

Environmental Defense Fund
128 Winding Brook Lane
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November 17, 2015

Secretary Rosemary Chiavetta
Pennsylvania Public Utility Commission
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17015-3265

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:

Enclosed, please find an original copy of Environmental Defense Fund's Reply Brief in the above-captioned matter.

Copies are being served in accordance with the attached Certificate of Service.

Sincerely,

/s/ John Finnigan

John Finnigan

cc: All Counsel of Record (w/ encl.)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**REPLY BRIEF OF
ENVIRONMENTAL DEFENSE FUND**

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

Philadelphia Gas Works (PGW), the Bureau of Investigation and Enforcement (I&E) and Environmental Defense Fund (EDF) support PGW's request for a waiver of the 5% cap on the Distribution System Improvement Charge (DISC). The Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA) and the Philadelphia Industrial and Commercial Gas Users Group (PICGUG) oppose PGW's waiver request.

No one disputes these basic facts: PGW has a large percentage of at-risk pipe; the pipe is a public safety hazard and a major source of greenhouse gas emissions; and PGW needs to accelerate its replacement rate in the interests of public safety, customers and the environment. The primary point of disagreement is whether PGW should fund this program by increasing the 5% DISC cap, or using other sources of funding, and whether PGW needs to file an amended long-term infrastructure improvement plan (LTIIP) before seeking the waiver.

PGW has met its burden of proof for a waiver of the 5% DISC cap, and has proven that the waiver will facilitate the provision of safe, adequate and reliable natural gas service. The parties opposing the waiver have not offered any reasonable arguments why PGW's waiver request should be rejected. The Commission should therefore approve PGW's waiver request.

OCA, OSBA and PICGUG all argue that PGW should fund the pipe replacement program from additional borrowing or from internal sources rather than an increased DSIC charge. These parties essentially argue that, if PGW could use other funding

sources to increase its replacement rate, then PGW's waiver request should be rejected.

This argument is patently unreasonable.

Section 1358(a)(1) of Act 11 states that:

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.

Thus, the standard for granting a waiver is simply that such waiver must facilitate the provision of "adequate, efficient, safe, reliable and reasonable" service by the utility.

On a plain reading, it is clear that Section 1358(a)(1) does not require that alternative mechanisms for raising revenues to ensure and maintain "adequate, safe..." service must be exhausted by a utility before seeking waiver of the 5% DSIC cap. Thus, the question of whether PGW has exhausted all available alternatives for increasing revenues for the much needed acceleration of its mains replacement program is irrelevant in determining whether PGW has met the legal standard for waiver of the 5% DSIC cap, and whether its request to raise the cap to 7.5% must be granted by the Commission. Therefore, arguments to the effect that PGW could borrow additional funds or adjust its budget to devote some additional internal funding for its pipeline replacement program must be disregarded by the Commission in determining whether to grant its request for a waiver of the 5% DSIC cap

In any case, no credible evidence has been presented to support the argument that PGW could use other sources for the significant additional funding it needs to accelerate its pipeline replacement program. As testified by PGW witness Mr. Golden, additional borrowing would impair PGW's financial condition and any available internal funding would not pay for a significant acceleration of PGW's pipeline replacement program.

OCA argues that the Commission is not authorized to grant the waiver request until PGW has filed an amended LTIP. OCA correctly points out that, under 66 Pa. Code § 1352(a)(6), PGW must file an LTIP. But OCA incorrectly argues that the law requires PGW to file an amended LTIP if it seeks to increase the DSIC cap. The statute does not require this. The statute simply requires a utility to file an LTIP to become eligible for a DSIC charge, and further requires that the Commission must review the LTIP at least once every five years. When the Legislature made provision for utilities to obtain a waiver from the DSIC cap, it could have required that utilities file an amended LTIP. But the Legislature chose not to do so. OCA should not be permitted to graft onto the statute this additional requirement of an amended LTIP, which the Legislature chose not to require.

Further, PGW has committed to filing an amended LTIP upon a Commission ruling approving PGW's waiver request. This is the most reasonable way forward. The Commission's ruling will determine a number of substantive issues (*e.g.*, increase in DSIC cap, annualization and levelization of DSIC charge) that will have a bearing on PGW's plans to accelerate its mains replacement program. In other words, the LTIP must be informed by the Commission's ruling. It would therefore have been unreasonable for the Company to file an amended LTIP in advance of such a ruling. OCA's argument that the Commission should reject PGW's waiver request because it failed to file an amended LTIP is formalistic, and fails to consider the substantive benefits to be gained from PGW filing an amended LTIP after a ruling by the Commission in the current proceeding. OCA's objection is therefore unreasonable and should be overruled.

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

PGW, I&E and EDF support PGW's request for a waiver to permit levelization and annualization of the DSIC charge. PICGUG takes no position on this issue. OSBA opposes this waiver request on the ground that the Commission rejected a similar request by PGW related to its existing DSIC charge. OCA opposes this request unless the Commission requires PGW to segregate the DSIC revenues and to update the DSIC charges quarterly and to provide an increased emphasis on budget billing. The arguments against the waiver are without merit, as demonstrated below.

OSBA correctly points out that the Commission denied PGW's request to annualize and levelize its DSIC revenues related to PGW's current DSIC charge. But OSBA failed to point out that the Commission stated that PGW could renew this request in a future proceeding. In fact, as pointed out in PGW's main brief, the Commission Staff has recommended that PGW seek a waiver to levelize and annualize its revenues in connection with PGW's request to implement a 7.5% DSIC charge.

As pointed out by PGW in its main brief, Act 11 does not contain a legal standard for granting a waiver to levelize and annualize the DSIC charge; therefore, the applicable standard is whether the waiver request is just and reasonable. A waiver would not increase the absolute amount customers would pay, but rather would smooth out PGW's collection of the revenues to ensure that it has a consistent level of cash flow to pay for the accelerated program. Moreover, this would benefit customers by avoiding higher DSIC charges during the winter months when customer bills are already at their highest level due to increased gas usage. The resulting predictability in bills will be most

beneficial for PGW's low income customers, who would otherwise suffer large, unpredictable seasonal fluctuations in monthly bills.

Finally, OCA identifies certain requirements that the Commission should impose on PGW as a condition of granting PGW's request for a waiver to levelize and annualize the DSIC revenues. The OCA requirements are unreasonable. PGW, in its original proposal and in its stipulation with I&E, agreed to certain conditions for levelizing and annualizing these revenues. These conditions include: levelizing and annualizing the revenues for calendar year 2016; basing the levelization and annualization on forecasted DSIC expenses; making quarterly reports and adjustments; and continuing the current periodic audit and reconciliation process. These proposed conditions are reasonable and offer adequate protection for customers. PGW's request for a waiver to levelize and annualize the DSIC revenues is therefore reasonable and should be granted.

III. CONCLUSION

For all the reasons explained above, EDF respectfully requests that the Commission approve PGW's requests for waivers to increase the DSIC charge cap to 7.5% (and up to 10% for reconciliation purposes), and to levelize and annualize the DSIC charge.

Date: November 17, 2015

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CERTIFICATE OF SERVICE

I hereby certify that on November 17, 2015, I served a true copy of the foregoing document upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), via email and first class mail, upon the persons listed below:

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