

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

555 Walnut Street, 5th Floor, Forum Place
Harrisburg, Pennsylvania 17101-1923
(717) 783-5048
800-684-6560

FAX (717) 783-7152
consumer@paoca.org

September 17, 2015

Rosemary Chiavetta, Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg.
400 North Street
Harrisburg, PA 17120

Re: Petition of Philadelphia Gas Works for
Approval to Establish a Distribution System
Improvement Charge
Docket No. P-2015-2501500

Dear Secretary Chiavetta:

Attached for electronic filing is the Office of Consumer Advocate's Answer in the above-referenced proceeding.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

Erin L. Gannon (YG)

Erin L. Gannon
Senior Assistant Consumer Advocate
PA Attorney I.D. # 83487
E-Mail: EGannon@paoca.org

Attachment

cc: Office of Administrative Law Judge
Office of Special Assistants
Certificate of Service

*212193

CERTIFICATE OF SERVICE

Re: Petition of Philadelphia Gas Works :
for Approval to Establish a Distribution : Docket No. P-2015-2501500
System Improvement Charge :

I hereby certify that I have this day served a true copy of the foregoing document, the Office of Consumer Advocate's Answer, 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 17th day of September 2015

SERVICE BY E-MAIL & INTER-OFFICE MAIL

Johnnie E. Simms, Director
Bureau of Investigation & Enforcement
Pa Public Utility Commission
400 North Street,
Harrisburg, PA 17101

SERVICE BY EMAIL & FIRST CLASS MAIL, POSTAGE PAID

Carl Shultz, Esquire
Daniel Clearfield, Esquire
Eckert Seamans Cherin & Mellott LLC
213 Market Street 8th Floor
Harrisburg, PA 17101

John R. Evans
Office of Small Business Advocate
Suite 202, Commerce Building
300 N. Second Street
Harrisburg, PA 17101

Erin L. Gannon (YG)

Erin L. Gannon
Assistant Consumer Advocate
PA Attorney I.D. #83487
Email: EGannon@paoca.org

Darryl Lawrence
Senior Assistant Consumer Advocate
PA Attorney I.D. # 93682
E-Mail: DLawrence@paoca.org

Counsel for
Tanya McCloskey, Acting Consumer
Advocate
Office of Consumer Advocate
555 Walnut Street, 5th Floor
Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of Philadelphia Gas Works for :
Approval of a Distribution System : Docket No. P-2015-2501500
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 in the above-captioned proceeding. Through its Petition, Philadelphia Gas Works (PGW or Company) asks the Commission, *inter alia*, to waive the current Distribution System Improvement Charge (DSIC) cap of 5% of distribution revenues and approve a 2.5% increase in the maximum DSIC without reconciliation and approve a total 10% cap including reconciliation recovery, for service rendered on or after January 1, 2016, and to waive or suspend the requirements of Act 11 of 2012 (Act 11) to permit PGW to use an annual, levelized charge as the basis for establishing a DSIC, subject to subsequent true-up for PGW's actual recovery.

Governor Corbett signed Act 11 of 2012 into law on February 14, 2012. Act 11 amended Chapter 33 of Title 66 of the Public Utility Code to grant the Commission authority to allow utilities to implement a DSIC, which would "provide for the 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). Act

11 also included certain consumer protections, including a requirement that the DSIC may not exceed 5% of amounts billed to customers. 66 Pa. C.S. § 1358(a)(1). Section 1358 allows the Commission to grant a waiver of the 5% limit “in order to ensure and maintain adequate, efficient, safe, reliable and reasonable service.” Id.

PGW’s initial DSIC was approved by Commission Order on May 9, 2013 and went into effect June 1, 2013. Petition of PGW for Approval of a DSIC, Docket No. P-2012-2337737, Order (May 9, 2013) (Final DSIC Order). PGW was authorized to bill customers up to 5% of its non-gas revenues, currently approximately \$22 million annually, to fund the replacement of cast iron main. Consistent with its Long Term Infrastructure Improvement Plan (LTIIP), approved by the Commission on April 4, 2013, this funding has allowed PGW to replace approximately 7 miles of cast iron main each year. Petition of PGW for Approval of its LTIIP, Docket No. P-2012-2337737, Opinion and Order (Apr. 14, 2013) (LTIIIP Order); Petition at 8-10. This is in addition to PGW’s historic replacement of approximately 18 miles of cast iron main each year, which is recovered in base rates. Id.

PGW’s DSIC includes a 5% cap on billed revenues. Final DSIC Order at 10. In 2012, within a 5% cap, PGW proposed to accelerate its replacement of cast iron main by 49 years. Petition of PGW for Approval of its LTIIP, Docket No. P-2012-2337737, LTIIP Petition at 14 (Dec. 3, 2012). In its 2015 Petition, PGW proposes to increase the cap to 7.5% to accelerate replacement of cast iron mains by an additional 37 years. Petition at 14. PGW states that the additional acceleration should – compared to PGW’s likely experience without acceleration – reduce leaks and the concomitant risk of serious incidents from those leaks, reduce breakage repairs and future breakage repair costs, reduce leak maintenance and repair on the facilities being removed from service, and reduce levels of unaccounted-for gas. Petition at 3-4. As a

whole, PGW states that these benefits will result in more adequate, efficient, safe, reliable and reasonable natural gas distribution service. Id. at 4.

The 5% cap was included in Act 11 in order to provide a very important protection to consumers. Although the Commission does have statutory authority to waive the 5% cap, a waiver is only to be granted “to ensure and maintain adequate, efficient, safe, reliable and reasonable service.” 66 Pa. C.S. § 1358(a)(1). The statute also includes the requirement that DSIC recovery is limited to plant placed in service during the prior quarter. 66 Pa. C.S. §§ 1357(a)(1)(ii), (a)(2), (b)(1). This limits eligible costs to plant already placed in service or “used and useful.” This is an important ratemaking principle and protection, given that these costs are recovered without the prudence review required for other capital costs.

The OCA submits that it is necessary for PGW to provide more information to demonstrate that an increase in the cap to 7.5% is necessary for purposes of Section 1358(a)(1), particularly without the benefit of an updated LTIIP. The OCA opposes PGW’s request to allow reconciliation recovery up to 10% of distribution revenues and pay zero interest on DSIC overcollections. With regard to PGW’s requests for approval to annualize and levelize the charge, more information is needed to show that waiver of the prescribed method for calculating DSIC-eligible costs is warranted and legally permissible. The OCA requests that the Commission suspend the Company’s proposed Tariff Supplement No. 85 to Pa PUC No. 2 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

PGW's proposed DSIC will increase rates for service and presents several important issues. The Petition should be denied as filed and 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:

1. Proposal to increase the DSIC cap to 7.5%.

While PGW proposes to increase the quarterly DSIC to 7.5%, for reasons discussed in the Petition, the utility has only incurred costs in excess of the 5% cap in one quarter. The significant increase in spending raises several concerns that are recognized by the Company: including the effect on commerce, traffic congestion and noise, and the availability of qualified contractors to perform the work. Petition at 17; PGW St. 1 at 14-15. The Company could have substantial over-collections – despite mitigation efforts – with no repercussion because of PGW's companion proposal to pay no interest on those amounts.

Act 11 allows the Commission to waive the 5% DSIC limit “to ensure and maintain adequate, efficient, safe, reliable and reasonable service.” 66 Pa. C.S. § 1358(a)(1). The Company's request for approval of a higher DSIC rate before it files a revised, supporting LTIIP is concerning. When it petitioned for approval of a 5% DSIC in 2012, PGW indicated that accelerating replacements using its main replacement prioritization model would reduce serious incidents, reduce breakage repairs and reduce future breakage repair costs. 2012 LTIIP at 17. The Company makes the same claims about the benefits of further acceleration under a 7.5% cap. Petition at 15-16; PGW St. 1 at 12-14. PGW has actually experienced an increased incidence of leaks and breaks. Petition at 11-12, 15-16; PGW St. 1 at 5-9. The Company's DSIC should not be put into effect until its supporting LTIIP is filed so that PGW's prioritization of main replacement can be reviewed to ensure that it is both prudent and cost-effective.

Another concern with raising the DSIC cap to 7.5% is the impact on customer bills. PGW's Petition discusses only the incremental impact above the current 5% cap, not the total impact that the DSIC will have on customers. Petition at 18; PGW St. 2 at 6. Additionally, since PGW has charged an average of 3.3% over the last 9 quarters and its lowest rate during the highest sales volume quarter, the effect customers feel will be much greater than the difference between 7.5% and 5% (or 10% and 5% inclusive of reconciliation). Petition at 20-21; PGW St. 2 at 7-8.

2. Proposal to allow PGW to exceed the DSIC cap, up to 10%.

The Company's proposal to raise the DSIC cap an additional 2.5% in order to recover under-collections should be denied. PGW bases its proposal to levelize and annualize its DSIC costs on the basis that it will avoid the significant DSIC rate fluctuations inherent in its cash-basis DSIC and will recover additional DSIC revenue for main replacement. Petition at 19-23; PGW St. 2 at 6-9. Its additional request to *exceed* its proposed rate cap so that it can effectively eliminate the possibility of undercollection is undue for several reasons. Petition at 24-25; PGW St. 2 at 11-13.

A waiver to the DSIC cap is only to be granted to "to ensure and maintain adequate, efficient, safe, reliable and reasonable service." 66 Pa. C.S. § 1358(a)(1). The OCA submits that PGW has not demonstrated in its Petition that a waiver and an increase in the cap to 10% is necessary for purposes of Section 1358(a)(1). Rather, PGW has only averred that it wants to exceed the cap so that it can "fully bill amounts it is hoping to spend on main replacement." Petition at 24. This is not a compelling reason to allow an additional 2.5% increase to the above the proposed 7.5% DSIC cap.¹

¹ It should be noted that, currently, PGW cannot charge in excess of the 5% cap when it carries an undercollection. Thus, the proposed 7.5% increase is a true 2.5% increase to its current recovery

PGW's DSIC proposal includes the ability to adjust the DSIC rate up or down in any quarter to account for changes to its accelerated construction budget or the difference between projected and actual billed amounts, to mitigate over or under collections. Petition at 21-22; PGW St. 2 at 10; 11 ("PGW believes that levelization will result in smaller under collections which otherwise would continually have to be recovered from customers over time"). As noted by PGW, the level of under collection that it expects to be in effect on January 1, 2016 is 0.30%. The harm of increasing rates by up to 2.5% – that is, 2.5% more than the 2.5% increase already sought – far outweighs the benefit of accelerating investment by what PGW suggests will typically be a "de minimus" amount. Petition at 24; PGW St. 2 at 12.

3. Proposal to pay no interest on over-collections.

PGW's request that the Commission waive the requirement that the utility pay interest on over-collections should be considered to determine whether it is legal, warranted and appropriate. This would eliminate an important statutory protection, to which every other utility with a DSIC is subject. 66 Pa. C.S. § 1358(e)(3). PGW contends that waiving interest is reasonable because any interest that PGW pays will reduce its cash flow and increase its cash deficiency and revenue requirement in its next base rate proceeding. Petition at 26; PGW St. 2 at 14. The Company ignores, however, that waiving the interest will allow PGW to borrow free money from ratepayers in the interim, which should not be permitted.

4. Proposal to levelize and annualize.

PGW proposes to recover a levelized and 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. Petition at 19-24; PGW St. 2 at 6-11. This proposal may violate the

opportunity. In addition, PGW has proposed to levelize and annualize its recovery. If approved, that waiver to the statute will already allow PGW to recover more through the DSIC than any other natural gas utility, on a percentage basis.

used and useful requirement for rate recovery and the prohibition against retroactive ratemaking, which are principles memorialized in Act 11. 66 Pa. C.S. § 1357(a)(1)(ii). These protections prevent the DSIC from overriding the traditional ratemaking process of filing for base rate increases under Section 1308 of the Public Utility Code. PGW seeks the benefits of the DSIC without being subject to those integral protections. As such, all of PGW's requested waivers must be carefully considered to determine that they are legal, absolutely necessary, and needed to the degree proposed.

5. Proposal that DSIC rates become effective prior to investigation/hearing.

PGW's proposal that the Commission put DSIC rates into effect prior to conclusion of its investigation and any evidentiary hearings should be denied. Petition at 27. As discussed above, the OCA has raised fundamental concerns with PGW's proposed DSIC computation, which cannot be implemented without waiver of several provisions of Act 11 and deviates significantly from the model tariff adopted by the Commission for non-jurisdictional gas utilities, *i.e.* PGW. See Implementation of Act 11 of 2012, Docket No. M-2012-2293611, Order, App. A (Aug. 2, 2012). 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.

6. Proposal to file supporting LTIIP on one (1) day's notice.

Finally, the OCA notes that PGW seeks approval to file an LTIIP on one (1) day's notice. The OCA seeks clarification that this request bears only on the timing of the LTIIP filing and not on the 30-day comment period provided in 52 Pa. Code § 121.4(c).

III. CONCLUSION

The cost recovery mechanism proposed by PGW will increase rates for service and requires waiver of material provisions of the statute authorizing surcharge recovery of the costs at issue. The OCA respectfully requests that the Commission deny the Petition as filed and refer the matter for development of an evidentiary record, for the reasons set forth above.

Respectfully submitted,

Erin L. Gannon (YB)

Erin L. Gannon
Assistant Consumer Advocate
PA Attorney I.D. # 83487
E-Mail: EGannon@paoca.org

Darryl Lawrence
Assistant Consumer Advocate
PA Attorney I.D. # 93682
E-Mail: DLawrence@paoca.org

Counsel for:
Tanya J. McCloskey
Acting Consumer Advocate

Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
(717) 783-5048

Dated: September 17, 2015

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