



Adeolu A. Bakare
Direct Dial: 717.237.5290
Direct Fax: 717.260.1744
abakare@mwn.com

100 Pine Street • PO Box 1166 • Harrisburg, PA 17108-1166
Tel: 717.232.8000 • Fax: 717.237.5300

November 13, 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 Main Brief 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

A handwritten signature in black ink, appearing to read 'Adeolu A. Bakare', written over a horizontal line.

Adeolu A. Bakare

Counsel to the Philadelphia Industrial and Commercial Gas Users Group

Enclosure

c: Administrative Law Judge Christopher P. Pell (via E-mail and First-Class Mail)
Administrative Law Judge Marta Guhl (via E-Mail and First-Class Mail)
Certificate of Service

www.mwn.com

HARRISBURG, PA • LANCASTER, PA • SCRANTON, PA • STATE COLLEGE, PA • COLUMBUS, OH • WASHINGTON, DC

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).

VIA E-MAIL AND FIRST-CLASS MAIL

Daniel Clearfield, Esq.
Carl R. Shultz, Esq.
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
dclearfield@eckertseamans.com
cshultz@eckertseamans.com

Abby Pozefsky, Esq.
Chief Administrative Officer
and General Counsel
Philadelphia Gas Works
800 W. Montgomery Avenue
Philadelphia, PA 19122
abby.pozefsky@pgworks.com

Darryl A. Lawrence
Erin L. Gannon, Esq.
Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
dlawrence@paoca.org
egannon@paoca.org

Sharon E. Webb, Esq.
Office of Small Business Advocate
202 Commerce Building
300 North Second Street
Harrisburg, PA 17101
swebb@pa.gov

Gina L. Lauffer, Esq.
Carrie Wright, Esq.
Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
P. O. Box 4365
Harrisburg, PA 17105-3265
ginlauffer@pa.gov
carwright@pa.gov

John Finnigan, Esq.
Environmental Defense Fund
128 Winding Brook Lane
Terrace Park, OH 45174
jfinnigan@edf.org

Michael Panfil, Esq.
Environmental Defense Fund
1875 Connecticut Avenue, N.W.
Washington, D.C. 20009
mpanfil@edf.org

Heather Langeland, Esq.
Environmental Defense Fund
200 First Avenue, Suite 200
Pittsburgh, PA 15222
langeland@pennfuture.org

Joseph Otis Minott, Esq.
Ernest Logan Welde, Esq.
Clean Air Council
135 S. 19th street, Suite 300
Philadelphia, PA 19103
joe_minott@cleanair.org
lwelde@cleanair.org



Adeolu A. Bakare
Counsel to the Philadelphia Industrial and
Commercial Gas Users Group

Dated this 13th day of November, 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 :

**MAIN BRIEF OF THE
PHILADELPHIA INDUSTRIAL AND
COMMERCIAL GAS USERS GROUP**

Aria Health
Einstein Healthcare Network
Magee Rehabilitation Hospital
Thomas Jefferson University
Thomas Jefferson University Hospitals, Inc.
Philadelphia College of Osteopathic Medicine

Charis Mincavage (Pa. I.D. 82039)
Adeolu A. Bakare (Pa. I.D. 208541)
Elizabeth Trinkle (Pa. I.D. 313763)
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
Phone: (717) 232-8000
Fax: (717) 237-5300
cmincavage@mwn.com
abakare@mwn.com
etrinkle@mwn.com

Counsel to the Philadelphia Industrial and
Commercial Gas Users Group

Dated: November 13, 2015

Table of Contents

	Page
I. INTRODUCTION AND STATEMENT OF THE CASE.....	1
II. PROCEDURAL HISTORY.....	2
III. BURDEN OF PROOF	3
IV. WAIVER OF 5% LIMITATION AND AUTHORIZATION FOR HIGHER MAXIMUM ALLOWABLE DSIC.....	3
A. Summary of Briefing Party's Position	3
B. Standard for Granting the Waiver.....	4
1. The Commission's review of PGW's Petition should weigh the unique impacts of PGW's cash-flow based DSIC on ratepayers.	5
2. PGW's claims that non-ratepayer revenues sources are irrelevant to its Petition must be dismissed.....	6
C. Has PGW Met the Standard for Waiver of 5% DSIC Cap?	8
1. The Petition fails to reasonably consider parallel recommendations in the Staff Report.	8
a) PGW has not credibly pursued the Staff Report recommendation to reduce cash-on-hand by 25%.	9
b) PGW has not initiated bona fide efforts to obtain waiver of the \$18 million annual payment to the City.	11
D. 7.5% Cap for DSIC Expenditures.....	13
E. 10% Cap for Reconciliation.....	13
V. WAIVERS TO PERMIT LEVELIZATION AND ANNUALIZATION OF DSIC-ELIGIBLE COSTS.....	14
VI. CONCLUSION.....	14
APPENDIX A - PROPOSED FINDINGS OF FACT	
APPENDIX B - PROPOSED CONCLUSIONS OF LAW	

I. INTRODUCTION AND STATEMENT OF THE CASE

On September 1, 2015, Philadelphia Gas Works ("PGW" or "Company") filed a 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"). The Petition reviews PGW's current and projected replacement rates for cast iron gas mains and certain findings from the Pennsylvania Public Utility Commission's ("PUC" or "Commission") April 21, 2015, *Inquiry into Philadelphia Gas Works' Pipeline Replacement Program* ("Staff Report").

In an attempt to accelerate its current pipeline replacement rate, PGW developed numerous DSIC modifications and outlined its proposals in the Petition. Specifically, the Petition requests: (1) a waiver of the current cap limiting DSIC collections to 5% of billed distribution revenues and approval of a new 7.5% cap; (2) a further waiver of the cap limit as necessary to approve a separate 2.5% cap on reconciliation adjustments, (3) a waiver to permit PGW to use an annual, levelized charge as the basis for establishing a DSIC; (4) a waiver of the statutory requirement to pay interest on DSIC over-collections; and (5) a waiver of the PUC's Regulations as necessary to authorize the filing, on one day's notice, of a revised Long-Term Infrastructure Improvement Plan ("LTIIIP").

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 from \$22 million to \$33 million, which equates to an increase of \$11 million.

The Philadelphia Industrial and Commercial Gas Users Group ("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, regulations, and

Commission Orders, as well as ensuring that these changes are just, reasonable, and non-discriminatory. As set forth below, PICGUG submits that PGW has failed to meet the standard for approval of the requested waivers. Accordingly, PICGUG requests that the Commission deny the Petition.

II. PROCEDURAL HISTORY

On September 17, 2015, the Office of Consumer Advocate ("OCA") filed a Notice of Intervention, Public Statement, an Answer and a formal Complaint. The Bureau of Investigation and Enforcement ("I&E") filed an Answer to PGW's Petition on September 18, 2015. On September 21, 2015, PICGUG filed an Answer in this proceeding. A description of PICGUG is set forth in PICGUG's Answer. PICGUG Answer, p. 2. The Office of Small Business Advocate ("OSBA") also filed an Answer, Verification, Public Statement, Notice of Appearance, and Notice of Intervention on September 21, 2015.

On October 2, 2015, Administrative Law Judges ("ALJs") Christopher P. Pell and Marta Guhl presided over a Prehearing Conference at which PGW, PICGUG, OCA, OSBA, and I&E consented to a litigation schedule for discovery, testimony, hearings, and briefs.

On October 13, 2015, the Environmental Defense Fund ("EDF") filed a Petition to Intervene. The Clean Air Council ("CAC") filed a Petition to Intervene on November 2, 2015.

Pursuant to the procedural schedule, OCA, OSBA, I&E, and EDF submitted Direct Testimony on October 19, 2015.¹ PGW submitted Rebuttal Testimony on October 29, 2015. OCA and OSBA submitted Surrebuttal Testimony on November 3, 2015.

ALJs Pell and Guhl presided over evidentiary hearings on November 5, 2015. Following evidentiary hearings the ALJs issued a Briefing Order on November 6, 2015.

¹ I&E filed a Motion to Strike the Direct Testimony submitted by EDF on October 26, 2015. On October 30, 2015, the ALJs issued an Order granting I&E's Motion to Strike.

Pursuant to the procedural schedule established at the Prehearing Conference and the Briefing Order issued on November 6, 2015, PICGUG hereby submits this Main Brief in the above-captioned proceeding.

III. BURDEN OF PROOF

Section 332(a) of the Public Utility Code, 66 Pa. C.S. § 332(a), provides that the proponent of a rule or order has the burden of proof. As the proponent of a rule or order, in this instance an order seeking a change in the Company's DSIC, PGW bears the burden of proof in this proceeding and, therefore, the duty to establish facts by a "preponderance of the evidence." *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950); *Samuel J. Lansberry, Inc. v. Pa. P. U. C.*, 578 A.2d 600 (Pa. Cmwlth. 1990). Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. 2 Pa. C.S. §704; *Mill v. Pa. P. U. C.*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transportation Corp. v. Pa. P.U.C.*, 623 A.2d 6 (Pa. Cmwlth. 1993). More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk and Western Ry. v. Pa. P. U. C.*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Commonwealth, Dept. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

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

A. Summary of Briefing Party's Position

PICGUG opposes PGW's request for waiver of the 5% DSIC cap, as PGW has not met the Commission's standard for waiving the cap. Before the Commission considers increasing PGW's current 5% DSIC cap, the Commission should consider the unique operation of PGW's DSIC, as PGW's DSIC is the only one in Pennsylvania operating on a cash flow basis, which

allows PGW to recover DSIC revenues in perpetuity, without compound escalation towards the statutory cap. In addition, while PGW's claims regarding the need to increase the timing for replacement of pipeline are understandable, PGW's failure to pursue non-ratepayer revenue sources, as identified in the Staff Report, remains a continuing source of frustration, as ratepayers cannot be the only source of relief for PGW's economic woes. Further, with regard to PGW's extraordinary request to increase the cap by an additional 2.5% to allow for separate recovery of reconciliation expenses, PGW has not offered any credible justification for waiver of the Act 11 provisions applicable to every other public utility utilizing a DSIC in Pennsylvania.

B. Standard for Granting the Waiver

Act 11 and the Commission's Final Implementation Order established the standard for waiver of a DSIC.² Act 11 provides the Commission with discretionary authority to grant a waiver of the 5% DSIC cap "in order to ensure and maintain adequate, efficient, safe, reliable and reasonable service." 66 Pa. CS § 1358(a). The Final Implementation Order further added that the Commission may grant a waiver when "*necessary* to ensure and maintain adequate, efficient, safe, reliable and reasonable service." Final Implementation Order, p. 41 (*emphasis added*). The unique characteristics of PGW's cash-flow based DSIC merit consideration of additional revenue sources as relevant to PGW's request for waiver of the 5% DSIC cap. The Commission should dismiss PGW's arguments to the contrary and consider such revenue sources as relevant to its review of PGW's Petition.

² The Commission entered its Final Implementation Order setting forth guidelines for implementing Act 11 on August 2, 2012. *Implementation of Act 11 of 2012*, Docket No. M-2012-2296311, Final Implementation Order (August 2, 2012) ("Final Implementation Order").

1. *The Commission's review of PGW's Petition should weigh the unique impacts of PGW's cash-flow based DSIC on ratepayers.*

In weighing whether PGW's request is "necessary," the Commission should consider the unique cost recovery structure of PGW's current cash-flow based DSIC under Act 11.³ As appropriately described by OCA Witness Ashley Everette, PGW's requested waivers constitute "major modifications" to Act 11. OCA Statement No. 1S, p. 7. Considering Act 11 already contains several provisions specifically designed to optimize PGW's DSIC through mechanisms not available to other Investor-Owned Utilities ("IOUs"), such further modifications seem unnecessary.

Most notably, PGW is the only utility permitted to recover DSIC-eligible investments on a cash flow basis. As described by Ms. Everette, "[a] typical utility regulated by the Commission has a rate base (PGW does not) and as such, its DSIC-eligible costs accumulate each quarter, creating a higher DSIC rate each quarter until the utility reaches the statutory cap or the utility files a base rate case, at which time DISC-eligible plant is rolled into base rates." OCA Statement No. 1, p. 13. Essentially, IOUs have a built-in sunset mechanism as the compound ROR recovered through the DSIC will inevitably drive the DSIC towards the 5% cap, thereby incentivizing an IOU to file a base rate case in order to zero-out the DSIC. *See id.* In the case of PGW, the Company can continue to collect the same quarterly DSIC revenues in perpetuity without any cumulative impacts or incentives towards submission of a base rate case.

As further described by Ms. Everette, PGW is also exempt from the earnings cap on total revenues applicable to IOUs administering a DSIC. *Id.* at 7. Instead, the Commission assesses

³ The Commission should also consider the general impact on ratepayers of increasing DSIC revenues by 50%. Changing the 5% DSIC cap to 7.5% would increase PGW's annual DSIC revenues by 50%, from \$22 million to \$33 million. This increase does not include the additional revenue that could be collected if the Commission approves the request to add an additional 2.5% cap for reconciliation expenses. *See* OCA Statement No. 1, p. 4.

whether PGW's DSIC should be reset to zero in any given quarter based on its review of PGW's rates and financial conditions, including internally generated funds. *Id.* at 7.

Due to the discretionary standard established for waiver of the statutory 5% DSIC and the unique operation of PGW's cash-flow based DSIC, "[i]t is entirely consistent with Commission policy and Orders, thus, for other sources of funding to be considered before charging ratepayers a 7.5% DSIC." *Id.* In other words, as part of the "necessity" determination, the PUC should examine whether PGW has pursued other sources of funding.

2. *PGW's claims that non-ratepayer revenues sources are irrelevant to its Petition must be dismissed.*

PGW incorrectly claims that sources of non-ratepayer revenue bear no relevance to the Petition. The Company avers that the Commission should consider only whether the additional revenue will accelerate its rate of pipeline replacement. With regard to non-ratepayer revenues, PGW argues that such considerations would constitute single-issue ratemaking. Both claims lack merit and must be dismissed.

PGW posits that the Company need only show that increased DSIC funding will accelerate the Company's pipeline replacement rates. *See* Petition, p. 14; *see also* PGW Statement No. 3-R, p. 3. Under such a standard, PGW's request would be a *fait accompli*, as virtually any increase in funding could easily be shown to accelerate infrastructural improvements. In this instance, however, the Commission's Final Implementation Order requires a utility to produce evidence showing the requested waiver to be necessary. Final Implementation Order, p. 41. Put another way, the Implementation Order clarifies that the authority given to the Commission to increase the 5% DSIC cap does not entitle public utilities to a waiver of the 5% cap as a matter of course, but only where circumstances adduced by the utility necessitate departure from the otherwise applicable 5% cap. *See id.*

PGW also argues that consideration of the non-ratepayer revenue sources outlined in the Staff Report would amount to single-issue ratemaking, in purported violation of Act 11 provisions allegedly barring the Commission from considering any matter previously addressed as part of a base rate case as relevant to PGW's proposed waivers. *See* PGW Statement No. 3-R, p. 3. First, PGW's last base rate case resulted in a comprehensive settlement, identifying the Company's Other Post-Employment Benefits obligation as the only specific line item approved for cost recovery. *See Pennsylvania Public Utility Comm'n v. Philadelphia Gas Works*, Opinion and Order, Docket No. P-2009-2139884 (July 29, 2010), p. 9. Accordingly, the non-ratepayer revenue sources identified in the Staff Report do not constitute matters addressed in PGW's most recent base rate case.

Even assuming, *arguendo*, that the non-ratepayer revenue sources implicate matters addressed in PGW's last base rate case, the argument still fails because PGW misrepresents the applicability of the referenced provision in the Final Implementation Order. The Final Implementation Order addressed whether parties could raise matters determined in a prior base proceeding specifically in response to a utility's submission of an initial DSIC pursuant to Section 1355 of the Public Utility Code. *See* Final Implementation Order, p. 28; *see also* 66 Pa. C.S. § 1355. Because this Section 1355 concerns only the initial DSIC filing, this language does not limit the Commission's discretionary authority to consider petitions for waiver of the statutory 5% cap pursuant to Section 1358(a)(1).

Accordingly, consistent with Act 11 and the Commission's Final Implementation Order, PGW must show that the requested waivers are necessary to "ensure and maintain adequate, efficient, safe, reliable and reasonable service." 66 Pa. C.S. § 1355. Contrary to the Company's flawed arguments, the Public Utility Code does not prohibit the Commission from requiring

PGW to explore other opportunities to generate revenue before granting a discretionary waiver of the statutory DSIC cap.

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

PGW has not met the standard for waiver of the 5% DSIC Cap. As set forth in the Implementation Order, PGW must show that waiver of the 5% DSIC Cap is "necessary to ensure and maintain adequate, efficient, safe, reliable and reasonable service." Implementation Order, p. 41. In assessing whether the requested waiver is necessary, the Commission should note the Staff Report prepared by I&E, the Bureau of Technical Utility Services ("TUS"), and the Bureau of Audits. *See* Staff Report, p. 3. As part of that Report, the Staff outlines the numerous means PGW can pursue in order to fund additional pipeline replacement, and several of those suggestions include non-ratepayer revenue funding. *See id.* at 4-7. Accordingly, the Commission should deny approval of the Petition as unnecessary until PGW demonstrates that it has meaningfully explored the non-ratepayer revenues sources cited in the Staff Report.

1. The Petition fails to reasonably consider parallel recommendations in the Staff Report.

PGW's DSIC Petition relies heavily on the Commission's Staff Report to support the requested waivers, but the Company fails to give reasonable consideration to the totality of recommendations set forth in the Staff Report. In framing the justification for the requested waivers, PGW states that "[m]ost importantly, the Staff of the PUC issued a Report on PGW's main replacement efforts...which strongly recommended that PGW consider steps, such as increasing the current DSIC cap above its current 5% level and levelizing its DSIC charge." Petition, p. 2. Notably, increasing the DSIC cap above the current 5% level would increase rates paid by ratepayers; however, the Staff Report also recommended additional measures to produce additional revenue for PGW without resorting to rate increases. *See* Staff Report, pp. 4-7.

More significantly, the Staff Report indicated that PGW could generate significant revenue for infrastructural improvements by: (1) reducing its cash-on-hand from \$100 million to \$75 million; and/or (2) requesting that the City of Philadelphia ("City") waive all or a portion of the \$18 million payment remitted annually from PGW to the City.⁴ *See* Staff Report, pp. 4-7; *see also* OSBA Statement No. 1, p. 9; OCA Statement No. 1, pp. 10-11.

As discussed more fully in Sections VI(C)1(a) and 1(b), *infra*, PICGUG submits that PGW's Petition fails to show reasonable consideration of two of the most important recommendations set forth in the Staff Report that would generate significant revenue to fund pipeline replacement while also alleviating some burden from ratepayers. Without due consideration of such non-ratepayer revenue sources, the requested waiver cannot be deemed necessary. Accordingly, PGW's request for waiver of the 5% DSIC cap should be denied.

a) *PGW has not credibly pursued the Staff Report recommendation to reduce cash-on-hand by 25%.*

As part of the Staff Report, the Staff recommends that PGW reduce its cash-on-hand from \$100 to \$75 million, thereby freeing up \$25 million that could be utilized to fund pipeline replacement. In this proceeding, evidence was presented that PGW has failed to adequately investigate the viability of this recommendation. Unless and until PGW presents evidence that its cash-on-hand cannot be reduced by \$25 million, that \$25 million should be considered an offset to any request to increase PGW's DSIC.

⁴ By way of clarification, the Staff Report also recommended that PGW: (1) commence efforts to save \$800,000 or more annually by streamlining its corporate governance structure; (2) investigate initial studies showing that the Company could save up to \$5 million annually by consolidating certain real estate holding; and (3) increase its debt ratio from the 56% to 70%. While certainly worthy of consideration, the recommendations to streamline corporate governance and consolidate real estate holdings are distinct from the recommendations to reduce cash-on-hand and request a waiver of the \$18 million annual payment in that the former would likely require more long-term investigations. *See* Staff Report, p. 7. Similarly, the recommendation to increase PGW's debt ratio cannot be considered as a non-ratepayer source of revenue because the Staff Report qualified the benefits of this recommendation as entirely contingent upon an increase to the 5% DSIC cap. *Id.* at 50.

According to PGW, the recommendation to reduce the Company's cash-on-hand must be ignored because rating agencies have suggested that PGW should actually raise its year end cash balance goals to \$125 million or more. *See* Petition, p. 13 note 31. This statement misleadingly suggests that one or more rating agencies have conducted a specific analysis of PGW's financial situation. To the contrary, the only evidence produced by PGW to support this statement was a US Public Power Rating Criteria report prepared by FitchRatings ("Public Power Report").⁵ Transcript (hereinafter, "Tr.") at 87 (confirming that PGW produced no further documentation from any rating agency other than the Public Power Report). As indicated by the title, the Public Power Report is a sector-specific analysis of the credit quality of municipal and cooperative power entities. *See id.* at 82-83; *see also* PGW Statement No. 3-R, Exhibit JFG-1, p. 1. Further, to the extent deemed applicable to natural gas operations, the Public Power Report provides general industry guidelines, not specific recommendations for any individual entity. *See* Tr. at 83-84. As such, PGW's representation that "the report has *made clear* that... PGW needs to have at least 60-90 days of cash-on-hand at fiscal year-end" is misleading and unsupported.⁶ PGW Statement No. 3-R, p. 5 (*emphasis added*).

The possibility of PGW pursuing a means by which to keep less cash on hand remains viable and would provide another avenue for funding pipeline replacement. More importantly, this revenue would ensure that ratepayers do not carry the sole burden of the costs associated

⁵ During cross-examination, PGW Witness Joseph F. Golden, Jr. testified as to his impressions of the relevance of the Public Power Report to PGW's credit quality stating that "I think it was indicative of our discussions we had with the three rating agencies when we went for our rating on our recent bond sale in August, and the three rating agencies thought that strength of cash is very important." Tr. at 87. Following an oral motion to strike on grounds of hearsay by counsel for PICGUG, the ALJs overruled the motion only after counsel for PGW clarified that the statement was not offered "for truth of the Statement that the rating agencies believe that" but only as an indication of Mr. Golden's basis for his belief. Tr. at 90.

⁶ For example, the Public Power Report also confirms that "[l]ess than 60 days cash indicates less financial flexibility, but can be adequate if a utility is subject to less cash flow volatility." Public Power Report, p. 9. Ironically, the Public Power Report identifies automatic rate adjustments, such as the DSIC, as a favorable indicator of financial stability. *Id.* at 6.

with pipeline replacement. For the reasons described above, the Commission should deny the request for waiver of the 5% cap as unnecessary due to PGW's failure to earnestly consider the Staff Report's recommendation to reduce cash-on-hand.

b) PGW has not initiated bona fide efforts to obtain waiver of the \$18 million annual payment to the City.

Another of the Staff's Recommendations focused on the \$18 million annual payment made by PGW to the City. Despite Staff's recommendation, PGW has declined to vigorously seek a waiver of the Company's annual payment to the City and ironically cites the City's endorsement of PGW's proposal to recover additional DSIC revenue from ratepayers. *See* Petition, p. 2 (affirming that "Philadelphia City Council recently suggested that PGW consider speeding up the pace of cast iron main removal by increasing its DSIC charge to 7.5%"). In light of the fact that PGW has failed to pursue the possibility of this revenue stream, the PUC should deny PGW's request to increase its DSIC as PGW has not show the increase to be "necessary." *See* Final Implementation Order, p. 41.

In response to testimony from the OCA recommending that the Commission deny approval of any DSIC waivers until PGW addresses the non-ratepayer recommendations in the Staff Report, PGW initially dismissed the recommendation to seek a waiver of the \$18 million payment as "pointless." PGW Statement No. 3-R, p. 10. PGW based this conclusion solely on its assertion that the Company lacks the ability or authority to require waiver of the \$18 million payment. *Id.* PGW appeared to reconsider the reasonableness of its initial position at the evidentiary hearings held on November 5, 2015. Upon cross-examination, PGW Witness Joseph F. Golden recounted his prior statement, but disclosed the following:

I did mention that in this testimony; however, I did take the liberty of contacting a Deputy Director of Finance yesterday afternoon in anticipation of this hearing and posed the question, would the \$18 million be something they would consider

granting back to PGW. And their response was that it would not be something they would do through the term of this Administration.

Tr. at 85. Notably, Mr. Golden's "contact" consisted of one telephone call to a single city Deputy Director.⁷ *See id.* As could be expected of an informal and unsubstantiated request, the City did not respond favorably or elaborate as to whether even a partial release from the payment could be considered. *See id.*

PICGUG submits that PGW's efforts fail the reasonableness test. PGW cannot expect the City to seriously consider waiving the \$18 million payment without presenting a detailed proposal for Council's consideration, which Mr. Golden confirmed was not done. *See* Tr. at 86. Moreover, considering that PGW is requesting an \$11 million rate increase from ratepayers, serious consideration should be given regarding whether at least a portion, if not all, of this burden could also be shouldered by the City. For these reasons, PGW should be directed to present a formal written request to Council, complete with supporting testimony and analysis for Council's review.

Finally, PGW's claim that the Commission lacks authority to direct such action remains unsupported. Contrary to written testimony offered by Mr. Golden, Section 2212(f) of the Public Utility Code prohibits the Commission from directing PGW to cease payment of the \$18 million and authorizes the Commission to review and approve only payments exceeding 110% of the \$18 million. 66 Pa. C.S. § 2212(f). This provision, however, does not disturb the Commission's

⁷ Mr. Golden also averred that the issue of waiving the \$18 million payment was discussed in prior meetings with the Philadelphia Facilities Management Corporation Board, noting only that "those conversations do come up in our budget process when they approve our budget." *See* Tr. at 92. Such generalized "conversations" should not be considered relevant to the question of whether PGW has formally prepared a request to waive the \$18 million annual payment before seeking Commission authority to recover an additional \$11 million or more in ratepayer revenue through waivers of Act 11.

authority to direct PGW to formally inquire as to Council's willingness to voluntarily waive collection of the \$18 million.⁸

For the reasons stated above, the Commission should protect the interests of PGW's ratepayers and require that PGW thoroughly investigate the opportunity to generate additional revenue from a waiver of the \$18 million annual payment to the City. Absent evidence that PGW has presented a formal request for waiver of the payment for consideration by the City, the Commission should deny PGW's request to waive the statutory 5% DSIC cap as unnecessary.

D. 7.5% Cap for DSIC Expenditures

The arguments set forth in Section IV.C., *supra*, are herein incorporated by reference. As PGW has failed to meet the standard for waiver of the 5% DSIC, the Commission must deny the Company's request to increase the DSIC cap to 7.5%

E. 10% Cap for Reconciliation

The arguments set forth in Section IV.C., *supra*, are herein incorporated by reference. Additionally, PICGUG avers that PGW has failed to adduce circumstances justifying preferential treatment with regard to reconciliation expenses. As described by OCA Witness Ashley Everette, "[u]nlike other proposals by PGW that are directly and narrowly tied to its unique situation, all utilities are subject to reconciliation of their DSIC recovery." OCA Statement No. 1, p. 16. Accordingly, PGW's request for an additional 2.5% increase to the DSIC cap for reconciliation expenses should be particularly inappropriate and unnecessary. *See id.* at 17. As

⁸ PGW also suggests that the Supreme Court of Pennsylvania's decision in *Public Advocate v. Philadelphia Gas Commission*, 674 A.2d 1056, 1062 (Pa. 1996) [hereinafter "*Public Advocate*"] renders any request for waiver of the \$18 million payment "inappropriate policy" on grounds that the Court determined that the payment is a justified return for the City's ownership of PGW. *See* PGW Statement No. 2, p. 11 (citing to *Public Advocate* as 654 A.2d 1156, although the intended cite appears to be 674 A.2d 1056). The Court in *Public Advocate*, however, found only that the City's collection of the payment passed constitutional muster. *See Public Advocate* at 1062. Further, at evidentiary hearings, PGW Witness Joseph F. Golden conceded that he would not object to a waiver of the \$18 million payment if granted by the City, contracting the prior statement that waiver of the \$18 million payment would be inappropriate. *See* Tr. at 93.

PGW has failed to meet the standard for waiver of the 5% DSIC, the Commission must deny the Company's request to increase the DSIC cap by an additional 2.5%.

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

PICGUG has no position on this issue.⁹

VI. **CONCLUSION**

WHEREFORE, the Philadelphia Industrial and Commercial Gas Users Group respectfully requests that the Pennsylvania Public Utility Commission:

- (1) deny the Petition for Waiver of Act 11 filed by PGW; and
- (2) take any additional action deemed necessary and consistent with this Main Brief.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By 

Charis Mincavage (Pa. I.D. 82039)
Adeolu A. Bakare (Pa. I.D. 208541)
Elizabeth Trinkle (Pa. I.D. 313763)
100 Pine Street
P. O. Box 1166
Harrisburg, PA 17108-1166
Phone: (717) 232-8000
Fax: (717) 237-5300
cmincavage@mwn.com
abakare@mwn.com
etrinkle@mwn.com

Counsel to the Philadelphia Industrial and Commercial Gas Users Group

Dated: November 13, 2015

⁹ PICGUG silence on this issue should not be taken as support for PGW's requested waiver.

APPENDIX A

PROPOSED FINDINGS OF FACT

1. Increasing the statutory cap on PGW's Distribution System Improvement Charge ("DSIC") from 5% to 7.5% would increase the annual DSIC revenues recovered from ratepayers from \$22 million to \$33 million, or an increase of \$11 million. *See* PGW Statement No. 1, p. 5.
2. PGW recovers DSIC charges from customers on Rates General Service ("GS") Residential, GS Commercial, GS Industrial, Municipal Service ("MS"), and Philadelphia Housing Authority ("PHA"). *See* Petition, Attachment B.
3. PGW does not recover DSIC charges from Interruptible Transportation customers. *See* Petition, Attachment B.
4. The Pennsylvania Public Utility Commission's ("PUC" or "Commission") issued the *Inquiry into Philadelphia Gas Works' Pipeline Replacement Program* ("Staff Report") on April 21, 2015. *See* PGW Statement No. 2, p. 5.
5. The Staff Report recommended that PGW, *inter alia*; (1) seek a waiver of the 5% DSIC cap; (2) reduce its cash-on-hand from \$100 million to \$75 million and invest the \$25 million differential in pipeline replacement; and (3) request that the City of Philadelphia ("City") waive all or a portion of the \$18 million payment remitted annually to the City. *See* Staff Report, pp. 4-7.
6. PGW has not provided documentary evidence showing that any credit rating agency specifically recommended that PGW maintain more than 60 days cash-on-hand. *Tr.* at 82-83, 87.
7. PGW provided a FitchRatings US Public Power Rating Criteria report showing general credit guidelines for municipal and cooperative public power guidelines. *See Tr.* at 82-83; *see also* PGW Statement No. 3-R, Exhibit JFG-1, p. 1
8. PGW has not submitted a formal request to the City of Philadelphia requesting a waiver of the annual \$ 18 million payment. *Tr.* at 85, 92.

APPENDIX B

PROPOSED CONCLUSIONS OF LAW

1. Act 11 authorizes the Commission to, at its discretion, grant a waiver of the 5% DSIC "in order to ensure and maintain adequate, efficient, safe, reliable and reasonable service." 66 Pa. CS § 1358(a).
2. The Commission has determined that waivers of the 5% gap may be granted where "necessary to ensure and maintain adequate, efficient, safe, reliable and reasonable service." *Implementation of Act 11 of 2012*, Docket No. M-2012-2296311, Final Implementation Order (August 2, 2012), p. 41.
3. PGW bears the burden of proof of showing that the requested waivers of Act 11 are necessary pursuant to Act 11 and the Final Implementation Order. *See* 66 Pa. C.S. § 332(a).
4. Section 1355 of the Public Utility Code, regarding the procedures for approval of an initial DSIC filing, do not limit the scope of issues properly considered by the Commission in reviewing a request for waiver of the 5% DSIC cap pursuant to Section 1358(a)(1) of the Public Utility Code. *See* Final Implementation Order, p. 28; *see also* 66 Pa. C.S. §§ 1355, 1358(a)(1).
5. Section 2212(f) prohibits the Commission from directing PGW to cease remitting the \$18 million annual payment to the City of Philadelphia, but does not prohibit the Commission from directing PGW to formally petition the City for a voluntary waiver of the payment. *See* 66 Pa. C.S. § 2212(f).