

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

November 13, 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

Secretary Chiavetta:

Enclosed please find the Office of Consumer Advocate's Main Brief in the
above-referenced proceeding.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

A handwritten signature in black ink that reads "Erin L. Gannon".

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

Attachment

cc: Honorable Marta Guhl
Honorable Christopher P. Pell

Certificate of Service

*214091

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 Main Brief, 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 13th day of November 2015

SERVICE BY E-MAIL & INTER-OFFICE MAIL

Gina L. Lauffer
Carrie B. Wright
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

Sharon Webb
Office of Small Business Advocate
Suite 202, Commerce Building
300 N. Second Street
Harrisburg, PA 17101

Adeolu A. Bakare, Esquire
McNees Wallace & Nurick, LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166



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

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

MAIN BRIEF OF THE
OFFICE OF CONSUMER ADVOCATE

Erin L. Gannon
Assistant Consumer Advocate
PA Attorney I.D. # 83487
E-Mail: EGannon@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
Phone: (717) 783-5048
Fax: (717) 783-7152
Dated: November 13, 2015

TABLE OF CONTENTS

I. INTRODUCTION AND STATEMENT OF THE CASE 1

II. PROCEDURAL HISTORY 2

III. BURDEN OF PROOF 4

IV. WAIVER OF 5% LIMITATION AND AUTHORIZATION FOR HIGHER MAXIMUM ALLOWABLE DSIC 5

 A. Summary of Briefing Party’s Position 5

 B. Standard for Granting the Waiver 7

 C. Has PGW Met Standard for Waiver of 5% Cap?..... 8

 1. Alternative Sources of Funding to Fund Accelerated Main Replacement..... 9

 2. Customer Impact..... 12

 D. 7.5% Cap for DSIC Expenditures 15

 1. An Amended LTIP Is Required Before the DSIC Rate Is Increased..... 15

 2. PGW’s Efforts to Distinguish Between Charging and Spending Do Not Allow It to Avoid the Requirement to File an Amended LTIP..... 20

 3. LTIP Reporting Conditions 22

 E. 10% Cap for Reconciliation..... 24

 1. PGW Has Not Under-Collected With a 5% DSIC Cap 24

 2. If PGW’s Other Requested Waivers Are Granted, an Additional 2.5% Is Not Warranted..... 25

V. WAIVERS TO PERMIT LEVELIZATION AND ANNUALIZATION OF DSIC-ELIGIBLE COSTS..... 27

 A. Summary of Briefing Party’s Position 27

 B. Standard for Granting the Waiver 27

 C. Has PGW Satisfied the Standard for Granting Waiver Permitting Annualization/Levelization?... 28

 D. Implementation Of and Conditions on the Levelization/Annualization Waiver..... 29

 1. Designation 30

 2. Required Quarterly Adjustments 30

 3. Budget Billing..... 31

VI. CONCLUSION..... 32

APPENDICES

- Appendix A: OCA Proposed Findings of Fact
- Appendix B: OCA Proposed Conclusions of Law
- Appendix C: OCA Proposed Ordering Paragraphs

TABLE OF AUTHORITIES

	Page(s)
Cases	
<u>Berner v. Pa. PUC,</u> 383 Pa. 622, 116 A. 2d 738 (1955)	4, 5
<u>Brockway Glass v. Pa. PUC,</u> 63 Pa. Commw. 238, 437 A.2d 1067 (1981)	4
<u>Burleson v. Pa. PUC,</u> 461 A. 2d 1234 (Pa. 1983)	4
<u>Lower Frederick Twp. v. Pa. PUC,</u> 48 Pa. Commw. 222, 409 A.2d 505 (1980)	4
<u>Pa. PUC v. Equitable Gas Co.,</u> 57 Pa. PUC 423 (1983)	5
<u>University of Pa. v. Pa. PUC,</u> 86 Pa. Commw. 410, 485 A.2d 1217 (1984)	5
Statutes	
66 Pa. C.S. § 315(a)	4
66 Pa. C.S. §§ 1350-1360	1
66 Pa. C.S. § 1352(a)	21
66 Pa. C.S. § 1352(a)(1).....	17
66 Pa. C.S. § 1352 (a)(3).....	17
66 Pa. C.S. § 1352 (a)(4).....	17
66 Pa. C.S. § 1352 (a)(6).....	8, 17
66 Pa. C.S. § 1352 (a)(7).....	8, 15, 28
66 Pa. C.S. § 1352(b)	1
66 Pa. C.S. § 1353(a)	21, 28
66 Pa. C.S. § 1356.....	23

66 Pa. C.S. § 1357(a)(ii)	1
66 Pa. C.S. § 1357(a)(1)(ii).....	9, 27, 28, 29
66 Pa. C.S. § 1358(a)(1).....	<i>passim</i>
66 Pa. C.S. § 1359(c)	18, 19
66 Pa. C.S. § 2212(c)	27

Regulations

52 Pa. Code § 69.2703	9, 14
52 Pa. Code § 121.2	16
52 Pa. Code § 121.5	16
52 Pa. Code § 121.3(a)(7).....	19

Administrative Decisions

<u>Final Implementation Order, 299 PUR4th 367</u>	9
<u>Implementation of Act 11 of 2012,</u> 299 PUR4th 367 (Pa. PUC 2012)	9
<u>Implementation of Act 11 of 2012,</u> Docket No. M-2012-2293611, Order (Aug. 2, 2012).....	32
<u>Pa. PUC v. Phila. Gas Works,</u> Docket No. R-00061931, Order (Sept. 28, 2007).....	29
<u>Petition of PGW for Approval of a DSIC,</u> Docket No. P-2012-2337737, Order (May 9, 2013).....	2, 3
<u>Petition of PGW for Approval of its LTIIP,</u> Docket No. P-2012-2337737, Opinion and Order (Apr. 4, 2013)	2
<u>Review of Long-Term Infrastructure Improvement Plan,</u> Docket No. L-2012-2317274, Final Rulemaking Order (May 22, 2014).....	19

Other Authorities

<u>Stratified Management and Operations Audit,</u> Docket No. D-2015-2468141, Audit Report (Oct. 22, 2015).....	14
--	----

I. INTRODUCTION AND STATEMENT OF THE CASE

Act 11 of 2012 amended Chapter 13 of Title 66 of the Public Utility Code to grant the Commission authority to allow utilities to implement a Distribution System Improvement Charge (DSIC), which permits recovery of certain reasonable and prudent capital costs incurred to repair, improve or replace eligible property. 66 Pa. C.S. §§ 1350-1360 (effective Apr. 16, 2012). Act 11 also provided several consumer protections, including the requirement that (1) the DSIC may not exceed 5% of amounts billed to customers, (2) utilities be in compliance with their approved long-term infrastructure improvement plan (LTIP), in order to charge a DSIC and (3) utilities may only charge customers for plant that is in service. 66 Pa. C.S. §§ 1358(a)(1), 1352(b), 1357(a)(ii).

Philadelphia Gas Works (PGW or Company) wants the Commission to waive all three of these protections. Specifically, the Company seeks approval to begin charging customers on January 1, 2016 an annualized amount of the total costs of improvements that it plans to make sometime during the calendar year – \$33 million or 7.36%. After the fact, PGW proposes to file and seek approval of an LTIP that supports this level of spending. If the Company does not spend as much as projected or revenue is different than what was assumed in calculating the DSIC rate, PGW will reconcile and refund the over-collection in April 2017, as long as 16 months after customers were overcharged.¹ Conversely, if the Company under collects, it wants authority to charge customers above 7.5%, up to 10% of a customer's distribution bill.

PGW's service territory has the highest percentage of households in "deep poverty" of any large city in the United States. For these customers, particularly, the Company's proposal to waive the protections of Act 11 will have a substantial adverse impact. PGW has not shown that

¹ Initially, PGW requested waiver of paying interest on over-collections but in response to testimony opposing that proposal, it withdrew that proposal. PGW St. 2R at 3.

it is reasonable for customers to pay an increased DSIC without any contribution from its owner, the City. Nor has it shown that it is reasonable for customers to pay for projects that might never be performed and before even the plan for doing the projects is subject to review. The Company has not shown that its cash flow methodology means that, unlike every other utility that manages its under-collections within the DSIC cap, PGW must have an additional 50% DSIC increase to raise the overall cap to 10%. The OCA has shown, however, that PGW's proposals should not be adopted at this time. The OCA has also shown that if the Commission waives Act 11 to allow the Company to charge an annualized, levelized DSIC rate: (1) PGW should not have unfettered discretion whether or not to make an adjustment to reduce over or under-collections each quarter, (2) any pre-collected DSIC revenue should be required to be spent on DSIC projects or returned to customers and (3) the Company should expand its efforts to enroll customers in Budget Billing to mitigate the impact of higher DSIC charges on winter bills.

II. PROCEDURAL HISTORY

PGW's initial DSIC 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 LTIIP, approved by the Commission on April 4, 2013, this funding has allowed PGW to replace approximately an additional 7 miles of cast iron main each year. PGW St. 1 at 2-3; Petition of PGW for Approval of its LTIIP, Docket No. P-2012-2337737, Opinion and Order (Apr. 4, 2013) (LTIIP Order). 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 replace an additional 7 miles of main per year. PGW St. 1 at 2-3. In a Petition filed September 1, 2015, PGW proposed to increase the DSIC cap to 7.5% to further accelerate annual replacement of cast iron mains. Id.

On September 1, 2015, PGW filed a Petition asking the Commission, *inter alia*, to waive the current Distribution System Improvement Charge (DSIC) cap of 5% of distribution revenues, 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. The Company also asked the Commission to waive or suspend the requirements of Act 11, *inter alia*, 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.

The OCA filed an Answer, Complaint and Notice of Intervention opposing PGW's Petition on September 17, 2015. The Bureau of Investigation and Enforcement (I&E) filed an Answer on September 18, 2015. The Office of Small Business Advocate (OSBA) filed an Answer and Notice of Intervention on September 21, 2015. On the same date, the Philadelphia Industrial and Commercial Gas Users Group (PICGUG) filed an Answer. By Orders issued on October 29, 2015 and November 4, 2015, respectively, the Petitions to Intervene by the Environmental Defense Fund (EDF) and the Clean Air Council (CAC) were granted. Testimony filed by EDF on October 19, 2015 was stricken by Order issued October 30, 2015.

Following a prehearing conference held on October 2, 2015, the presiding officers, Administrative Law Judges Guhl and Pell, issued an Order establishing a litigation schedule that set hearings for November 5, 2015. The OCA's Main Brief is submitted pursuant to that schedule.

III. BURDEN OF PROOF

PGW bears the burden of proof to establish the justness and reasonableness of every element of its proposed Distribution System Improvement Charge. As set forth in Section 315(a) of the Public Utility Code:

Reasonableness of rates- In any proceeding upon the motion of the Commission, involving any proposed or existing rate of any public utility, or in any proceedings upon the complaint involving any proposed increase in rates, the burden of proof to show that the rate involved is just and reasonable shall be upon the public utility.

66 Pa. C.S. § 315(a). The Commonwealth Court interprets this principle as follows:

Section 315(a) of the Public Utility Code, 66 Pa. C.S. § 315(a), places the burden of proving the justness and reasonableness of a proposed rate hike squarely on the utility. It is well-established that the evidence adduced by a utility to meet this burden must be substantial. [Citations omitted.]

Lower Frederick Twp. v. Pa. PUC, 48 Pa. Commw. 222, 226-27, 409 A.2d 505, 507 (1980); see also Brockway Glass v. Pa. PUC, 63 Pa. Commw. 238, 437 A.2d 1067 (1981).

The Pennsylvania Supreme Court has stated that the party with the burden of proof has a formidable task to show that the Commission may lawfully adopt its position. Even where a party has established a prima facie case, the party with the burden of proof must establish that “the elements of that cause of action are proven with substantial evidence which enables the party asserting the cause of action to prevail, precluding all reasonable inferences to the contrary.” Burleson v. Pa. PUC, 461 A. 2d 1234, 1236 (Pa. 1983) (Burleson). Thus, a utility has an affirmative burden to establish the justness and reasonableness of every component of its rate request.

The OCA points out that Pennsylvania law is clear that there is no similar burden for a party proposing an adjustment to a utility rate filing. See, e.g., Berner v. Pa. PUC, 383 Pa. 622, 116 A. 2d 738 (1955) (Berner). In Berner, the Pennsylvania Supreme Court stated:

[T]he appellants did not have the burden of proving that the plant additions were improper, unnecessary or too costly; on the contrary, that burden, is by statute, on the utility to demonstrate the reasonable necessity and cost of the installations and that is the burden which the utility patently failed to carry.

Berner, 382 Pa. at 631, 116 A.2d at 744. The Commission recognizes this standard in its rate determinations. Pa. PUC v. Equitable Gas Co., 57 Pa. PUC 423, 471 (1983). See also University of Pa. v. Pa. PUC, 86 Pa. Commw. 410, 485 A.2d 1217 (1984). Thus, it is unnecessary for the OCA (or any challenger) to prove that PGW's proposed rate is unjust, unreasonable, or not in the public interest. To prevail in its challenge, Pennsylvania law requires only that the OCA show how PGW failed to meet its burden of proof.

In conclusion, PGW must affirmatively demonstrate the reasonableness of every element of its proposed DSIC rate and calculation and demonstrate that its proposed rate is just, reasonable, and in the public interest. The OCA will show that PGW has failed to satisfy its statutory burden in the manner set forth below.

IV. WAIVER OF 5% LIMITATION AND AUTHORIZATION FOR HIGHER MAXIMUM ALLOWABLE DSIC

A. Summary of Briefing Party's Position

PGW's Petition for waivers of Act 11 and fundamental changes to the operation of its DSIC should be denied as filed.

PGW's existing DSIC includes the statutory 5% cap on billed revenues. PGW proposes to increase the cap to 7.5% to accelerate replacement of cast iron mains by an additional \$11 million. 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). Based on the record in this proceeding, PGW has not demonstrated that an increase in the cap to 7.5% is necessary for purposes of Section

1358(a)(1). The Company could possibly make that showing when it files an amended LTIP, which it expects to file in the January 2016 timeframe. The Company indicates that the amended LTIP filing will “clearly identify how PGW proposes to expend the additional dollars made available by an increase in the DSIC percentage from 5% to 7.5%.” PGW St. 1 at 5. Until then, the Commission has no basis to allow PGW to increase its DSIC rate above the existing 5% cap.

The record shows that an increase to 7.5% would provide annual DSIC revenues of \$33 million. This is nearly double PGW’s actual DSIC spending for any 12-month period to date. The significant increase in spending raises the concern that the Company will not be able to safely ramp up to that level due to the effect on commerce, traffic congestion and noise, and the availability of qualified contractors to perform the work. The Company could have substantial over-collections – despite mitigation efforts – and even if the excess revenues are refunded with interest, customers will be required to pay unnecessarily higher bills and wait up to a year for their refund. The effect on customer bills is of particular concern because of the economic demographics of PGW’s service territory.

The record also shows that it is not reasonable to recover all of the incremental \$11 million from ratepayers alone, through the DSIC. PGW should be required to pursue other potential funding sources before turning to ratepayers to fully support its accelerated mains replacement program.

The Company also asked the Commission to allow reconciliation recovery up to 10% of distribution revenues. This request should be denied. PGW bases its proposal to levelize and annualize its DSIC costs on the argument that it will avoid the significant DSIC rate fluctuations inherent in its cash-basis DSIC and will recover additional DSIC revenue for main replacement.

Its additional request to *exceed* its proposed rate cap so that it can effectively eliminate the possibility of undercollection is undue for several reasons.

The additional 2.5% increase will not serve to accelerate spending by 2.5%. It will only serve to avoid any under-collection. This is neither necessary nor warranted because PGW expects under-collections to be “de minimus” due to its proposed 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. PGW St. 2 at 10, 11-12.

B. Standard for Granting the Waiver

Section 1358(a)(1) of Act 11 provides:

(1) Except as provided under paragraph (2), the distribution system improvement charge may not exceed 5% of the amount billed to customers under the applicable rates of the wastewater utility or distribution rates of the electric distribution company, natural gas distribution company or city natural gas distribution operation. The commission may upon petition grant a waiver of the 5% limit under this paragraph for a utility in order to ensure and maintain adequate, efficient, safe, reliable and reasonable service.

66 Pa. C.S. § 1358(a)(1). The standard for the Commission to waive the 5% cap, therefore, is whether the incremental DSIC revenue is necessary for PGW to ensure and maintain adequate, efficient, safe, reliable and reasonable service. See OCA St. 1 at 3. Then, if it is determined that incremental revenue is necessary, the Commission has discretion whether or not to grant a waiver.

As discussed below, PGW has not met the standard for the Commission to waive the 5% cap for PGW to charge a 7.5% or 10% DSIC.

C. Has PGW Met Standard for Waiver of 5% Cap?

PGW has not met the standard for waiver of the 5% cap. As discussed in Section IV.D, below, in order to show that spending an additional \$11 million is necessary, the Company must file a new or revised LTIP showing “the manner in which the replacement of aging infrastructure will be accelerated and how the repair, improvement or replacement will ensure and maintain adequate, efficient, safe, reliable and reasonable service.” 66 Pa. C.S. § 1352(a)(6), (7). Only after an LTIP supporting the additional spending is approved, will the Commission have the information needed to determine whether PGW meets the standard for waiver and whether a waiver should be granted.

If, based on an approved LTIP supporting additional acceleration, the Commission determines that additional DSIC funding is warranted, it has discretion whether to raise the 5% cap. Single-issue surcharge authority, even where the General Assembly has specifically authorized it, should be used cautiously, as it imposes additional burdens on ratepayers. Increasing the cap on the surcharge is not the sole means of generating revenues through which to improve infrastructure. PGW’s proposal, however, eschews all other methods of generating revenues and turns to ratepayers as the first and only source of funding. The proposed increase in distribution bills, by a minimum of 50%, is a significant burden on PGW ratepayers, many of whom live in deep poverty. Before any increase to ratepayers, the Company should utilize its internally generated funds and pursue other funding options.

PGW’s proposal to increase the DSIC rate by another 2.5% for reconciliation also does not meet the standard for waiving the 5% cap. As discussed in Section IV.E below, the additional 2.5% for reconciliation does not represent additional acceleration of main replacement and is not needed for the Company to timely collect amounts spent on accelerated replacement.

1. Alternative Sources of Funding to Fund Accelerated Main Replacement

PGW is requesting major modifications to the DSIC that was established by Act 11 – in addition to a 50% increase in the DSIC rate, the Company also seeks waiver of the requirement that the investment be made *before* it is recovered in rates. 66 Pa. C.S. § 1357(a)(1)(ii). Although every other utility funds its investment up front before recovering it in the DSIC, PGW is asking ratepayers to be the first and only source of funding for additional distribution system improvements. OCA St. 1 at 10-12.

In response to OSBA Set I-4, PGW stated that it “will consider other sources of funds for mains replacement should this DSIC petition be denied,” including sources other than a base rate increase. OCA St. 1 at 10. The OCA submits that PGW has it backwards. *Before* any DSIC increase is permitted (not after a denial), PGW should have evaluated and pursued these other funding sources. *Id.* at 10-12. In further support of pursuing other funding sources, the OCA notes that no earnings cap is applied to PGW as it is to other utilities.² Implementation of Act 11 of 2012, 299 PUR4th 367, 390 (Pa. PUC 2012) (Final Implementation Order). For PGW alone, the Commission determines whether the DSIC should be reset to zero in a given quarter based on its review of PGW’s rate levels and financial condition pursuant to the standards set forth in its policy statement at 52 Pa. Code § 69.2703. Pursuant to the policy statement, relevant factors include internal generation of funds (IGF) to fund construction. It is entirely consistent with Commission policy and Orders, thus, for other sources of funding to be considered before charging ratepayers a 7.5% DSIC.

² “[W]e decline to adopt the OCA’s recommendation to consider specific interest coverage ratios that would trigger a DSIC reset for city natural distribution companies. The Commission will monitor PGW’s rate levels and financial condition pursuant to the standards set forth in our policy statement at 52 Pa. Code § 69.2703.” Final Implementation Order at 390.

The record shows several possible sources of IGF to offset additional DSIC recovery. On August 18, 2015, PGW completed a revenue bond refunding that decreases the Company's annual debt service by \$3.2 million. OCA St. 1 at 10 (citing OCA-I-12). Auditors identified an estimated \$2.2 million in annual savings, plus a one-time savings of approximately \$1.1 million, that could be generated by implementation of the recommendations identified in PGW's recent Stratified Management and Operations Audit Report. OCA St. 1S at 7-8.

OSBA Knecht's analysis showed that the Company should be able to readily finance the proposed infrastructure spending without turning to ratepayers and with no material negative impact in its financial position relative to its current forecast. OSBA St. 1 at Table IEC-3. Mr. Knecht stated:

A review of the Company's financial projections provided in response to OSBA-I-2 indicates that the Company should be able to readily finance the necessary increase in expenditures using internally generated funds and temporary financing mechanisms without incurring any deterioration in its financial ratios, at least until the Company's anticipated base rate increase goes into effect in fiscal year 2018. In contrast, the basic financial implications of the Company's proposals in this proceeding are a substantial improvement in the financial position of the Company, and a significant gain for the shareholder.

I therefore conclude that there is simply no need to race through this accelerated proceeding and make significant changes to the Pennsylvania DSIC precedents in order to allow PGW to accelerate its increase in ratepayer-financed equity.

Id. at 2-3, 7-8, Table IEC-3.

Another potential source of funding is a waiver or grant back of all or a portion of PGW's \$18 million annual payment to the City of Philadelphia. OCA St. 1 at 10-11. Mr. Knecht's testimony showed that "ratepayers have already paid for an increase in city equity from \$244 million at the end of FY 2009 to \$454 million in FY 2015." OSBA St. 1 at 6. Mr. Knecht further noted that:

Thus, all told, from 2009 to 2021, even before the proposed changes to the DSIC, the Company expects to use ratepayers to increase city equity by some \$590 million, while paying dividends to the city of an additional \$180 million. With the proposed changes to the DSIC in the current proceeding, the ratepayer contribution to the shareholder simply gets larger.

Id. at 6.³

PGW indicates that it has considered and rejected each of these possible sources of funding. In particular, with regard to the \$18 million payment to the City, PGW states that it has no control over whether the City waives the payment, as it has done historically. PGW St. 3R at 10. OCA witness Everette countered the Company's assertion:

First, even if the decision to waive the \$18 million payment is outside of PGW's authority, the request must be made: it is incumbent upon PGW to let its owner know of its needs. Second, it is appropriate that the City share responsibility with PGW's ratepayers to ensure adequate, efficient, safe, reliable and reasonable service at rates that are reasonable because it has a vested interest in the condition of PGW's system and the utility's financial viability. Ratepayers should not be the sole source for funding infrastructure improvements, particularly in the current economic environment and given the economic demographics of PGW's customer base.

OCA St. 1 at 11. The Company acknowledges that the City granted back the payment in 2004 through 2010. PGW St. 3R at 10; OCA St. 1S at 8. PGW has not made any formal request to the City. Tr. 86. PGW witness Golden testified that, on the eve of evidentiary hearings, he called Catherine Paster, Deputy Director of Finance for the City of Philadelphia, to inquire about the likelihood that a grant back would be considered. Tr. 85. According to Mr. Golden, Ms.

³ Mr. Knecht explained:

Table IEC-1 also shows that the impact of the acceleration of mains replacement with the proposed DSIC changes would result in an even greater improvement in PGW's financial status. By 2021, the DSIC changes will add an additional \$67 million to city equity, further reduce the debt ratio, and further improve financial coverage ratios. From a financial perspective, the Company's proposal in this proceeding has the appearance of a program designed to benefit the shareholder, rather than an effort to sensibly finance a mains replacement program.

OSBA St. 1 at

Paster told him that “it would not be something they would do through the term of this Administration.” Tr. 85. Mr. Golden acknowledged that a new administration will take office at the beginning of January 2016. Tr. 89.

Before PGW is permitted to recover additional dollars from ratepayers through a higher DSIC, PGW should be required to formally initiate consideration by the appropriate entities – after the referenced change of administration – of waiving or granting back all or a portion of the \$18 million annual payment to the City. The Company should also reconsider other funding sources including but not limited to bond refunding and bond reissuances, as well as using the internally generated funds that result from implementation of the recommendations from the Stratified Management Audit before charging ratepayers an additional \$11 million.

2. Customer Impact

PGW presents its proposal to increase the DSIC cap as a 2.5% increase to residential customers’ distribution bills or “just a few dollars per month.”⁴ PGW St. 2 at 6. The Company discusses only the incremental impact above the current 5% cap, however, not the total impact that the DSIC will have on customers or the impact over its current DSIC billing trend. PGW’s analysis understates the actual impact on customers.

OCA witness Everette explained that increasing the DSIC to a levelized 7.5% would be a greater impact than the incremental difference between 5% and 7.5% that PGW shows because PGW has only charged the maximum 5% DSIC in three out of 10 quarters that the DSIC has been in effect. Ms. Everette stated:

Because PGW’s DSIC rate fluctuates throughout the year and the highest DSIC rate was not charged during the highest sales volume quarter, the effect customers feel will be much greater than the difference between 7.5% and 5% or the

⁴ PGW indicates the bill impact is only 1.7% but that is on a total bill basis, inclusive of gas costs, which comprise the majority of the bill. PGW St. 2 at 6.

difference between 10% and 5%. Petition, pages 20-21; PGW St. 2, pages 7-8. PGW has only charged the maximum DSIC rate of 5% in three out of the ten quarters that the DSIC rate has been in effect. PGW’s DSIC has been an average of 3.5% over the last 10 sales quarters. Using the monthly revenues provided in the response to OCA-I-1 and June 2015 rates, I found that the DSIC billing in 2015 would have been approximately \$18.47 per year for a residential customer using 83 MCF per year. In contrast, at the levelized 7.5% DSIC rate proposed by PGW, the same customer would pay \$52.83 per year in DSIC charges, an increase of \$40.92 per year, or an average increase of \$2.86 per month. With regard to fluctuation, in paragraph 32 of the Petition, PGW provided a chart showing the incremental impact of increasing the DSIC to 7.5% (i.e. 7.5% minus 5.00%). In the chart below, I show what the impact will be, as compared to the actual DSIC rates billed in 2014 and 2015.

Incremental Impact - Average Residential Heating Customer Bill			
	Increase Compared to 5.00% Rate Per PGW	Increase Compared to Actual 2014 Charges	Increase Compared to Actual 2015 Charges
DSIC	7.50%	7.50%	7.50%
Customer Impact \$/Year	17.60	23.13	34.36
Customer Impact \$/Month	1.47	1.93	2.86

With regard to the quarter with the highest usage, PGW’s DSIC in effect in January, February and March 2014 was 4.34%, while the DSIC in effect in January, February and March 2015 was 2.24%. A customer using 46.1 MCF during these three months would have paid a total DSIC of \$17.18 in January through March 2014 and a total DSIC of \$8.87 in January through March 2015. Under PGW’s levelized DSIC proposal at 7.5%, this customer would pay a total DSIC of \$29.69 for the same amount of usage in January through March.

OCA St. 1 at 17-19.

PGW witness Dybalski argued that customers “will actually see a net decrease in their rates” because bills are projected to be lower in 2016 than in July 2013. PGW St. 2R at 10. Ms. Everette explained, however, that an increase to the DSIC rate will increase customers overall bills, regardless of changes in the gas cost portion of the bill. She stated:

Even if the customers will see a “net decrease” in their total bills because the gas cost portion of their bill is lower, they would see a greater net decrease if the DSIC portion of their bill were not increased.

OCA St. 1S at 11.

Ms. Everette identified other considerations regarding the impact of raising the DSIC rate. Specifically, PGW’s rates are already very high compared with other Pennsylvania utilities and approximately one-third of PGW’s customers are considered low income, which is nearly double the amount of low income customers for the average natural gas distribution company. OCA St. 1 at 19. This is consistent with a recent news article, which stated that Philadelphia has the highest percentage of households in “deep poverty” of any large U.S. city. “Deep poverty” is defined as household income of 50% or less of the federal poverty level. Ms. Everette noted that for these customers, particularly, increasing the DSIC cap will have a substantial impact. Id.

PGW countered Ms. Everette’s testimony about the impact of a DSIC rate increase by pointing out that Customer Responsibility Program (CRP) customers’ bills will not increase if the DSIC rate increases. Tr. 117. This is because CRP customers pay a fixed bill based on their income rather than their usage. Stratified Management and Operations Audit, Docket No. D-2015-2468141, Report at 441 (Oct. 22, 2015) (Audit Report). The fact is, however, that while one-third of PGW’s customers are considered low income, only 13% of customers are on the CRP program. Audit Report at 440. The Audit Report stated that:

PGW personnel indicated that there could be as many as approximately 157,000+ (confirmed) to 187,000+ (estimated) low-income customers who may be eligible for the program.

Audit Report at 441-42. Moreover, the Company ignores that PGW’s non-CRP customers pay the portion of the actual bill that CRP customers do not pay, which means that non-CRP customers will pay the DSIC increase that is not paid for by CRP customers. Audit Report at

441. Thus, low income customers who are not enrolled in CRP and all non-CRP customers will pay the DSIC rate increase and the impact on their bills is greater than PGW calculates.

D. 7.5% Cap for DSIC Expenditures

1. An Amended LTIP Is Required Before the DSIC Rate Is Increased.

In its Petition, PGW asked the Commission to authorize the filing of a revised LTIP, on one day's notice after the Petition to increase the DSIC to 7.5% is granted. Petition at 1, 5. The amendment to its current LTIP will provide its "specific plan for use of these additional funds." PGW St. 1 at 11. The OCA submits that this is putting the cart before the horse. For several reasons, the amended LTIP must come first.

First, the Commission cannot determine whether the incremental DSIC revenue is necessary for purposes of granting a waiver of the statutory 5% DSIC cap if PGW does not demonstrate that its specific plan for use of the proposed funds will "ensure and maintain adequate, efficient, safe, reliable and reasonable service." 66 Pa. C.S. § 1358(a)(1). The Company does not propose to provide its specific plan until it files an amended LTIP, around January 2016. PGW St. 1R at 5-6. Only after the Commission has determined that the plan for spending an additional \$11 million meets the requirements of Act 11 will it know whether funding of the plan is necessary to meet the statutory requirement for waiver.⁵ The Commission

⁵ The standards for approval of an LTIP and waiving the 5% DSIC cap are the same. Section 1352 requires an LTIP to show:

(6) The manner in which the replacement of aging infrastructure will be accelerated and how the repair, improvement or replacement will ensure and maintain adequate, efficient, safe, reliable and reasonable service.

(7) If the plan is not adequate and sufficient to ensure and maintain adequate, efficient, safe, reliable and reasonable service, the commission shall order a new or revised plan.

66 Pa. C.S. § 1352(6), (7). Likewise, Section 1358(a)(1) provides:

and interested parties, therefore, should have the benefit of knowing how the Company proposes to expend an additional \$11 million *before* PGW is permitted to increase the DSIC rate.

Second, the Commission’s regulations regarding LTIPs require utilities to have a supporting, approved LTIP in place as a condition of DSIC recovery. 52 Pa. Code § 121. Subsection 121.2 defines a “major modification” to the LTIP as one that increases the total estimated cost of the LTIP by more than 20%. 52 Pa. Code § 121.2, 121.5. PGW proposes to increase the cost of its LTIP by 50%. Accordingly, the Company must have an approved LTIP that supports a \$33 million spending plan before it can charge customers a 7.5% DSIC rate.

In response, PGW argues that it has already provided enough information to determine that the acceleration “will enhance the safety, reliability and efficiency of its distribution network.” PGW St. 1R at 1-2. It relies heavily on the fact that acceleration is consistent with “the overwhelming weight of opinion.” *Id.* As explained by OCA witness Everette, however, the point is not to accelerate for acceleration’s sake. Tr. 103-04. The Company still bears the burden of providing its specific plan for use of the additional funds, which is not satisfied by the mere assertion that more pipe will be replaced faster. Ms. Everette stated:

It is inappropriate to collect surcharge revenues from ratepayers with neither a plan nor approval in place to ensure that the additional spending will be cost-effective, prudent and safely performed. PGW should not be permitted to increase the DSIC rate prior to approval of an LTIP that shows how the increased revenues will be spent.

...

The LTIP is necessary to properly prioritize the Company’s spending and to establish that PGW can safely increase construction to support its proposed spending increase.

The commission may upon petition grant a waiver of the 5% limit under this paragraph for a utility in order to ensure and maintain adequate, efficient, safe, reliable and reasonable service.

OCA St. 1S at 2-3; Tr. 104 (“there should be that plan in place in order to show how the funds are going to be spent and that they're going to be spent where they're needed”).

For example, PGW has not identified or estimated the quantity of eligible property to be improved with the incremental revenue or a breakdown of how the incremental dollars will be spent. 66 Pa. C.S. § 1352(a)(1), (3), (4), (6). PGW only provides the general assertion that it will target higher risk cast iron mains, *i.e.* the majority of its system. PGW St. 2 at 14; PGW St. 1 at 2. PGW also makes the general assertion that it expects to experience less leaks and breaks compared to what the Company “is likely to” experience without acceleration. PGW St. 1 at 12. The record shows that since the 5% DSIC has been in effect, no reduction has occurred. OCA St. 1 at 5. As Ms. Everette stated:

PGW has actually experienced an increased incidence of leaks and breaks between 2013 and 2014. This casts doubt on the Company’s claims that those benefits stated above will actually occur due to a further acceleration under a 7.5% cap.

Id. (internal citations omitted). PGW must provide more than general assertions to justify an \$11 million rate increase. PGW St. 1 at 9; see OCA St. 1 at 5.

The Company’s existing LTIP is not a substitute for providing information about the incremental spending. According to PGW, the scope and pace of its current 5-year infrastructure plan was determined by the amount of funds available to PGW from its 18-mile program funded in base rates and DSIC spending of \$22 million per year. OCA St. 1 at 4 (citing PGW’s Petition at 4). Specifically, the prioritization for replacement was based on the recommendations contained in benchmarking studies conducted in 2008 and 2012, as well as the Company’s Distribution Integrity Management Program (DIMP), field observations and consideration of redundant or under-utilized main segments. PGW Exh. DPM-1 at 4-5, 15-20. Since that time, a new benchmarking study was performed for PGW. OCA St. 1 at 4-5; Tr. 41. PGW expects to

have the study by December 2015. PGW St. 1 at 5. Accordingly, the Company does not propose to file an LTIP, in which it will “clearly identify how PGW proposes to expend the additional dollars made available by an increase in the DSIC percentage from 5% to 7.5%” until January 2016. PGW St. 1R at 5. Yet, the Company is asking the Commission to approve a 50% DSIC spending increase from \$22 million to \$33 million before it sees the LTIP supporting the additional spending.

In addition to the requirement that PGW show how it will cost-effectively and prudently accelerate infrastructure replacement with an incremental \$11 million, the Company must show that it can safely do so. 66 Pa. C.S. § 1359(c). To date, the most PGW has spent on DSIC-eligible infrastructure projects in a 12-month period is \$18.5 million, nearly half of the \$33 million it proposes to spend in 2016. OCA St. 1S at 5-6. The Company has identified its own concerns with increasing the level of main replacements: the effect on commerce, traffic congestion and noise, and the availability of qualified contractors to perform the work. OCA St. 1 at 6 (citing PGW St. 1 at 14-15). With regard to contractors, OCA witness Everette noted that the Company’s service territory is within close proximity to PECO, PSE&G and South Jersey Gas. Each of those large natural gas utilities is accelerating infrastructure replacement and is in competition with PGW for qualified contractors. OCA St. 1 at 8. The same is true for neighboring water and wastewater utilities that are accelerating infrastructure investment, *e.g.*, Philadelphia Water Department, Aqua Pennsylvania.

The availability of qualified contractors is crucial to consideration of whether or not PGW will be able to replace infrastructure at the level it proposes. In developing regulations for review of utility’s LTIPs, the Commission stated “Act 11 contemplates that the utilization of qualified personnel is essential to the successful implementation of any long-term plan to

improve infrastructure.” OCA St. 1 at 8 (citing Review of Long-Term Infrastructure Improvement Plan, Docket No. L-2012-2317274, Final Rulemaking Order at 14-15 (May 22, 2014)).

PGW witness Murray recognized that there may be changes to its existing workforce management plans and training programs necessitated by the increased DSIC spending and that such changes would be addressed in the Company’s amended LTIP. PGW St. 1R at 8. He stated:

The revised LTIP will show how the additional workload proposed by accelerated replacement is achievable. The revised LTIP will include provisions for the use of staff and/or subcontractor crews to perform main replacements and will explain how PGW will be able to increase spending to the proposed level - in short, all the information that I&E has requested.

Id. Act 11 precludes recovery of costs for projects that were not performed by qualified contractors.⁶ 66 Pa. C.S. § 1359(c). Consistent with this provision, the Commission must review PGW’s amended LTIP showing how it will ensure that it will have access to a qualified workforce to perform an incremental \$11 million acceleration in spending *before* allowing recovery in rates. 52 Pa. Code § 121.3(a)(7). As Ms. Everette stated:

Given that PGW proposes to charge a DSIC that is based on projected, rather than actual spending, it is even more important that the Company file an amended LTIP before it is permitted to increase rates and spending. The Commission should have the benefit of PGW’s plans for implementing a \$33 million replacement program utilizing qualified contractors in making its determination whether to increase the DSIC rate cap.

⁶ Section 1359(c) of Act 11 provides:

Work on projects to repair, improve or replace eligible property that is not performed by qualified employees or contractors or inspected by the utility’s qualified personnel shall not be eligible for recovery of a distribution system improvement charge.

66 Pa. C.S. § 1359(c).

OCA St. 1 at 8-9. Given that PGW proposes to charge customers before it even performs the projects funded by the incremental \$11 million, the only means to protect customers from pre-paying the costs of future projects that are not performed by qualified contractors is for the Commission to review the Company's amended LTIP before allowing a DSIC rate increase.

OCA witness Everette summarized her recommendation as follows:

PGW should provide an LTIP supporting the proposed \$33 million replacement program, which includes an updated benchmarking study before any approval is granted. PGW's proposal to increase the DSIC cap above 5% should not be approved unless and until the Commission approves the new LTIP and determines that further main replacement acceleration is cost-effective and prudent. Consistent with the Commission's regulations, parties should have 30 days to comment on the proposed LTIP. 52 Pa. Code § 121.5(a).

OCA St. 1 at 6.

2. PGW's Efforts to Distinguish Between Charging and Spending Do Not Allow It to Avoid the Requirement to File an Amended LTIP

For all of the reasons discussed in the prior section, the Company should file an amended LTIP that provides its specific plans for cost-effectively and safely accelerating infrastructure replacement. With the benefit of that information, the Commission can determine whether to increase the DSIC rate cap to fund the plan. OCA St. 1 at 5-6.

In response, Company witness Golden stated that PGW does not plan to spend any of the incremental revenues prior to approval of its amended LTIP. Rather, the Company wants to be able to start collecting the incremental revenues from ratepayers prior to approval of its amended LTIP and spend after it has approval. PGW St. 1R at 6-7, 10. The reasons for having an amended LTIP in place before the DSIC cap is increased, however, are not addressed by PGW's commitment:

It is inappropriate to collect surcharge revenues from ratepayers with neither a plan nor approval in place to ensure that the additional spending will be cost-effective, prudent and safely performed. PGW should not be permitted to increase

the DSIC rate prior to approval of an LTIP that shows how the increased revenues will be spent.

OCA St. 1S at 2. Until the Commission has reviewed the amended LTIP and determined that the Company's plan for the \$11 million properly prioritizes the Company's spending and establishes that PGW can safely increase construction to support its proposed acceleration, the Commission has no basis to make the finding that a waiver of the 5% DSIC cap is necessary for purposes of Section 1358(a)(1). See Section A.1.a, *supra*.

Moreover, it is clear that a utility may only recover from customers "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). The Act's mechanism for ensuring that the costs are reasonable and prudent is the requirement that the costs be included in an approved LTIP. 66 Pa. C.S. § 1352(a) ("In order to be eligible to recover costs under section 1353 (relating to distribution system improvement charge), a utility must submit a long-term infrastructure improvement plan."). These protections apply to the charge to customers and cannot be avoided by PGW's assurances that it will not actually spend the additional revenues prior to LTIP approval.

PGW argues that waiting to charge the 7.5% DSIC will prevent it from spending the full \$33 million in 2016 because PGW bills approximately 47% of its total revenues in January, February and March.⁷ PGW St. 2R at 4; PGW St. 1R at 6-7. The OCA acknowledges this possibility but points out that PGW only spent \$15.8 of the \$22 million that it was authorized to spend in 2015. OCA St. 1S at 5-6; PGW St. 2R at 6; Tr. 105. The record shows that IGF could

⁷ In the alternative, PGW witness Dybalski states that the Company could spend the full \$33 million but could have a large undercollection in 2017. PGW St. 2R at 4-5. The Company's concerns about undercollections are addressed in Section IV.E.1, *infra*. With regard to spending \$33 million, the record shows that there are several reasons why the Company may not be able to accelerate its spending to that level in 2016. See Section IV.D.1, *supra*.

also be used as a supplement or replacement for DSIC funding. See Section IV.C.1, *supra*. Moreover, PGW witness Murray acknowledges that there will be a ramp up period before the Company meets its accelerated levels of work defined in the amended LTIP. PGW St. 1R at 2.

3. LTIP Reporting Conditions

In addition to conditioning waiver of the DSIC cap on the Commission's approval of an amended LTIP, the OCA recommends that the Company be required to provide quarterly reports about its training efforts, the qualifications of contractors being utilized and how those contractors are performing. OCA St. 1 at 9. The reports should also include updates regarding the condition of the three categories of mains being replaced, how leaks and broken mains are trending and how PGW explains the trends. Id. This information will help to address the concern that acceleration is being performed by qualified personnel and that the condition of infrastructure is improving as a result of the Company's efforts. OCA St. 1at 9.

In response, PGW first argues that this reporting requirement has not been placed on any other gas or electric utility with a DSIC. PGW St. 1R at 9-10. As explained by OCA witness Everette, no other utility with a DSIC has proposed such fundamental changes to the operation of the Act 11 DSIC. OCA St. 1S at 4. She stated:

As noted in my direct testimony, PGW itself has expressed concern over its ability to retain sufficient qualified contractors to complete projects at the proposed level of spending. Accompanied with the fact that the incidence of leaks has not improved since the implementation of the DSIC, it is appropriate for the Company to evaluate and report on the performance of its contractors as well as on the progress of main replacement and leak trends. PGW's reference to other gas and electric utilities is not relevant because no other gas or electric utility has received approval to increase the DSIC rate to 7.5%, particularly under the circumstances previously described. Nor has any other utility sought to recover costs before plant is in service. Nor has any other utility proposed to increase DSIC recovery by one-half on the first day of its increased DSIC. The other utilities ramp up their spending and recovery, which gradually increases their DSIC rate. Because of PGW's levelization proposal, the DSIC rate will increase by one-half on the first day.

OCA St. 1S at 4.

PGW also opposes the OCA's reporting requirement on the basis that the reports will not be useful because the Annual Asset Optimization Plan "should provide all the relevant information for the Commission and other parties to evaluate whether PGW is on track with plans to attract and train qualified operators, etc." PGW St. 1R at 9-10. Review of PGW's 2014 and 2015 AAOPs shows, however, that the reports address only the categories of main replacements. OCA St. 1S at 4-5. There is no information in the AAOPs regarding training, qualifications, performance quality or leak trends. The OCA notes that PGW has submitted a Stipulation indicating that its future AAOPs will include information on its success in training qualified staff and contractors to satisfy the goals of its LTIP generally and the portion of its main replacement program funded by the incremental \$11 million specifically. PGW and I&E Exh. 1. There is no indication that future AAOPs will provide information about how leaks and breaks are trending and how PGW explains the trends.

Moreover, the asset optimization plans are required only once per year. 66 Pa. C.S. § 1356. Given PGW's proposals to increase the DSIC rate by more than 50% before the Company actually further accelerates replacement and then to nearly double its historic spending, it is appropriate for PGW to provide updates more often than once per year, particularly during the initial year. In this way, interested parties will be able to timely identify issues.

Accordingly, if the Commission allows PGW to increase its DSIC rate above 7.5% and recover costs before plant is in service, the Company should be required to provide regular reports about its training efforts, the qualifications of contractors being utilized and how those contractors are performing, as well as updates on the condition of the three categories of mains being replaced, how leaks are trending and how PGW explains the trends. The OCA notes that if

PGW files an AAOP or LTIP that includes the required information, no report for that quarter is necessary.

E. 10% Cap for Reconciliation

PGW has not met the standard for increasing the cap to 10% because the increase does not represent additional spending. 66 Pa. C.S. § 1358(a)(1); OCA St. 1 at 16. Rather, PGW has only averred that it wants to exceed the cap so that it can avoid undercollections. PGW St. 2 at 11. OCA witness Everette and OSBA witness Knecht showed that, in the period since PGW's DSIC was implemented, the Company has been able to collect amounts spent on DSIC projects. OCA St. 1S at 5-6; OSBA St. 1S at 12. Further, given PGW's other proposals to alter the DSIC, the Company has not shown a need to further increase the cap for purposes of reconciliation.

1. PGW Has Not Under-Collected With a 5% DSIC Cap

PGW claims that its proposal to increase DSIC to 10% is needed because it has been unable to collect amounts spent, and that it has a historical under-collection of \$4,101,365. PGW St. 2R at 5. As discussed by OCA witness Everette, this amount does not comport with the annual reconciliations the Company has filed with the Commission. PGW witness Dybalski provides a chart showing a total of \$4.1 million of under-collections between 2013 and 2015. PGW St. 2R at 6. Ms. Everette explained that there is a difference in timing, however, between what is included in PGW's chart and what is included in the calculations of the DSIC. She stated:

For example, although this chart shows \$8.2 million of under-collections in 2013, the reconciliation filed with the Commission showed under-collections of only \$3.1 million in 2013. The difference is that the \$5.1 million of infrastructure placed in service in November 2013 was not billed in the DSIC revenue until the January 1, 2014.

The 2014 reconciliation report shows that in 2014, PGW recouped the entire 2013 under-collection of \$3.1 million, and ended 2014 with an under-collection of \$1.4

million. This under-collection is being recovered during 2015. Because 2015 is not over, calculations of under or over-collections would not be accurate at this point. If PGW ends 2015 with an under-collection based on the costs eligible for recovery during 2015, the under-collections will be recovered during 2016.

OCA St. 1S at 5-6. Thus, contrary to PGW's testimony, the Company does not have a large outstanding amount of under-collections that is growing each year. OSBA witness Knecht showed that, in fact, PGW over-recovered costs from July 2013 to September 2015. He stated:

Mr. Dybalski's table incorrectly includes \$5.29 million in DSIC-eligible costs incurred by PGW during the July-September 2015 quarter. It is not surprising that these costs have not been recovered in the DSIC charge, since those costs may not be included in rates until October 2015. In reality, PGW earned \$34.26 million in DSIC revenue from July 2013 to September 2015. The comparable costs for that recovery period, namely those incurred from April 2013 to June 2015, were \$33.07 million. Thus, when costs and revenues are compared on the same basis, PGW has, in fact, over-recovered costs by some \$1.19 million. The attached Exhibit IEc-S2 is an updated summary of PGW's DSIC filings (originally presented in Exhibit IEc-3), which includes the revenue information provided in Mr. Dybalski's rebuttal testimony.

OSBA St. 1S at 12.

The evidence shows that PGW has collected amounts spent and has a net over-recovery for the period July 2013 to September 2015. Accordingly, there is no support for increasing the DSIC to 10% for reconciliations.

2. If PGW's Other Requested Waivers Are Granted, an Additional 2.5% Is Not Warranted

There are additional reasons why the further 2.5% DSIC increase (to a total of 10%) should not be allowed. First, 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. PGW St. 2 at 10-11. Indeed, Company witness Dybalski stated: "PGW believes that levelization will result in smaller under collections which otherwise would continually have to be

recovered from customers over time.” Id. at 11. PGW also notes that the level of undercollection that it expects to be in effect on January 1, 2016 is 0.30% and characterizes this as “de minimus.” PGW St. 2 at 12.

The Company’s own testimony, thus, shows the lack of need for a further 2.5% increase in the DSIC rate cap. As stated by OCA witness Everette:

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 avoiding “de minimus” undercollections.

OCA St. 1 at 17 (citing PGW St. 2 at 12).

Second, although PGW uses a cash flow ratemaking, it has not distinguished itself from the rate base/rate of return utilities in this regard. Ms. Everette explained:

every other utility that has a DSIC at 5% or 7.5% manages its over and under-collections within that threshold, *i.e.* the cap is inclusive of over and under-collections. Unlike other proposals by PGW that are directly and narrowly tied to its unique situation, all utilities are subject to reconciliation of their DSIC recovery. All utilities have seasonal usage variations and have seasonal limitations on construction. PGW has proposed other mechanisms to avoid significant DSIC rate fluctuations inherent in its cash-basis DSIC – levelization/annualization and the ability to mitigate under and over collections by adjusting the DSIC rate in any quarter. No other utilities will have those benefits because they cannot waive the requirements of Act 11. It is unnecessary to also allow PGW an additional 2.5% increase.

OCA St. 1 at 16-17.

For the foregoing reasons, PGW has not carried its burden of showing that an additional increase to the DSIC rate for reconciliation purposes is necessary or proper. PGW’s proposal to increase the DSIC rate up to 10% for reconciliation should be denied.

V. WAIVERS TO PERMIT LEVELIZATION AND ANNUALIZATION OF DSIC-ELIGIBLE COSTS

A. Summary of Briefing Party’s Position

Section § 1357 provides that the DSIC shall be calculated to recover only the costs 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 asks the Commission to waive this statutory requirement so that PGW can annualize and levelize the DSIC rate. PGW St. 2 at 6. Specifically, the Company proposes to “set the DSIC on an annualized basis to recover the eligible costs incurred as part of the accelerated replacement program of \$33 million, using a levelized charge each month, instead of being reimbursed based on a calculation of actual costs for eligible property placed in service in the previous quarter.” PGW St. 2 at 8.

The OCA recommends that waivers should not be granted to allow annualization and levelization unless PGW is required to (1) designate revenues that are pre-collected from the DSIC for DSIC spending, (2) update the DSIC every quarter to ensure that the DSIC reflects the most recent projected annual construction costs and projected quarterly revenues and (3) do more to enroll customers in budget billing. OCA St. 1 at 14-15.

B. Standard for Granting the Waiver

Section 2212 provides that the provisions of the Public Utility Code, with certain exceptions, shall apply to PGW. 66 Pa. C.S. § 2212(c). The Company is permitted to request, and the Commission is authorized to suspend or waive, “the application to a city natural gas distribution operation of any provision of this title....” *Id.* Section 2212(c) does not provide a statutory standard for waiver. The OCA submits that it is, thus, appropriate to consider the provision of Act 11 that PGW seeks to waive, Section 1357(a)(1)(ii). 66 Pa. C.S. §

1357(a)(1)(ii). That Section provides that the quarterly calculation of the DSIC rate will recover only the fixed cost of eligible property that has “[b]een placed in service during the three-month period ending one month prior to the effective date of the distribution improvement system charge.” *Id.* This requirement is one of the consumer protections included in the Act in recognition that DSIC allows recovery without the prudence review required for other capital costs. While Act 11 does not contemplate waiver of this protection, its standard for waiver of another consumer protection – the cap on DSIC recovery – is instructive. Section 1358(a)(1) provides for 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). It is reasonable to apply this standard to the Commission’s determination whether PGW has satisfied the standard for waiver of Section 1357(a)(1)(ii). Indeed, the same standard applies to phrase “to ensure and maintain adequate, efficient, safe, reliable and reasonable service” appears three times in Act 11, which indicates its importance. 66 Pa. C.S. §§ 1352(a)(7), 1353(a), 1358(a)(1). In addition, any waiver should be shown to be in the public interest and to result in just and reasonable rates.

C. Has PGW Satisfied the Standard for Granting Waiver Permitting Annualization/Levelization?

The OCA recognizes that, while all gas utilities’ revenues are impacted by seasonal usage variations, PGW may be more severely impacted due to its cash flow method of ratemaking. *See* PGW St. 2 at 6-7; OCA St. 1 at 13. The OCA also notes that, as discussed in Section E.1., *supra*, the record shows that PGW does not have a large outstanding amount of under-collections under its current DSIC structure. OCA St. 1 at 12.

If the Commission determines that PGW meets the standard for a waiver of Section 1357(a)(1)(ii), the OCA submits that the waiver should be conditioned on three requirements, which are addressed in the next section.

D. Implementation Of and Conditions on the Levelization/Annualization Waiver

Although PGW argues that Section 1357(a)(1)(ii) embodies the “used and useful” principle used in the rate base/rate of return construct and is thus not applicable to PGW, such argument is incorrect. Section 1357(a)(1)(ii) sets forth an element of the just and reasonable requirement for rates, which applies to PGW – despite its cash flow ratemaking.⁸ Pa. PUC v. Phila. Gas Works, Docket No. R-00061931, Order at 9 (Sept. 28, 2007) (PGW 2007); PGW St. 2 at 6-7. Indeed, the General Assembly included this requirement in Act 11 without exception for PGW even though another provision of the Act specifically recognized PGW’s unique ratemaking methodology. 66 Pa. C.S. § 1357(a)(3).

Thus, if this consumer protection is eliminated, steps should be taken to mitigate any potential harm to customers. PGW should be required to (1) put accounting controls in place to ensure that DSIC revenues that are collected in advance of DSIC-eligible spending are designated for this purpose, (2) update the DSIC rate each quarter to reflect changes in projected construction costs and projected quarterly revenues and (3) do more to enroll customers in budget billing. OCA St. 1 at 12-15.

⁸ In PGW 2007, the Commission stated:

At the same time, the adoption of this ratemaking methodology to set rates for PGW allows the Commission’s other statutory directives, such as minimum debt service coverage and just and reasonable rates, to be fulfilled in accordance with Sections 1301 of the Code and 2212(c) of the Act.

As such, it is clear that the Commission is permitted to use other statutory directives, such as the determination of just and reasonable rates, in accordance with the Code and the Act.

PGW 2007 at 9-10 (internal citations omitted).

1. Designation

With regard to designating the incremental DSIC revenues, PGW witness Dybalski stated that “there is no need to segregate DISC [sic] revenues from other revenues” because the DSIC is an automatic adjustment clause and is reconciled annually. PGW St. 2R at 7-8. As a cash flow company, however, PGW should not be permitted to divert ratepayer collections for one purpose to another purpose. OCA St. 1S at 9. The Company is proposing to charge customers the DSIC prior to spending on infrastructure investments rather than charging customers for plant already in service. Therefore, in order to ensure that DSIC revenues are available at the time of expenditure and spent the way PGW has proposed, it is important to designate DSIC funds. Id. Only in this way can the Commission ensure that the funds collected from customers are available and spent as intended by Act 11.

2. Required Quarterly Adjustments

PGW’s proposal indicates that the annualized, levelized DSIC would be set annually based on the DSIC funded construction budget. PGW St. 2 at 9. PGW witness Dybalski states that “PGW *may* make quarterly adjustments to the annualized DSIC for the difference between projected and actual billed amounts” and “PGW *may* make quarterly adjustments to account for changes to the construction budget during the year for the accelerated replacement program.” PGW St. 2 at 10 (emphasis added). When asked to quantify when the Company would or would not make a quarterly adjustment, Mr. Dybalski indicated that PGW would make an adjustment if the change in projected spending amounted to more than \$200,000. Tr. 56-57. With regard to revenues, Mr. Dybalski thought the trigger might be \$500,000 to \$1 million. Id. at 59. PGW does not propose to be required to make an adjustment in any quarter if these deviations are met. Id. at 60.

PGW's position reflects its contention that, if dollars are overcollected from ratepayers, no harm is done because the amounts will be refunded with interest.⁹ PGW St. 1R at 2. This ignores that until refunds are paid, customers do not have access to those dollars. See Tr. 60-61. Given the economic demographic of PGW's service territory, this does constitute a "harm." As stated by OCA witness Everette: "PGW should not collect from ratepayers any more than it can spend in the rate period to avoid unnecessarily and unreasonably burdening customers." OCA St. 1S at 11. Accordingly, if the levelized, annualized DSIC proposed by PGW is approved, PGW should be required to update the DSIC rate each quarter to reflect changes in projected construction costs and projected quarterly revenues, in order to reduce under or over collections. OCA St. 1S at 8-9. The decision whether to update the DSIC rate in response to a change should not be discretionary.

3. Budget Billing

If PGW's customers will be charged the same 7.5% DSIC rate each month, PGW should be required to do more to enroll customers in budget billing to avoid significant swings in bills in seasons of high and low usage. OCA witness Everette explained her recommendation, stating:

If the Commission allows PGW to annualize and levelize the DSIC portion of bills, the Company should also make efforts to levelize the entire bill for residential customers. PGW's tariff currently allows for budget billing. I recommend that PGW develop a plan to enroll a greater percentage of its customers in budget billing. Levelizing bills would be consistent with the Company's arguments that customers want predictable bills (Petition, page 4) and it will provide some relief for customers who are paying higher winter bills and will see an increase in the DSIC charged in the winter months if the DSIC is levelized.

⁹ Initially, PGW asked the Commission to waive the requirement to pay interest on DSIC overcollections. PGW St. 2 at 14. The OCA and other parties strongly opposed this proposal and the Company withdrew its request in Rebuttal testimony. PGW St. 2R at 3.

OCA St. 1 at 13. In other words, PGW should be required to increase its efforts to ensure that all customers who are eligible are aware of the budget billing program and have the informed option to enroll, to both mitigate the impact of the DSIC rate increase for customers and to reduce the fluctuations in PGW's revenue cycle. Id.

VI. CONCLUSION

PGW's proposed DSIC deviates significantly from the model tariff adopted by the Commission for PGW (as the only city-owned gas utility). See Implementation of Act 11 of 2012, Docket No. M-2012-2293611, Order, App. A (Aug. 2, 2012). The provisions of Act 11, from which PGW seeks waiver, are protections that prevent the DSIC from overriding the traditional ratemaking process of filing for base rate increases under Section 1308 of the Public Utility Code. It must be considered that PGW seeks the benefits of the DSIC without being subject to those integral protections. As such, all of the Company's proposals must be carefully considered to determine that they are legal, absolutely necessary, and needed to the degree proposed.

The OCA's recommendations are summarized in Ms. Everette's direct testimony:

1. No increase in the DSIC rate above 5% should be authorized until PGW files and receives approval of a supporting LTIP (including the benchmarking study expected to be completed in September 2015) and establishes the need for an \$11 million acceleration in its main replacement program to ensure and maintain adequate, efficient, safe, reliable and reasonable service. Parties should have 30 days to comment on the proposed LTIP.

Any approval to increase the DSIC cap to 7.5% should be conditioned on commitment by PGW to:

2. evaluate and pursue other funding sources including but not limited to bond refunding and bond reissuances.

3. initiate consideration by the appropriate entities of waiving all or a portion of the \$18 million annual payment to the City of Philadelphia to further support infrastructure repair and replacement.
4. provide quarterly reports about the Company's training efforts, the qualifications of contractors being utilized and how those contractors are performing. The reports should also include updates regarding the condition of the three categories of mains being replaced, how leaks are trending and how the Company explains the trends.

If PGW is granted the necessary waivers to levelize and annualize the DSIC rate:

5. PGW should be required to designate revenues that are pre-collected from the DSIC for DSIC spending.
6. PGW should be required to do more to enroll customers in budget billing.
7. PGW should be required to update the DSIC rate each quarter to reflect changes in projected construction costs and projected quarterly revenues.

Additionally, I recommend:

8. The proposal to waive the requirement to pay interest on over-collections should be denied.
9. PGW's request to increase the DSIC cap to 10% should be denied.

OCA St. 1 at 19-20.¹⁰

Respectfully submitted,



Erin L. Gannon
Assistant Consumer Advocate
PA Attorney ID No. 83487
Email: EGannon@paoca.org

Office of Consumer Advocate
555 Walnut Street 5th Floor
Harrisburg, PA 17101-1923

Counsel for:
Tanya J. McCloskey
Acting Consumer Advocate

(717) 783-5048

Dated: November 13, 2015

213922

¹⁰ As noted *supra*, PGW withdrew its interest proposal in the rebuttal portion of the case. PGW St. 2R at 3.

Proposed Findings of Fact

1. PGW stated that it “will consider other sources of funds for mains replacement should this DSIC petition be denied,” including sources other than a base rate increase. OCA St. 1 at 10 (citing Company response to OSBA Set I-4).
2. The record shows several possible sources of IGF to offset additional DSIC recovery. OCA St. 1 at 10; OCA St. 1S at 7-8; OSBA St. 1 at 2-3, 7-8.
3. On August 18, 2015, PGW completed a revenue bond refunding that decreases the Company’s annual debt service by \$3.2 million. OCA St. 1 at 10 (citing OCA-I-12).
4. Auditors identified an estimated \$2.2 million in annual savings, plus a one-time savings of approximately \$1.1 million, that could be generated by implementation of the recommendations identified in PGW’s recent Stratified Management and Operations Audit Report. OCA St. 1S at 7-8.
5. OSBA Knecht’s analysis showed that the Company should be able to readily finance the proposed infrastructure spending without turning to ratepayers and with no material negative impact in its financial position relative to its current forecast. OSBA St. 1 at 2-3, 7-8, Table IEC-3.
6. Another potential source of funding is a waiver or grant back of all or a portion of PGW’s \$18 million annual payment to the City of Philadelphia. OCA St. 1 at 10-11.
7. Ratepayers have already paid for an increase in city equity from \$244 million at the end of FY 2009 to \$454 million in FY 2015. OSBA St. 1 at 6.
8. The City granted back the payment in 2004 through 2010. PGW St. 3R at 10; OCA St. 1S at 8.
9. PGW has not made any formal request to the City for a waiver of some or all of the \$18 million annual payment. Tr. 86.
10. A new administration will take office at the beginning of January 2016. Tr. 89.
11. Increasing the DSIC to a levelized 7.5% would be a greater impact than the incremental difference between 5% and 7.5% that PGW shows because PGW has only charged the maximum 5% DSIC in three out of 10 quarters that the DSIC has been in effect. OCA St. 1 at 17-18.
12. With regard to the quarter with the highest usage, PGW’s DSIC in effect in January, February and March 2014 was 4.34%, while the DSIC in effect in January, February and March 2015 was 2.24%. A customer using 46.1 MCF during these three months would have paid a total DSIC of \$17.18 in January through March 2014 and a total DSIC of \$8.87 in January through March 2015. Under PGW’s levelized DSIC proposal at 7.5%, this customer would pay a total DSIC of \$29.69 for the same amount of usage in January through March. OCA St. 1 at 18-19.

13. PGW's rates are already very high compared with other Pennsylvania utilities and approximately one-third of PGW's customers are considered low income, which is nearly double the amount of low income customers for the average natural gas distribution company. OCA St. 1 at 19.
14. While one-third of PGW's customers are considered low income, only 13% of customers are on the CRP program. Stratified Management and Operations Audit, Docket No. D-2015-2468141, Report at 440 (Oct. 22, 2015) (Audit Report).
15. PGW's non-CRP customers pay the portion of the actual bill that CRP customers do not pay, which means that non-CRP customers will pay the DSIC increase that is not paid for by CRP customers. Audit Report at 440.
16. PGW does not propose to file an amended LTIIIP until after the Commission rules on its Petition for Waiver of the 5% DSIC cap, around January 2016. PGW St. 1 at 11. PGW St. 1R at 5-6.
17. The amendment to its current LTIIIP will provide the Company's "specific plan" for use of the incremental \$11 million. PGW St. 1 at 11.
18. PGW proposes to increase the cost of its LTIIIP by 50%, which is a "major modification" for purposes of the Commission's LTIIIP regulations. 52 Pa. Code § 121.2, 121.5.
19. PGW must have an approved LTIIIP that supports a \$33 million spending plan before it can charge customers a 7.5% DSIC rate. 52 Pa. Code § 121.2, 121.5.
20. The LTIIIP is necessary to properly prioritize the Company's spending and to establish that PGW can safely increase construction to support its proposed spending increase. OCA St. 1S at 2-3; Tr. 104.
21. PGW has not identified or estimated the quantity of eligible property to be improved with the incremental revenue or a breakdown of how the incremental dollars will be spent.
22. Since the 5% DSIC has been in effect, no reduction in leaks and breaks has occurred. OCA St. 1 at 5. PGW has actually experienced an increased incidence of leaks and breaks between 2013 and 2014. PGW St. 1 at 5-9.
23. Since PGW filed its LTIIIP in 2012, a new benchmarking study was performed for PGW. OCA St. 1 at 4-5; Tr. 41. PGW expects to have the study by December 2015. PGW St. 1 at 5.
24. To date, the most PGW has spent on DSIC-eligible infrastructure projects in a 12-month period is \$18.5 million, nearly half of the \$33 million it proposes to spend in 2016. OCA St. 1S at 5-6.
25. The Company has identified its own concerns with increasing the level of main replacements: the effect on commerce, traffic congestion and noise, and the availability of qualified contractors to perform the work. OCA St. 1 at 6 (citing PGW St. 1 at 14-15).
26. PGW must compete for contractors with proximate natural gas, water and wastewater utilities that are also accelerating infrastructure investment. OCA St. 1 at 8.
27. PGW has not shown how it will safely increase infrastructure investment by \$11 million.
28. The only means to protect customers from pre-paying the costs of future projects that are not performed by qualified contractors is for the Commission to review the Company's amended LTIIIP before allowing a DSIC rate increase. OCA St. 1 at 6; OCA St. 1S at 2.

29. Until the Commission has reviewed the amended LTIP and determined that the Company's plan for the \$11 million properly prioritizes the Company's spending and establishes that PGW can safely increase construction to support its proposed acceleration, the Commission has no factual basis to make the finding that a waiver of the 5% DSIC cap is necessary for purposes of Section 1358(a)(1).
30. PGW only spent \$15.8 of the \$22 million that it was authorized to spend in 2015. OCA St. 1S at 5-6; PGW St. 2R at 6; Tr. 105.
31. PGW witness Murray acknowledges that there will be a ramp up period before the Company meets its accelerated levels of work defined in the amended LTIP. PGW St. 1R at 2.
32. Due to PGW's levelization proposal, the DSIC rate will increase by one-half on the first day. OCA St. 1S at 4.
33. PGW's 2014 and 2015 AAOP reports are provided only once per year and do not provide information regarding training, qualifications, performance quality or leak trends. OCA St. 1S at 4-5.
34. There is no indication that future AAOPs will provide information about how leaks and breaks are trending and how PGW explains the trends.
35. In the period since PGW's DSIC was implemented, the Company has been able to collect amounts spent on DSIC projects. OCA St. 1S at 5-6; OSBA St. 1S at 12.
36. PGW does not have a large outstanding amount of under-collections that is growing each year. OCA St. 1S at 5-6.
37. PGW over-recovered costs from July 2013 to September 2015 by approximately \$1.19 million. OSBA St. 1S at 12; OSBA Exh. IEC-S2.
38. Levelization will result in smaller under collections. PGW St. 2 at 11.
39. The level of undercollection that PGW expects to be in effect on January 1, 2016 is 0.30% and the Company characterizes this as "de minimus." PGW St. 2 at 12.
40. 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 avoiding "de minimus" undercollections. OCA St. 1 at 17 (citing PGW St. 2 at 12).
41. Every other utility that has a DSIC at 5% or 7.5% manages its over and under-collections within that threshold, *i.e.* the cap is inclusive of over and under-collections.
42. All utilities have seasonal usage variations and have seasonal limitations on construction. OCA St. 1 at 16-17.
43. PGW has proposed other mechanisms to avoid significant DSIC rate fluctuations inherent in its cash-basis DSIC – levelization/annualization and the ability to mitigate under and over collections by adjusting the DSIC rate in any quarter. OCA St. 1 at 16-17.
44. If the protection of requiring plant to be in service before it is recovered through the DSIC is eliminated, steps should be taken to mitigate any potential harm to customers. OCA St. 1 at 12-15.
45. Because PGW is a cash flow company, to ensure that DSIC revenues are available at the time of expenditure and spent the way PGW has proposed, PGW should not be permitted to divert ratepayer collections for one purpose to another purpose. OCA St. 1S at 9.

46. Under its levelization/annualization proposal, PGW customers do not have access to overcollected amounts until the next annual reconciliation. See Tr. 60-61.
47. PGW should not collect from ratepayers any more than it can spend in the rate period to avoid unnecessarily and unreasonably burdening customers. OCA St. 1S at 11.
48. The decision whether to update the DSIC rate in response to a change should not be discretionary. OCA St. 1S at 8-9.
49. PGW's tariff currently allows for budget billing. OCA St. 1 at 13.
50. All customers who are eligible are aware of the budget billing program should have the informed option to enroll in budget billing, to both mitigate the impact of the DSIC rate increase for customers and to reduce the fluctuations in PGW's revenue cycle. OCA St. 1 at 13.

OCA Proposed Conclusions of Law

1. PGW’s DSIC rate must be just and reasonable. 66 Pa. C.S. § 1301.
2. The burden of proving that waiver of the statutory 5% DSIC cap is necessary “to ensure and maintain adequate, efficient, safe, reliable and reasonable service” is on PGW. 66 Pa. C.S. § 1358(a)(1).
3. If PGW meets this burden, the Commission has discretion whether or not to grant the waiver. 66 Pa. C.S. § 1358(a)(1).
4. PGW has failed to demonstrate that an increase to 7.5% is necessary, based on the record in this proceeding.
5. No increase in the DSIC rate above 5% will be authorized until PGW files and receives approval of a supporting LTIIIP (including the benchmarking study expected to be completed in December 2015) and establishes the need for additional acceleration in its main replacement program to ensure and maintain adequate, efficient, safe, reliable and reasonable service.
6. Parties will have 30 days to comment on the proposed LTIIIP. 52 Pa. Code § 121.4(c).
7. Any increase of the DSIC cap to 7.5% is conditioned on PGW:
 - a. evaluating and pursuing other funding sources including but not limited to bond refunding and bond reissuances;
 - b. initiating formal consideration by the appropriate entities – after the January 2016 change in administration – of waiving all or a portion of the \$18 million annual payment to the City of Philadelphia to further support infrastructure repair and replacement; and
 - c. providing quarterly reports about the Company’s training efforts, the qualifications of contractors being utilized and how those contractors are performing. The reports should also include updates regarding the condition of the three categories of mains being replaced, how leaks are trending and how the Company explains the trends. If an AAOP or LTIIIP is filed in place of a quarterly report, that filing will include the same information.
8. PGW has failed to demonstrate that a further increase in the DSIC cap to 10% is necessary.
9. The burden of proving that waiver of the prohibition on DSIC recovery of plant that was not placed in service in the prior quarter is necessary to “to ensure and maintain adequate, efficient, safe, reliable and reasonable service” is on PGW. 66 Pa. C.S. §§ 1357(a)(1)(ii), 1358(a)(1).

10. The burden of proving that waiver of the prohibition on DSIC recovery of plant that was not placed in service in the prior quarter is in the public interest and will result in just and reasonable rates is on PGW. 66 Pa. C.S. §§ 1301, 1350-1360.
11. Levelization and annualization of the DSIC rate is conditioned on PGW taking the following actions:
 - a. Designating revenues that are pre-collected from the DSIC for DSIC spending.
 - b. Updating the DSIC rate each quarter to reflect changes in projected construction costs and projected quarterly revenues.
 - c. Doing more to enroll customers in budget billing.
12. PGW will pay interest on over-collections, consistent with 66 Pa. C.S. § 1358(e)(3).

OCA Proposed Ordering Paragraphs

IT IS HEREBY ORDERED THAT:

1. No increase in the DSIC rate above 5% will be authorized until PGW files and receives approval of a supporting LTIP (including the benchmarking study expected to be completed in December 2015) and establishes the need for additional acceleration in its main replacement program to ensure and maintain adequate, efficient, safe, reliable and reasonable service. Parties will have 30 days to comment on the proposed LTIP.

Any increase of the DSIC cap to 7.5% is conditioned on PGW:

1. evaluating and pursuing other funding sources including but not limited to bond refunding and bond reissuances.
2. initiating formal consideration by the appropriate entities – after the January 2016 change in administration – of waiving all or a portion of the \$18 million annual payment to the City of Philadelphia to further support infrastructure repair and replacement.
3. providing quarterly reports about the Company’s training efforts, the qualifications of contractors being utilized and how those contractors are performing. The reports should also include updates regarding the condition of the three categories of mains being replaced, how leaks are trending and how the Company explains the trends. If an AAOP or LTIP is filed in place of a quarterly report, that filing will include the same information.

2. PGW may only be granted the necessary waivers to levelize and annualize the DSIC rate with the following conditions:

1. PGW will designate revenues that are pre-collected from the DSIC for DSIC spending.
 2. PGW will update the DSIC rate each quarter to reflect changes in projected construction costs and projected quarterly revenues.
 3. PGW will do more to enroll customers in budget billing.
3. PGW will pay interest on over-collections, consistent with 66 Pa. C.S. § 1358(e)(3).
4. PGW's request to increase the DSIC cap to 10% is denied.