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September 21, 2015

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

VIA ELECTRONIC FILING

RE: Petition of Philadelphia Gas Works For Waiver of Provisions of Act 11 to Increase the Distribution System Improvement Charge Cap and to Permit Levelization of DSIC Charges; Docket No. P-2015-2501500

Dear Secretary Chiavetta:

Please find enclosed for filing with the Pennsylvania Public Utility Commission the Answer of the Philadelphia Industrial and Commercial Gas Users Group ("PICGUG"), in the above-referenced proceeding.

As evidenced by the attached Certificate of Service, all parties to this proceeding are being duly served.

Sincerely,

McNEES WALLACE & NURICK LLC

By 
Adeolu A. Bakare

Counsel to the Philadelphia Industrial and Commercial Gas Users Group

Enclosure

c: Certificate of Service

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CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a true copy of the foregoing document upon the participants listed below in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant).

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Adeolu A. Bakare
Counsel to the Philadelphia Industrial and
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Dated this 21st day of September, 2015, at Harrisburg, Pennsylvania

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PETITION OF PHILADELPHIA GAS	:	
WORKS FOR WAIVER OF PROVISIONS	:	Docket No. P-2015-2501500
OF ACT 11 TO INCREASE THE	:	
DISTRIBUTION SYSTEM	:	
IMPROVEMENT CHARGE CAP AND TO	:	
PERMIT LEVELIZATION OF DSIC	:	
CHARGES	:	

**ANSWER
OF THE PHILADELPHIA INDUSTRIAL
AND COMMERCIAL GAS USERS GROUP**

Pursuant to Sections 5.71 through 5.74 of the Pennsylvania Public Utility Commission's ("PUC" or "Commission") Regulations, 52 Pa. Code §§ 5.71 - 5.74, the Philadelphia Industrial and Commercial Gas Users Group ("PICGUG") hereby files this Answer in response to the Petition for Waiver of Provisions of Act 11 to Increase the Distribution System Improvement Charge ("DSIC") Cap and to Permit Levelization of DSIC Charges ("Petition") filed by Philadelphia Gas Works ("PGW" or "Company").

I. BACKGROUND

PGW filed its Petition requesting waiver of certain provisions of Act 11 on September 1, 2015. The Petition reviews PGW's current and projected replacement rates of cast iron gas mains and select findings from the Commission's April 21, 2015, Inquiry into Philadelphia Gas Works' Pipeline Replacement Program ("Staff Report"). PGW concurs with certain comments from the Staff Report advising the Company to undertake measures to accelerate its replacement rate of cast iron gas mains. Specifically, PGW avers that its current pipeline replacement program, funded by base rate and DSIC revenues, allows the Company to replace approximately

25 miles of cast iron gas mains per year. At this rate, the Company would fully replace its cast iron gas mains in 86 years.

In an attempt to accelerate its current pipeline replacement rate, PGW developed numerous modifications to the DSIC designed to generate additional DSIC revenue for distribution system improvements. PGW projects that approval of the Petition will result in a DSIC of 7.64% effective January 1, 2016. The higher DSIC charge is expected to increase PGW's current annual DSIC revenues by approximately \$11 million, from \$22 million to \$33 million.

PICGUG is an ad hoc group of energy-intensive customers receiving service from PGW under both sales and transportation rate schedules.¹ PICGUG members use substantial volumes of natural gas in their manufacturing and operational processes, and natural gas costs comprise a significant element of their respective costs of operation.

PICGUG is concerned that PGW's proposed DSIC would increase rates for all of the Company's firm rate classes, including the Company's large customer classes. It is therefore imperative that the Commission ensure that the proposed modifications to PGW's DSIC be approved only upon a showing that the proposed changes are consistent with Act 11 and other applicable statutes and regulations. To that end, PICGUG hereby Answers PGW's Petition as follows:

II. ANSWER

1. As filed, PGW's Petition fails to justify the requested relief and must be denied. PGW proposes to increase revenues available to fund distribution system improvements by: (1) increasing the current DSIC cap from 5% of billed distribution revenues to 7.5%;

¹ PICGUG's current member list is attached as Appendix A.

(2) excluding reconciliation costs from 7.5% and adopting a separate 2.5% cap on the E-factor adjustments; (3) levelizing the DSIC charge based on annualized DSIC-eligible expenses; and (4) waiving the requirement to pay interest on DSIC overcollections.

2. As evidenced by the requested waivers, PGW seems to have focused its options for funding distribution system improvements to mechanisms generating additional customer revenue. The Company's position fails to fully consider the Commission's Staff Report, which concluded that managerial and operational changes could also produce extensive savings that could be reallocated towards the necessary improvements. Further, many of the requested waivers contradict express language in Act 11.

3. Accordingly, for the reasons set forth above and further detailed below, PGW's requested waivers are not in the public interest and should be denied. Alternatively, the Commission should require the Company to demonstrate more efficient use of existing revenues before considering the proposed waivers.

a. Waiver No. 1 - Proposed Increase of 5% DSIC Cap

4. An initial review of PGW's Petition indicates that the proposal to increase the 5% DSIC cap may not be in the public interest because PGW failed to demonstrate that a waiver is necessary or appropriate "to ensure and maintain adequate, efficient, safe, reliable and reasonable service." See 66 Pa. C.S. § 1358(a)(1). The Commission's Staff Report presented comprehensive guidelines to accelerate PGW's pipeline replacement rate. Staff Report, pp. 4-7. The Petition indicates that PGW supports the recommendation that would increase customer revenues, but PGW seems to have overlooked the additional options to generate funding for distribution system improvements through managerial and operational efficiencies. See Petition

at 10-12. Therefore, the Commission should deny the as-filed Petition as contrary to the public interest.

5. Act 11 authorizes the Commission to approve a waiver of the 5% DSIC cap "in order to ensure and maintain adequate, efficient, safe, reliable and reasonable service." 66 Pa. C.S. § 1358(a)(1). Notably, the Commission's authority to increase the 5% DSIC cap was codified as an exception to the general rule that DSICs approved for wastewater collection companies, natural gas distribution companies, city natural gas distribution operations, or electric distribution companies must be capped at 5% of distribution revenues. See id. The DSIC does not replace a utility's obligations under Section 1501 of the Public Utility Code to "furnish and maintain adequate, efficient, safe, and reasonable service and facilities." See 66 Pa. C.S. § 1501. Accordingly, prior to granting a discretionary increase to PGW's 5% DSIC cap, the Commission should ensure that PGW has first met its obligation under Section 1501 with regard to its present operations.²

6. The record presented by PGW's Petition, including the cited Staff Report, indicates that the Company has not demonstrated that the requested waiver of Act 11 is necessary to "ensure and maintain adequate, efficient, safe, reliable, and reasonable service." See 66 Pa. C.S. § 1358(a)(1). While PGW references solely the recommendations to increase the DSIC cap and levelize the DSIC, the Staff Report also advised PGW to consider broader reforms to its management and operations. See Petition, pp. 10-12; but see Staff Report, pp. 4-7. In

² For example, in reviewing the final draft of Act 11 on the Pennsylvania Senate Floor, Senator Mary Jo White of the 21st District commented on the necessity to limit DSIC expenses to investments beyond the utility's normal obligations, stating that "... I wanted to be sure that when the consumer is paying an extra little fee on their bill every month, what they are getting is over and above what the utility is supposed to be doing anyway." Pennsylvania Legislative Journal – Senate, January 25, 2012, at 73 (statement of Senator White).

addition to acknowledging the potential effectiveness of increasing the DSIC cap and levelizing DSIC charges, the Staff Report recommended that PGW:

- a. Reduce its cash-on-hand from \$100 million to \$75 million and invest the \$25 million differential in pipeline replacement;
- b. Request that the City of Philadelphia ("City") waive all or a portion of the \$18 million payment remitted annually from PGW to the City;
- c. Commence efforts to save \$800,000 or more annually by streamlining its corporate governance structure, which currently involves a degree of oversight from the Mayor, City Council, the City Controller, the Philadelphia Gas Commission ("PGC"), and the Philadelphia Facilities Management Corporation; and
- d. Further investigate initial studies showing that the Company could save up to \$5 million annually by consolidating certain real estate holdings.³

Noticeably, PGW's Petition liberally references the Commission's Staff Report to support the requested waiver, but offers no indication or update on the Company's efforts to explore additional alternatives to more efficiently allocate its existing revenues and mitigate the rate burden borne by its customers. See Petition, pp. 10-12, 14-16. To the contrary, the Petition represents that the Company intends to fund its pipeline replacement program solely with the \$18 million annual base rate allocation, the \$22 million from current annual DSIC collections, and the anticipated \$11 million that would result if PGW's proposals to modify its DSIC are approved. See Petition, p. 3.

³Staff Report, pp. 4-7. By way of clarification, the Staff Report also recommended that PGW increase its debt ratio from the 56% to 70%, but qualified the benefits of this recommendation as entirely contingent upon an increase to the 5% DSIC cap. Id. at 50.

7. Consideration of PGW's Petition under such circumstances would be inappropriate from a policy standpoint and inconsistent with Act 11. In addition to the rate-related recommendations to increase the DSIC cap and levelize DSIC charges, the Staff Report outlined four non-rate recommendations with the potential to generate more than \$50 million in savings to PGW, including approximately \$25 million in recurring annual savings.⁴ As referenced above, Act 11 authorizes, but does not obligate, the Commission to approve a waiver of the 5% DSIC cap "in order to ensure and maintain adequate, efficient, safe, reliable and reasonable service." 66 Pa. C.S. § 1358(a)(1). Where PGW has failed to undertake or pursue multiple alternative options to better ensure and maintain adequate and safe facilities with its existing revenues, the Commission should not automatically waive the 5% cap and force customers to pay higher rates for distribution system improvements that could potentially be addressed by curing managerial and operational deficiencies.

b. Waiver No. 2 - Proposal to Add Separate 2.5% Cap for Reconciliation

8. PGW's proposal to implement a separate 2.5% cap for E-factor charges recovering prior years' DSIC undercollections should be denied for the same reasons set forth in Section II(a), *supra*. See Petition, p. 24. The plain language of Act 11 limits DSIC charges to 5% of billed revenues, regardless of whether the charge relates to current collections or reconciliation of prior collections. 66 Pa. C.S. § 1358(a)(1). Accordingly, the Commission should deny any proposal to waive the statutory 5% DSIC cap consistent with the above arguments regarding PGW's failure to appropriately invest current revenues towards distribution system improvements.

⁴ As projected in the Staff Report, reducing PGW's cash-on-hand by 25% would generate a one-time \$25 million savings, while the proposed adjustments to its annual City payment, real estate holdings, and corporate governance could produce approximately \$25 million in recurring annual savings. See Staff Report, pp. 51, 55-56.

c. Waiver No. 3 - Proposal to Levelize DSIC Charges

9. In addition to proposing to increase the DSIC cap, PGW requests that the Commission invoke its authority under Section 2212(c) of the Public Utility Code and waive or suspend the Act 11 requirement requiring PGW to bill only DSIC charges reflecting the costs of facilities placed into service in the prior quarter. See Petition, p. 19. PGW claims that this provision disadvantages the Company in relation to investor-owned utilities. See id. The Company's arguments ignore the fact that the General Assembly already accounted for PGW's status as a cash-flow utility in structuring Act 11. See 66 Pa. C.S. § 1357(c). Invoking Section 2212(c) to upset the balance struck by the General Assembly would contravene the public interest. Accordingly, PGW's request should be denied.

10. In passing Act 11, the General Assembly established a balance between the dual interests of securing additional investment for utilities' distribution system infrastructure and mitigating potential for unjust and unreasonable customer rates. See 66 Pa. C.S. § 1350 et seq. To achieve this balance, the General Assembly developed specific cost recovery procedures applicable to wastewater, natural gas, and electric utilities. See 66 Pa. C.S. § 1350. With regard to PGW, the General Assembly both defined city natural gas distribution operations as subject to the policies and customer protections set forth in Act 11 and, where appropriate, promulgated modified policies accommodating PGW's cash flow operations. See 66 Pa. C.S. § 1357(c). Specifically, the General Assembly determined that, where investor-owned utilities would be permitted to recover depreciation and a Rate-of-Return ("ROR") on DSIC investments, PGW would be permitted to recover expenses consistent with cash-flow ratemaking, including

"amounts reasonably expended or incurred to purchase and install eligible property and associated financing costs, if any, including debt service, debt service coverage and issuance costs." See 66 Pa. C.S. § 1357(c).

11. As such, the General Assembly anticipated that investor-owned utilities would recover expenses incorporating a compound ROR component, while PGW would alternatively recover DSIC expenses on a cash flow basis. See id. This policy decision would inherently result in greater volatility for PGW's DSIC as the ROR component continually compounded through each quarter of an investor-owned utility's DSIC would not burden PGW.

12. Interestingly, PGW attempts to portray this difference as a disadvantage, stating that, in comparison to the ROR-based DSIC structure, "PGW's current DSIC structure does not result in a steadily increasing revenue stream." See Petition, p. 19. However, the fact that investor-owned utilities recover a ROR on DSIC investment also increases escalation to the 5% cap. Because the ROR on each improvement will continue to accrue from each quarter to the next, the investor-owned utility's DSIC will constantly increase until the utility must file a base rate case to zero out the DSIC. See id. To the contrary, the cash flow DSIC specifically authorized by the General Assembly frees PGW from the accrual of an ROR component and allows the Company to recover up to a 5% DSIC in perpetuity. See id., at 5, 17 (referencing PGW's pay-as-you-go DSIC recovery).

13. In summary, the General Assembly fully considered PGW's status as a cash flow utility and declined to exempt the Company from the requirement to limit DSIC expense to those incurred in the prior quarter. Further, the current DSIC mechanism does not unreasonably disadvantage PGW in relation to investor-owned utilities, but rather, allows PGW to recover

DSIC expenses on a pay-as-you-go basis, with no carry-over from one quarter to the next. For these reasons, the requested waiver authorizing leveled DSIC collections should be denied.

d. Waiver No. 4 - Proposal to Eliminate Interest on DSIC Charges

14. PGW's proposal to eliminate interest on DSIC charges would reverse an express customer protection set forth in Act 11 and deemed specifically applicable to PGW. See Petition, p. 26. While the proposal is unreasonable on its face, the Commission should be particularly averse to granting the request to waive interest payments for overcollections if PGW's parallel request to levelize and annualize the DSIC would be adopted. Allowing PGW to collect DSIC charges based on uncertain investments, and then hold such revenue for up to a year without interest, would eviscerate the General Assembly's efforts to ensure all revenues collected pursuant to Act 11 are just and reasonable. Accordingly, the Commission should deny PGW's request to eliminate interest for DSIC undercollections.

15. In addition to the issues identified above, PICGUG reserves the right to raise and address additional issues of concern during the course of the proceeding based on further review of the Petition, issues identified via discovery, and issues raised by other parties.

III. CONCLUSION

WHEREFORE, for the reasons stated above, the Philadelphia Industrial and Commercial Gas Users Group respectfully request that the Pennsylvania Public Utility Commission deny the Petition for Waiver of Provisions of Act 11 to Increase the Distribution System Improvement Charge Cap and to Permit Levelization of DSIC Charges, consistent with the above Answer.

Respectfully submitted,

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Dated: September 21, 2015

APPENDIX A

PHILADELPHIA INDUSTRIAL AND COMMERCIAL GAS USERS GROUP

Einstein Healthcare Network

Magee Rehabilitation Hospital

Philadelphia College of
Osteopathic Medicine

Thomas Jefferson University/
Thomas Jefferson University Hospitals, Inc.