customers who can operate without gas service for a determined period of time. Accordingly, absent additional evidence showing that the DSIC should not apply to Rate IT customers, PGW’s proposal to eliminate the DSIC Rider for Rate IT customers should be denied.

5. PGW's proposals regarding the filing schedule and effective date of its DSIC tariff do not appear to conform to Section 1358 (e)(2), and whether PGW has met the requirements for a Section 2212(c) waiver or suspension.

With regard to reconciliation, Section 1358(e)(2) provides:

The revenue received under the distribution system improvement charge for the reconciliation period shall be compared to the utility's eligible costs for that period. The difference between revenue and costs shall be recouped or refunded, as appropriate, in accordance with section 1307(e) (relating to sliding scale of rates; adjustments), over a one-year period or quarterly period commencing April 1 of each year.

66 Pa. C.S. § 1358(e)(2). In its April 4, 2013 Order, the Commission directed PGW to update its original DSIC tariff to reflect the April 1 date. Order at 32. Instead, PGW's modified DSIC tariff proposes to recoup or refund the difference between revenue and costs over a one-year period commencing December 1 of each year with a 12-month reconciliation period ending August 31 with reconciliations on September 1, December 1, March 1 and June 1. Exhibit B at 152; Response at 10-11.

The Company argues that this schedule would be more reasonable for PGW because it would synchronize the DSIC reconciliations with PGW's Gas Cost Rate reconciliations, resulting in rate changes only four times per year rather than eight. Response at 10-11. PGW acknowledges, however, that it is capable of adhering to the April 1, July 1, October 1 and January 1 schedule. *Id.* at 11.

The OCA takes no position on this issue. The OCA does object, however, to PGW's ancillary request that the Commission reconsider its finding that PGW's initial DSIC filing must coincide with the quarterly filing schedule adopted for DSIC updates. Response at 11. PGW notes that Section 1358(e)(2) requires only that "reconciliations" be filed on April 1 and quarterly thereafter. *Id.* at 11, n.15 (citing 66 Pa. C.S. § 1358(e)(2)). The OCA submits that there is good cause for the Commission to align the effective date of a new rate with the Company's

regular reconciliation schedule, if PGW is permitted to charge the DSIC as a percentage of each element of the customer's distribution bill (versus a separate line item). As discussed above, this presentation of the DSIC may be confusing to customers, and explaining the new charges could be more difficult if PGW's initial DSIC is effective for less than the regular three months.

III. OCA COMMENTS ON "COMPLIANCE TARIFF"

PGW provides a "compliance tariff" and asks that the Commission, as one alternative, permit the tariff to go into effect subject to hearings, if necessary. Response at 1. PGW states that it is fully prepared to institute the Compliance Tariff "if the Commission decides that it wishes to maintain uniformity in DSIC tariffs among utilities." *Id.* at 3. The OCA does not object to the approval of a Compliance Tariff for PGW that is entirely compliant with Act 11 and the Final Implementation Order. The OCA has identified several ways in which the tariff contained in Exhibit A differs materially from those requirements. For ease of reference, the OCA provides these differences in a list:

Tariff Page 151:

1. The first line states "up to 5%." This should state a specific percentage.
2. Paragraph 2.A. should include the word "fixed" as provided in this sentence: "The initial DSIC shall be calculated to recover the fixed costs of eligible plant additions..."

Tariff Page 152:

1. In the first sentence of Paragraph 2.C., the word "or" should be replaced with "for" so the sentence reads: "applied to the total amount billed to each customer for distribution service."
2. The second sentence of Paragraph 2.C. should follow the model tariff and state: ". . . thereafter, 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."

3. Paragraph 4.A. of the Model Tariff provides “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.” The tariff in Exhibit A replaces the last six words with “projected for the quarterly period during which the DSIC charge will be collected.”

Tariff Page 153:

1. Paragraph E. states that the Company “may reduce or eliminate the DSIC to any customer with competitive alternatives or potential competitive alternatives.” As discussed in Section II.5, *supra*, the OCA submits that “potential” competitive alternatives is different than and broader than the exclusion provided in the Final Implementation Order. Final Implementation Order at 45-46. The OCA submits that, consistent with the Commission’s Final Implementation Order, PGW’s tariff should address only customers “with competitive alternatives and customers having negotiated contracts from the utility.” *Id.* at 46.

The Company does not provide support for these differences in its Response. The OCA also notes that the tariff in Exhibit A does not apply the DSIC to Rate IT customers.⁵ See discussion *supra* Section II.5. Absent evidence showing that PGW’s proposals are consistent with the requirements of Act 11 and the Commission’s Final Implementation Order, the tariff contained in Exhibit A should not be approved as filed.

⁵ Exhibit A does include tariff pages for Rates GS, MS, PHA and NGVS, which state that the DSIC will apply. Exhibit A at 83, 87, 90, 135. Tariff page 111 (Rate IT) is not included in Exhibit A.

IV. CONCLUSION

The DSIC mechanism proposed in the “modified DSIC tariff” is not consistent with the DSIC statute and, for the reasons discussed, waivers of the statute are not just, reasonable or in the public interest. The Commission should not approve the tariff contained in Exhibit B. Also, the “compliance tariff” proposed by PGW (Exhibit A) differs in material ways from the directives in the Final Implementation Order and should not be adopted as filed.

Accordingly, the OCA requests that the Commission refer the Company’s proposed Tariff Supplements and the contested aspects of the DSIC Petition to the Office of Administrative Law Judge, consistent with Ordering Paragraph 6. Order at 39. 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. In the alternative, the Commission should direct PGW to modify its proposed “compliance tariff” as recommended herein to make it entirely compliant with Act 11 and the Final Implementation Order.

Respectfully submitted,



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Dated: April 25, 2013
168182

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 Comments of the Office of Consumer Advocate, 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 25th day of April 2013.

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