**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of UGI Penn Natural Gas, Inc. for : P-2013-2397056

Approval of a Distribution System Improvement : C-2014-2399316

Charge : C-2014-2401382

**RECOMMENDED DECISION**

Before

Joel H. Cheskis

Administrative Law Judge

INTRODUCTION

This Decision recommends that the Joint Petition for Settlement of All Issues be approved in its entirety without modification because it is in the public interest and is supported by substantial evidence. This Decision finds that the Settlement complies with relevant Sections of the Public Utility Code regarding distribution system improvement charges and is consistent with Commission regulations promoting settlements.

HISTORY OF THE PROCEEDING

On December 12, 2013, UGI Penn Natural Gas, Inc. (UGI-PNG or “the Company”) filed with the Pennsylvania Public Utility Commission (Commission) a Long Term Infrastructure Improvement Plan (LTIIP) pursuant to Section 1352 of the Public Utility Code and a Petition for Approval of a Distribution System Improvement Charge (DSIC) pursuant to Section 1353 of the Public Utility Code. In the DSIC Petition, UGI-PNG noted that, on February 14, 2012, Act 11 of 2012 (Act 11) was signed into law authorizing natural gas distribution companies to establish a DSIC to recover reasonable and prudent costs incurred to repair, improve or replace certain eligible distribution property that is part of the utility’s distribution system. UGI-PNG further provided that it had undertaken a significant distribution system infrastructure evaluation, repair and replacement program that is focused on those portions of its system that were constructed using cast iron and bare steel pipe. As a result, UGI-PNG requested approval of a DSIC.

On January 2, 2014, the Office of Consumer Advocate (OCA) filed a Formal Complaint and Public Statement in response to the DSIC filing, Docket Number C-2014-2399316. In its Complaint, the OCA averred that the proposed DSIC calculation and tariff may be unjust or unreasonable in violation of Section 1301 of the Public Utility Code and that the proposed calculation and tariff may be inconsistent with the limitations on cost recovery provided in Act 11. The OCA requested that the Commission hold evidentiary hearings and modify or reject the DSIC and initial tariff if it is not found to be in compliance with the Public Utility Code.

Also on January 2, 2014, the Office of Small Business Advocate (OSBA) filed a Complaint, Verification, Public Statement and Notice of Appearance in response to UGI-PNG’s DSIC filing, Docket Number C-2014-2401382. In its Complaint, the OSBA sought to ensure that the filing is just, reasonable, nondiscriminatory and not contrary to Commission regulation or policy. The OSBA requested that the Commission hold evidentiary hearings and deny the proposed DSIC if it is found to be unjust, unreasonable, unduly discriminatory or contrary to sound ratemaking principles.

On January 27, 2014, UGI-PNG filed Answers to the Complaints filed by the OCA and the OSBA. In its Answers, UGI-PNG admitted or denied the various averments made by the OCA and the OSBA in their respective Complaints and requested that the Complaints be dismissed in their entirety.

By Opinion and Order entered September 11, 2014, the Commission approved the LTIIP and DSIC filed by UGI-PNG. The Commission stated that it reviewed the DSIC filing and did not find it to be inconsistent with applicable law or policy. Furthermore, however, the Commission allowed UGI-PNG to implement the DSIC mechanism subject to recoupment and/or refund pending final resolution of various matters referenced in the Opinion and Order. The Commission determined that the DSIC filing would be referred to the Office of Administrative Law Judge for hearing and preparation of a Recommended Decision regarding those various matters.

On September 24, 2014, the Commission issued a Hearing Notice establishing an Initial Prehearing Conference for Tuesday, October 28, 2014 at 10:00 a.m. in Hearing Room 4 of the Commonwealth Keystone Building in Harrisburg and assigning me as the Presiding Officer. A Prehearing Conference Order dated October 1, 2014 was issued setting forth various procedural issues that would govern the Initial Prehearing Conference. In response to the Prehearing Conference Order, Prehearing Memoranda were received from UGI-PNG, the OCA and the OSBA. The Initial Prehearing Conference convened on Tuesday, October 28, 2014, as scheduled.

During the Initial Prehearing Conference, various procedural matters were discussed. The parties were reminded that Commission policy promotes settlements. 52 Pa.Code § 5.231(a). The parties were encouraged to commence settlement discussions as early as possible and that any settlement, however, must be supported by substantial record evidence. 2 Pa.C.S. § 704. The procedural matters were memorialized by Scheduling Order dated

October 29, 2014.

Pursuant to the Scheduling Order, the evidentiary hearing was held in this matter on February 10, 2015. The parties indicated that a settlement of all or some of the outstanding issues may be possible and admitted the following pre-served testimony into the record via stipulation:

**UGI-PNG**

Exhibit A (Petition of UGI Penn Natural Gas, Inc. for Approval of Distribution System Improvement Charge), and accompanying UGI-PNG Exhibit Numbers 1-3 and UGI-PNG Statement Numbers 1 and 2

UGI-PNG St. No. 1-S (Supplemental Direct Testimony of William McAllister), and accompanying Exhibits WJM-1S and WJM-2S

UGI-PNG St. No. 1-R (Rebuttal Testimony of William McAllister), and accompanying Exhibits WJM-1R and WJM-2R

UGI-PNG St. No. 1-RJ (Rejoinder Testimony of William McAllister)

UGI-PNG St. No. 2-S (Supplemental Direct Testimony of Hans G. Bell)

UGI-PNG St. No. 2-R (Rebuttal Testimony of Hans G. Bell)

**OCA**

OCA St. No. 1 (Direct Testimony of Thomas Catlin)

OCA St. No. 1-S (Surrebuttal Testimony of Thomas Catlin)

The parties were encouraged to further pursue settlement discussions and provide any settlement, along with accompanying statements in support of the settlement, by March 19, 2015, the Reply Brief due date. A Briefing Order dated February 13, 2015 was issued.

On March 19, 2015, a Joint Petition for Settlement of All Issues (Settlement) was submitted by UGI-PNG and the OCA. The OSBA indicated that it did not oppose the Settlement. Attached to the Settlement were Statements in Support of the Settlement from UGI-PNG (Appendix A) and the OCA (Appendix B), as well as the letter from the OSBA indicating that it does not oppose the Settlement (Appendix C).

The record in this proceeding closed on March 19, 2015, the date the Settlement was submitted. For the reasons set forth below, the Settlement will be recommended for approval in its entirety without modification.

FINDINGS OF FACT

1. UGI-PNG began operations as a wholly-owned subsidiary of UGI Utilities, Inc. on September 1, 2006 via an acquisition of the stock of Southern Union Company. UGI-PNG Exh. No. 2 at 4.
2. UGI-PNG is a public utility and a natural gas distribution company, as such terms are defined under Sections 102 and 2202 of the Public Utility Code, and is subject to the Commission’s regulatory jurisdiction. UGI-PNG Exh. No. 2 at 6.
3. UGI-PNG renders natural gas distribution and purchase gas cost service to customers pursuant to its Commission-approved tariffs and certificate authorities. UGI-PNG Exh. No. 2 at 6.
4. UGI-PNG provides natural gas service to 162,523 Pennsylvania customers as of September 30, 2013. UGI-PNG Exh. No. 2 at 6.
5. UGI-PNG’s customers are located throughout its certificated service territory which includes 13 counties in and around Northeast Pennsylvania. UGI-PNG Exh. No. 2 at 6.
6. UGI-PNG’s service area is somewhat densely populated in and around the cities of Wilkes-Barre, Scranton and Williamsport but otherwise consists of sparsely populated rural or suburban communities. UGI-PNG Exh. No. 2 at 6.
7. UGI-PNG’s distribution system contains 2,575 miles of natural gas mains and 66 miles of natural gas transmission mains. UGI-PNG Exh. No. 2 at 6.
8. UGI-PNG’s accounting associated with regulator stations and regulator station equipment includes $146,669 in software for the upgrade of the Company’s Smallworld Geographic Information System (GIS). UGI-PNG St. No. 1-S at 11-12.
9. The repair and replacement associated with regulator stations and regulator station equipment included in the DSIC includes the function of the GIS technology. UGI-PNG St. No. 2-S at 2-4.
10. OCA witness Thomas S. Catlin agreed that the inclusion of regulator stations and regulator station equipment qualifies as DSIC-eligible investment but disagreed with the inclusion of the cost associated with GIS because the GIS is used for the planning, operation and maintenance of utility distribution systems and is not unique or specific to making distribution system improvements. OCA St. 1 at 5-7.
11. UGI-PNG does not currently own gathering or storage lines and does not have any plans to own such facilities in the immediate future. UGI-PNG St. 2-S at 1.
12. UGI-PNG included gathering lines and storage lines as part of its initial DSIC tariff in the event the Company obtains these facilities in the future because the facilities would be part of the Company’s distribution system and contribute to the safety and reliability of the distribution system. UGI-PNG St. No. 2-S at 2.
13. UGI-PNG is not eligible to actively recover dollars through the DSIC until April 1, 2015 as a result of a settlement at Docket No. C-2012-2308997 which established a 24-month period where the Company was prohibited from recovering costs through the DSIC. UGI-PNG St. No. 1-S at 5-6.

DISCUSSION

**Legal Standard**

In this case, the parties submitted a settlement of all issues. Commission policy promotes settlements. 52 Pa.Code § 5.231. Settlements lessen the time and expense the parties must expend litigating a case and at the same time conserve administrative resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa.Code § 69.401. The focus of inquiry for determining whether a proposed settlement should be recommended for approval is not a “burden of proof” standard, as is utilized for contested matters. Pa. Pub. Util. Comm’n., *et al*. v. City of Lancaster – Bureau of Water, Docket Nos. R-2010-2179103, *et al*., Opinion and Order (entered July 14, 2011) (Lancaster). Instead, the benchmark for determining the acceptability of a settlement or partial settlement is whether the proposed terms and conditions are in the public interest. Id.; *citing*, Warner v. GTE North, Inc., Docket No. C-00902815, Opinion and Order (entered April 1, 1996) (Warner); Pa. Pub. Util. Comm’n. v. CS Water and Sewer Associates, 74 Pa. PUC 767 (1991).

The decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm’n, 489 Pa. 109, 413 A.2d 1037 (1980); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 194 Pa. Superior Ct. 278, 166 A.2d 96 (1961); and Murphy v. Comm., Dept. of Public Welfare, White Haven Center, 85 Pa. Cmwlth Ct. 23, 480 A.2d 382 (1984).

The subject matter of this proceeding is governed by Act 11 of 2012 (Act 11) which amended Chapters 3, 13 and 33 of the Public Utility Code. Act 11 provided jurisdictional water and wastewater utilities, electric distribution companies and natural gas distribution companies (NGDCs) with the ability to implement a distribution system improvement charge (DSIC) to recover reasonable and prudent costs incurred to repair, improve or replace certain eligible distribution property that is part of the utility’s distribution system. The term “eligible property” is defined in Section 1351 of the Public Utility Code. Of note, Section 1351 includes in the definition of “eligible property” for NGDC’s “other related capitalized costs.” 66 Pa.C.S. § 1351(2)(x). Section 1352 states that as a precondition to the implementation of a DSIC, a utility must file a Long-Term Infrastructure Improvement Plan (LTIIP). 66 Pa.C.S. § 1352. The Commission established various procedures and guidelines necessary to implement Act 11. *See, e.g.*, Implementation of Act 11 of 2012, Docket No. M-2012-2293611, Final Implementation Order (entered Aug. 2, 2012) (Final Implementation Order).

Also relevant to this proceeding, as discussed further below, is a settlement between UGI-PNG and the Commission’s Bureau of Investigation and Enforcement (I&E) of issues raised in a formal complaint brought by I&E regarding a fatal natural gas explosion that occurred in February, 2011 in Allentown, Pennsylvania. Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. UGI Utilities, Inc., Docket No. C-2012-2308997, Order (entered Feb. 19, 2013) (Allentown settlement). The Allentown settlement, among other things, prohibits the Company from seeking recovery of any DSIC costs for a period of 24 months.

As noted above, by Opinion and Order entered in this case on September 11, 2014, the Commission approved the LTIIP and DSIC filed by UGI-PNG and referred to the OALJ various issues for hearing subject to recoupment and/or refund. As a result, the focus of this case is the following issues the Commission assigned in its September 11 Order to the OALJ for hearing and recommendation:

* 1. DSIC-recovery of costs related to “other related capitalized costs,” including but not limited to, regulator stations and equipment, electronic systems and software, and vehicles, tools and power equipment;
  2. DSIC-recovery of expenditures related to the inclusion of gathering lines and storage lines as DSIC-eligible property; and
  3. Proposal of UGI Penn Natural Gas, Inc. to include qualifying plant investment placed into service during the December 1, 2013 to November 30, 2014 timeframe in its April 1, 2015 DSIC rate.

September 11th Order at 46.

**Terms of the Settlement**

In the Settlement submitted on March 19, 2015, the Company and OCA have agreed to resolve the issues identified in the September 11th Order as follows (with original paragraph numbering maintained):

**a. Other Related Capitalized Costs:**

### Subject to paragraph 12(a)(2), below, the parties agree that UGI-PNG will be allowed to recover through the DSIC “other related capitalized costs” including, but not limited to, regulator stations and equipment, electronic systems and software, vehicles, tools and power equipment, consistent with the DSIC Petition filed by UGI-PNG at Docket No. P-2013-2397056 on December 12, 2013.

### The parties agree that UGI-PNG will exclude from the DSIC certain costs associated with the Smallworld Geographic Information System (“GIS”) software which are at controversy in this docket, specifically the amount of $146,669 that UGI-PNG included in the DSIC in September 2014. Such exclusion is without prejudice to UGI-PNG’s right to include any new eligible incremental GIS or other eligible software in future DSIC filings.

**b. Gathering and Storage Lines:**

1. The parties agree that UGI-PNG may include eligible gathering lines and storage lines that serve a distribution function in the DSIC at such time when UGI-PNG actually installs or acquires such facilities.

2. UGI-PNG agrees to provide specific notice of the inclusion of such property to the OCA. Such inclusion is without prejudice to the OCA’s right to serve discovery on UGI-PNG relating to such property and/or to file a complaint challenging UGI-PNG’s inclusion of such property.

**c. Timeframe for Inclusion of Qualifying Plant:**

1. The parties agree that as of April 1, 2015, UGI-PNG will be allowed to recover costs for eligible property through the DSIC, and the DSIC calculation at that time will include qualifying plant additions placed into service from June 1, 2014 through February 28, 2015, at the net depreciated original cost as of April 1, 2015.

Settlement at 4-5. The Settlement further notes that any other terms or provisions of the DSIC not modified by the Settlement will be implemented consistent with the September 11th Order. Id. at 5.

The Settlement is conditioned upon the standard terms and conditions found in most settlements submitted to the Commission. This includes that the parties may elect to withdraw from the Settlement and proceed with litigation if the Commission modifies the terms and conditions. Id. The parties also reserved their procedural rights to argue their respective positions if the Commission does not approve the Settlement and the proceeding continues. Id. at 6. The parties also noted that the Settlement is made without any admission against, or prejudice to, any position that any party may adopt in the event of subsequent litigation and that the Settlement may not be cited as precedent in any future proceeding unless required for implementation. Id.

The OSBA indicated that it does not oppose the Settlement.

**Public Interest**

1. Introduction

As noted above, it is the policy of the Commission to promote settlements. 52 Pa.Code § 5.231(a). The benchmark for determining the acceptability of a settlement or partial settlement is whether the proposed terms and conditions are in the public interest. Lancaster, Warner, *supra.* The Settlement does not contain any discussion of how the terms included are in the public interest. Both parties, however, provided a Statement in Support of the Settlement wherein they discussed why they believe that the Settlement is in the public interest and should be approved in its entirety without modification. Each provision of the Settlement will be examined in turn below to determine whether it is in the public interest.

1. Inclusion Of Geographic Information System Costs

In the September 11th Order, the Commission noted that the OCA challenged the recovery of certain costs in the DSIC and referred to the OALJ the issue of whether the costs associated with “other related capitalized costs” are recoverable through the DSIC mechanism. September 11th Order at 27. The OCA raised this issue in its Answer to UGI-PNG’s Petition when it asked for such costs to be reviewed to determine that the projects are consistent with Act 11 and the Final Implementation Order, *supra*.

In the Settlement, the parties agreed that UGI-PNG will exclude from the DSIC $146,669 in software costs for the upgrade of the Company’s Smallworld Geographic Information System (GIS) which was contested by the OCA. This exclusion is without prejudice to UGI-PNG’s right to include any new eligible incremental GIS or other eligible software in future DSIC filings. As noted by UGI-PNG witness Bell, the purpose of the GIS is to manage all facility data related to its natural gas transmission and distribution operations. UGI-PNG St. No. 2-S at 4. Mr. Bell noted that the system is used to collect, store and analyze this data using a combination of its spatial and physical attributes. Id. Data gathered in the GIS includes field observations of assets such as pipe condition, coating condition, corrosion observations, leak repair data and additional information. UGI-PNG St. No. 2-R at 4.

UGI-PNG noted in its Statement in Support that this provision of the Settlement is in the public interest because the parties agreed in the Settlement to exclude this cost from the DSIC while allowing UGI-PNG to recover through the DSIC “other related capitalized costs” such as regulatory stations and equipment, electronic systems and software, vehicles, tools and power equipment. UGI-PNG noted that this provision of the Settlement is in the public interest because it adequately addresses the limited concerns raised by the OCA, which pertained to a particular cost item identified in the “other related capitalized costs” category, while allowing the Company to include a broad range of other legitimate costs that are incurred in order to repair and replace its aging infrastructure. UGI-PNG added that this provision of the Settlement “also acknowledges the legitimacy of the Company’s proposal to include electronic systems and software in the future, should they be eligible for inclusion in the DSIC.”

Similarly, in its Statement in Support of the Settlement, the OCA noted that this provision of the Settlement is in the public interest and should be adopted because it permits UGI-PNG to recover capitalized costs determined to be improvements to the distribution system through DSIC while excluding those costs from DSIC recovery that are used in the routine operation of the distribution system. The OCA noted that “these provisions are in the public interest because they ensure that only eligible property that is part of the Company’s distribution system will be included in the DSIC, while routine operational projects are recovered through base rates as part of the Company’s normal capital planning process.”

This provision of the settlement is in the public interest because it excludes from the DSIC the costs that are in controversy in this docket while allowing UGI-PNG to recover “other related capitalized costs,” as allowed for by Section 1351, and allowing UGI-PNG to include any new eligible incremental GIS or other eligible software in future DSIC filings. Section 1353 of the Public Utility Code allows NGDC’s such as UGI-PNG to timely recover 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). This provision in the Settlement addresses the concerns raised by the OCA regarding GIS costs while allowing UGI-PNG to include a broad range of other costs incurred to repair and replace its aging infrastructure. This provision ensures that only eligible property that is part of the Company’s distribution system will be included in the DSIC and that the goals of Section 1353 of maintaining adequate, efficient, safe, reliable and reasonable service are satisfied. This issue, therefore, addresses the matter referred by the Commission to the OALJ in the September 11th Order and addresses the issue raised in the OCA’s Answer. As a result, this provision of the Settlement is in the public interest and should be approved without modification.

1. Gathering Lines and Storage Lines

In the September 11th Order, the Commission referred to the OALJ for review and recommendation the OCA’s issue related to the inclusion of gathering lines and storage lines as DSIC-eligible property. September 11th Order at 34. The OCA argued in its Answer to UGI-PNG’s Petition that the proposal to treat gathering lines and storage lines as “distribution system” property for purposes of DSIC recovery requires further consideration.

In the Settlement, the parties agreed that UGI-PNG may include eligible gathering lines and storage lines that serve a distribution function in the DSIC at such time when UGI-PNG actually installs or acquires such facilities. The Settlement further provides that UGI-PNG agrees to provide specific notice of the inclusion of such property to the OCA and that such inclusion is without prejudice to the OCA’s right to serve discovery on UGI-PNG pertaining to such property and/or file a complaint challenging UGI-PNG’s inclusion of such property. Section 1351 of the Public Utility Code limits DSIC recovery to property that is part of the utility’s distribution system. 66 Pa.C.S. § 1351. In this case, UGI-PNG does not currently have any gathering or storage lines, nor does the Company reasonably foresee having any in the near future. *See, e.g.*, UGI-PNG St. 2-R at 2. The OCA raised concerns regarding including this category of costs in the DSIC. After further investigation of the issue by the parties, a settlement was reached.

With regard to UGI-PNG’s claim for including gathering and storage lines in the DSIC, UGI-PNG noted in its Statement in Support of the Settlement that this provision is in the public interest because the parties were able to agree that UGI-PNG may include eligible gathering lines and storage lines that serve a distribution function in the DSIC at such time when UGI-PNG actually installs or acquires those facilities. UGI-PNG added that, “in order to protect the public interest, UGI-PNG has agreed to provide specific notice to the OCA of the inclusion of gathering and storage lines in the DSIC, if and when that event occurs” and that the OCA reserves the right to challenge UGI-PNG’s inclusion of such property.

In its Statement in Support of the Settlement, the OCA stated that this provision is in the public interest and supports adopting the Settlement in its entirety without modification because it defers inclusion of gathering lines and storage lines in the DSIC until such time when the Company actually installs or acquires that type of property. As a result, the OCA will be permitted to challenge that inclusion of such lines in the DSIC if appropriate. The OCA added that this provision is in the public interest because it helps to “ensure that only eligible property that is part of the Company’s distribution system will be included in the DSIC and that all customers who make use of and benefit from those lines will be required to bear a share of the replacement costs.”

This provision of the Settlement is in the public interest and will be recommended for approval without modification. It is not necessary to definitively resolve this issue at this time since UGI-PNG does not currently have any gathering or storage lines, nor does the Company reasonably foresee having any such lines in the near future. Nonetheless, the Settlement allows UGI-PNG to include eligible gathering lines and storage lines that serve a distribution function in DSIC when UGI-PNG actually installs or acquires such facilities and allows the OCA to investigate such inclusion by serving discovery and/or filing a complaint. This approach is consistent with Section 1351 of the Public Utility Code that limits DSIC recovery to property that is part of the utility’s distribution system while also allowing UGI-PNG to timely recover 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. This issue, therefore, addresses the matter referred by the Commission to the OALJ in the September 11th Order and addresses the issue raised in the OCA’s Answer. As a result, this provision of the Settlement is in the public interest and should be adopted without modification.

1. Timeframe for Inclusion of Qualifying Plant

In the September 11th Order, the Commission referred to the OALJ for hearing the issue regarding the total months for which UGI-PNG may include eligible plant investment in its non-zero DSIC rate filing of April 1, 2015. September 11th Order at 36. In its Answer to UGI-PNG’s Petition, the OCA raised as an issue UGI-PNG’s proposal to recover qualifying plant investment placed into service during the period December 1, 2013 through November 30, 2014 in a DSIC charge effective April 1, 2015, noting that such inclusion does not appear to comply with Section 1357 of the Public Utility Code. Section 1357 limits recovery to eligible plant placed in service during the three month period ending one month prior to the effective date of the charge. 66 Pa.C.S. § 1357. In this case, that period would be from December 1, 2014 through February 28, 2015.

In the Settlement, the parties agreed that as of April 1, 2015, UGI-PNG will be allowed to recover costs for eligible property through the DSIC, and the DSIC calculation at that time will include qualifying plant additions placed into service from June 1, 2014 through February 28, 2015, at the net depreciated original costs of April 1, 2015. This issue arose from the Allentown settlement, *supra*, wherein UGI-PNG was prohibited from seeking recovery of any costs that would otherwise be eligible for recovery through a DSIC until April 2015. *See*, September 11th Order, at 2. In this case, the OCA challenged UGI-PNG’s proposal to include depreciated book value associated with qualifying plant placed into service during the timeframe of December 1, 2013 through November 30, 2014.

With regard to this issue, UGI-PNG noted in its Statement in Support of the Settlement the impact on this issue of the Allentown settlement. UGI-PNG added that pursuant to the Settlement in this case, the parties agreed that as of April 1, 2015, the Company will be allowed to recover costs for eligible property through the DSIC subject to the consumer protection provisions of Act 11. UGI-PNG noted that this provision is in the public interest because it accurately reflects the intent of the parties to the Allentown settlement, allows the Company to recover its costs for DSIC-eligible plant and is consistent with the express language and intent of Act 11. UGI-PNG also noted that “this provision will help the Company maintain its accelerated pace of infrastructure repair and replacement, which will allow the Company to ensure safe and reliable service to its customers.”

Similarly, with regard to the issue of the timeframe for the inclusion of qualifying plant, the OCA also noted the impact of the Allentown settlement on this issue. The OCA noted that the provision in the Settlement that limits recovery to plant placed in service after June 1, 2014 is consistent with the requirement of Section 1357 that permits recovery of eligible plant placed in service during the three-month period ending one month prior to the effective date of October 1, 2014. The OCA notes that this provision reflects a compromise of the parties’ position regarding the impact of the Allentown settlement by eliminating recovery of plant placed in service between December 1, 2013 and May 30, 2014 and added that “based on the unique facts and unique circumstances of this specific proceeding, the OCA submits that the included Settlement provision is in the interest of the Company’s ratepayers and the public interest.”

This provision of the settlement is in the public interest because, as noted above, Section 1357 of the Public Utility Code permits recovery of eligible plant that has been placed in service during the three-month period ending one month prior to the effective date of the DSIC. The Allentown settlement was approved by Commission Order entered February 19, 2013 and, therefore, the 24-month period prohibiting UGI-PNG from seeking recovery ended   
February 28, 2015. Because the DSIC is set on a quarterly basis, UGI-PNG would be required to set the DSIC at 0.0% until April 1, 2015 to comply with the Allentown settlement. Therefore, the provision in the Settlement allowing UGI-PNG to recover the costs of eligible property through the DSIC as of April 1, 2015 for plant additions placed into service from June 1, 2014 through February 28, 2015 at the net depreciation original cost as of April 1, 2015 is consistent with both the Allentown settlement and Section 1357 of the Public Utility Code. This provision reflects a compromise of the parties’ positions regarding the impact of the Allentown settlement by eliminating recovery of plant placed in service between December 1, 2013 and May 30, 2014. As such, this provision will help UGI-PNG timely recover its 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. This issue, therefore, addresses the matter referred by the Commission to the OALJ in the September 11th Order and addresses the issue raised in the OCA’s Answer. As a result, this provision of the Settlement is in the public interest and should be adopted.

1. Conclusion

In conclusion, for the reasons noted above, the terms of the Settlement are in the public interest and the Settlement will be recommended for approval in its entirety without modification. The issue regarding GIS costs will be excluded from the DSIC at this time although the parties reserved their right to raise the issue and contest it in the future. Similarly, UGI-PNG can seek inclusion of gathering lines and storage lines when and if the Company actually installs or acquires such lines and OCA has reserved its right to contest such inclusion. The parties have also agreed to a timeframe for inclusion of qualifying plant consistent with the Allentown settlement and the relevant provisions of the Public Utility Code.

In addition to these reasons, the Settlement is also in the public interest and will be recommended for approval without modification because, as with most settlements, approving the Settlement will avoid the substantial time and expense involved in further litigation. Although extensive pre-served testimony has already been exchanged between the parties, such efforts and accompanying investigations were likely necessary to effectuate the Settlement. Accepting the Settlement will, nonetheless, save time and resources by negating the need to examine or cross-examine witnesses, prepare extensive main and reply briefs, prepare exceptions and reply exceptions, prepare a Commission Order and any possibility of appeal. Avoiding these expenses serves the interests of all parties involved and the Commission and is, therefore, in the public interest.

Finally, the Settlement is also in the public interest and should be approved without modification because it is supported by substantial evidence. The numerous pieces of pre-served testimony, submitted after multiple rounds of discovery, exchanged in this proceeding and admitted into the record via stipulation, demonstrate that the initial filing and responses to it have been thoroughly vetted by the parties. All the parties should be commended for such an extensive investigation which resulted in the Settlement, and which further supports adopting the Settlement as being in the public interest.

CONCLUSION

The Joint Petition for Settlement of all Issues should be approved in its entirety without modification because it is in the public interest. The Settlement complies with the various provisions of the Public Utility Code regarding DSICs, as well as relevant Commission precedent on the issues addressed. Furthermore, the Settlement Petition is also supported by substantial evidence because the extensive pre-served testimony was admitted into the record of this proceeding. It will, therefore, be recommended that the Settlement Petition be approved in its entirety without modification consistent with the Commission’s policy to promote settlements and that the formal complaints filed be dismissed.

CONCLUSIONS OF LAW

1. Commission policy promotes settlements. 52 Pa.Code § 5.231.
2. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa.Code § 69.401.
3. The focus of inquiry for determining whether a proposed settlement should be recommended for approval is not a “burden of proof” standard, as is utilized for contested matters; rather, the benchmark for determining the acceptability of a settlement or partial settlement is whether the proposed terms and conditions are in the public interest. Pa. Pub. Util. Comm’n, *et al*. v. City of Lancaster – Bureau of Water, Docket Nos. R-2010-2179103, *et al*. (Opinion and Order entered July 14, 2011); Warner v. GTE North, Inc., Docket No. C-00902815 (Opinion and Order entered April 1, 1996); Pa. Pub. Util. Comm’n. v. CS Water and Sewer Associates, 74 Pa. PUC 767 (1991).
4. The decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704.
5. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm’n, 489 Pa. 109, 413 A.2d 1037 (1980); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 194 Pa. Superior Ct. 278, 166 A.2d 96 (1961); and Murphy v. Comm., Dept. of Public Welfare, White Haven Center, 85 Pa. Commonwealth Ct. 23, 480 A.2d 382 (1984).
6. Act 11 of 2012 provides jurisdictional water and wastewater utilities, electric distribution companies and natural gas distribution companies with the ability to implement a distribution system improvement charge to recover reasonable and prudent costs incurred to repair, improve or replace certain eligible distribution property that is part of the utility’s distribution system.
7. “Eligible property” for inclusion in NGDC’s DSIC includes “other related capitalized costs.” 66 Pa.C.S. § 1351(2)(x).
8. The Commission established various procedures and guidelines necessary to implement Act 11. *See, e.g.*, Implementation of Act 11 of 2012, Docket No. M-2012-2293611 (Final Implementation Order entered Aug. 2, 2012).
9. Section 1353 of the Public Utility Code allows NGDC’s to timely recover 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).
10. Section 1357 of the Public Utility Code permits recovery of eligible plant that has been placed in service during the three-month period ending one month prior to the effective date of the DSIC. 66 Pa.C.S. § 1357(a).
11. The Joint Petition for Settlement of All Issues is in the public interest and should be adopted in its entirety without modification.
12. The formal Complaints filed by the Office of Consumer Advocate and the Office of Small Business Advocate should be dismissed.

ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the Joint Petition for Settlement of All Issues submitted in this proceeding on March 19, 2015 by UGI Penn Natural Gas, Inc. and the Office of Consumer Advocate is hereby approved in its entirety without modification.
2. That, effective April 1, 2015, UGI Penn Natural Gas, Inc.’s distribution system improvement charge will include qualifying plant additions placed into service from June 1, 2014 through February 28, 2015, at the net depreciated original cost as of April 1, 2015.
3. That UGI Penn Natural Gas, Inc. will exclude from its distribution system improvement charge $146,669 of Geographic Information System costs incurred.
4. That UGI Penn Natural Gas, Inc.’s distribution system improvement charge may include eligible gathering lines and storage lines that serve a distribution function at such time when UGI Penn Natural Gas, Inc. installs or acquires such facilities.
5. That the formal complaints filed in this proceeding by the Office of Consumer Advocate at Docket Number C-2014-2399316 and the Office of Small Business Advocate at Docket Number C-2014-2401382 be and are hereby dismissed and marked closed.
6. That the investigation at Docket No. P-2013-2397056 be marked closed.

Date: May 15, 2015 /s/

Joel H. Cheskis

Administrative Law Judge