



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE  
REFER TO OUR FILE

November 13, 2015

Secretary Rosemary Chiavetta  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Re: Pennsylvania Public Utility Commission v.  
Philadelphia Gas Works  
Docket No. P-2015-2501500

Dear Secretary Chiavetta:

Enclosed please find an original copy of the Bureau of Investigation and Enforcement's (I&E) **Main Brief**.

Copies are being served on all active parties of record, as well as EDF's counsel. If you have any questions, please contact me at (717) 787-8754.

Sincerely,

Gina L. Lauffer  
Prosecutor  
Bureau of Investigation and Enforcement  
PA Attorney I.D. #313863

Carrie B. Wright  
Prosecutor  
Bureau of Investigation and Enforcement  
PA Attorney I.D. #208185

CBW/GLL/sea  
Enclosure

cc: Certificate of Service  
ALJ Marta Guhl  
ALJ Christopher P. Pell

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>Pennsylvania Public Utility Commission</b>	:	
	:	
	:	<b>Docket No. P-2015-2501500</b>
<b>v.</b>	:	
	:	
<b>Philadelphia Gas Works</b>	:	

---

**MAIN BRIEF  
OF THE  
BUREAU OF INVESTIGATION AND ENFORCEMENT**

---

Carrie B. Wright  
Prosecutor  
Attorney ID #208185

Gina L. Lauffer  
Prosecutor  
Attorney ID # 313863

Pennsylvania Public Utility Commission  
Bureau of Investigation and Enforcement  
Post Office Box 3265  
Harrisburg, Pennsylvania 17105-3265  
(717) 787-1976

Dated: November 13, 2015

## TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	PROCEDURAL HISTORY.....	3
III.	BURDEN OF PROOF .....	5
IV.	WAIVER OF 5% LIMITATION AND AUTHORIZATION FOR HIGHER MAXIMUM ALLOWABLE DSIC .....	6
	<b>A. Summary of Briefing Party’s Position .....</b>	6
	<b>B. Standard for Granting the Waiver.....</b>	8
	<b>C. Has PGW Met Standard for Waiver of 5% Cap? .....</b>	8
	<b>1. Operator Qualifications and Staffing Plan.....</b>	11
	<b>D. 7.5% Cap for DSIC Expenditures .....</b>	16
	<b>1. Act 11 and Federal Requirements .....</b>	17
	<b>2. DIMP and LTIP Concerns .....</b>	18
	<b>E. 10% Cap for Reconciliation .....</b>	24
V.	WAIVERS TO PERMIT LEVELIZATION AND ANNUALIZATION OF DSIC-ELIGIBLE COSTS.....	28
	<b>A. Summary of Briefing Party’s Position .....</b>	28
	<b>B. Standard for Granting the Waiver.....</b>	29
	<b>C. Has PGW Satisfied the Standard for Granting Waiver     Permitting Annualization/Levelization?.....</b>	29
	<b>D. Implementation of the Levelization/Annualization Waiver.....</b>	32
VI.	CONCLUSION.....	33
	Appendix A .....	34
	Appendix B .....	38
	Appendix C .....	40

## TABLE OF CITATIONS

### Cases

<i>Pennsylvania Pub. Util. Comm'n v. PGW</i> , R-2008-2073938, 2009 WL 884424 (Mar. 26, 2009) .....	8, 30
<i>Petition of PPL Elec. Utilities Corp. for Approval of A Distribution Sys. Improvement Charge Ppl Elec. Utilities Corp</i> C-2013-2345729, 2015 WL 1754563, at *40 (Apr. 9, 2015) .....	8
<i>Samuel J. Lansberry, Inc. v. Pa. PUC</i> , 578 A.2d 600, 602 (Pa. Cmwlth. 1990).....	5
<i>Se-Ling Hosiery v. Margulies</i> , 70 A.2d 854 (Pa. 1950).....	6

### Statutes

66 Pa.C.S. §§ 101 .....	3
66 Pa.C.S. § 308.2 .....	2
66 Pa.C.S. § 308.2(a)(11).....	2
66 Pa.C.S. § 332(a).....	5
66 Pa.C.S. § 1352 .....	1, 17, 38
66 Pa.C.S. § 1356 .....	2, 18, 39
66 Pa.C.S.A. § 1356 .....	2
66 Pa.C.S. § 1357(a)(1)(ii).....	28
66 Pa.C.S. § 1357(a)(2).....	28
66 Pa.C.S. §§ 1358 and 2212(c).....	6
66 Pa.C.S. §§ 1358(a)(1).....	8, 25, 26, 38
66 Pa.C.S. § 1501 .....	1
66 Pa.C.S. § 2212(c).....	8, 28, 29, 38

**Regulations**

49 C.F.R. § 192.801 ..... 11, 12

49 C.F.R. § 192.1005 ..... 2

49 C.F.R. § 192.1007 ..... 2

52 Pa. Code §§1.1 ..... 3

52 Pa. Code §121.5 ..... 22

52 Pa. Code §123.5 ..... 22

## I. INTRODUCTION

On February 14, 2012, Governor Corbett signed into law Act 11 of 2012 (Act 11), which, in part, amends Chapters 13 of the Pennsylvania Public Utility (Code) to allow water and wastewater utilities, electric distribution companies (EDCs), and natural gas distribution companies (NGDCs) or a city natural gas distribution operation to petition for a distribution system improvement charge (DSIC).<sup>1</sup> An essential element of DSIC qualification is that DSIC recovery should accelerate infrastructure improvement, in some form.<sup>2</sup> Act 11 requires that all such infrastructure improvements must “performed by qualified employees or contractors in a manner that protects system reliability and safety of the public.”<sup>3</sup>

Additionally, Act 11 requires that as a precondition to the implementation of a DSIC, a utility must file a Long Term Infrastructure Improvement Plan (“LTIP”) for Commission approval.<sup>4</sup> The purpose of the LTIP requirement is to

[e]nsure[s] that the quarterly DSIC repairs, improvements, and replacements to eligible property are being made consistent with a LTIP that has carefully examined the utility’s current distribution infrastructure, including its elements, age, and performance and that also reflects reasonable and prudent planning of expenditures over the course of many years to replace and improve aging infrastructure in order to maintain the safe, adequate, and reliable service required by law.<sup>5</sup>

---

<sup>1</sup> Implementation of Act 11 of 2012, Final Implementation Order (M-2012-2293611) Entered on August 2, 2012, p. 1.

<sup>2</sup> Implementation of Act 11 of 2012, Final Implementation Order (M-2012-2293611) Entered on August 2, 2012, p. 24.

<sup>3</sup> Implementation of Act 11 of 2012, Tentative Order (M-2012-2293611) Entered on May 11, 2012, p. 6

<sup>4</sup> 66 Pa. C.S. §1352; Final Implementation of Act 11 of 2012, Final Implementation Order (M-2012-2293611) Entered on August 2, 2012, p. 11.

<sup>5</sup> Implementation of Act 11 of 2012, Final Implementation Order (M-2012-2293611) Entered on August 2, 2012, p. 11; 66 Pa. C.S. § 1501.

The Commission has also indicated that natural gas distribution companies, such as PGW, must incorporate into their LTIP an analysis that includes consideration of and consistency with their Distribution Integrity Management Program (“DIMP”) plans.<sup>6</sup>

The DIMP plan requirement, which originated in Federal Pipeline safety laws, requires all gas distribution operators to develop and implement a DIMP plan that addresses risk evaluation and ranking, performance measurement and monitoring, and periodic evaluation and improvement.<sup>7</sup>

Furthermore, a utility seeking DSIC recovery must file an annual Asset Optimization Plan (“AOP”) containing the following elements: (1) a description of all eligible property repaired, improved and replaced in the preceding 12 months and (2) a detailed description of all facilities to be improved in the upcoming 12 months.<sup>8</sup> The Commission has clarified that a utility seeking DSIC recovery is not required to file an AOP until its LTIP been submitted and approved by the Commission.

Act 129 of 2008, 66 Pa.C.S. § 308.2, authorized the Commission to establish bureaus, offices and positions to, *inter alia*, take appropriate enforcement actions that are necessary to insure compliance with the Public Utility Code and Commission regulations and orders. 66 Pa.C.S. § 308.2(a)(11). In accordance with Act 129, the Commission established the Bureau of Investigation and Enforcement (“I&E”) to serve as the prosecutory bureau for the purposes of representing the public interest in ratemaking and

---

<sup>6</sup> Implementation of Act 11 of 2012, Tentative Implementation Order (M-2012-2293611) Entered on May 11, 2012, p. 8-9.

<sup>7</sup> 49 C.F.R. § 192.1005; 49 C.F.R. § 192.1007.

<sup>8</sup> 66 Pa. CSA §1356.

service matters, and enforcing compliance with the Public Utility Code, 66 Pa.C.S. §§ 101 *et seq.*, and Commission regulations, 52 Pa. Code §§ 1.1 *et seq.* See *Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Order entered August 11, 2011). The instant proceeding implicates I&E's participation because its outcome will not only have an impact upon public safety, but it will also have a rate impact upon PGW's customers.

## II. PROCEDURAL HISTORY

On September 1, 2015, Philadelphia Gas Works ("PGW" or "Company") filed a Petition for Waiver of Provisions of Act 11 to Increase its DSIC cap and to Permit Levelization of DSIC Charges ("Petition"). This Petition, filed at Docket No. P-2015-2501500, serves as a PGW's request that the Commission: (1) waive the current DSIC cap of 5% of distribution revenues and approve a maximum allowed DSIC of 7.5% with a total 10% cap including any reconciliations; (2) waive or suspend the requirements of Act 11 of 2012 to permit PGW to use an annual, levelized charge as the basis for establishing a DSIC, subject to a true-up based on PGW's actual experience; (3) waive the requirements of Act 11 to exempt PGW from paying interest on DSIC over-collections, and (4) authorize the filing, on one day's notice, of a revised LTIP.

On September 18, 2015, I&E filed an Answer to PGW's Petition. Pursuant to a Prehearing Conference Order dated September 30, 2015, Administrative Law Judges Christopher P. Pell and Marta Guhl (collectively "ALJs"), were assigned to develop an evidentiary record and Recommended Decision in this proceeding. The ALJs conducted

a Prehearing Conference on October 2, 2015. Counsel for I&E attended the Prehearing Conference, and other active participants, included the Office of Consumer Advocate (“OCA”), the Office of Small Business Advocate (“OSBA”), and the Philadelphia Industrial and Commercial Gas Users Group (“PICGUG”) also attended. At the Prehearing Conference, a procedural schedule and the procedures applicable to this proceeding were set forth and subsequently memorialized in Prehearing Order #1. Later in the proceeding, the Environmental Defense Fund (“EDF”) and the Clean Air Council (“CAC”) petitioned for and were granted intervention on October 29, 2015 and November 4, 2015, respectively. After the Prehearing Conference, I&E, the OCA, the OSBA, and PICGUG engaged in a substantial amount of discovery and participated in settlement discussions.

In accordance with the procedural schedule outlined in Prehearing Order #1, the parties exchanged direct, rebuttal, surrebuttal, and rejoinder testimony. I&E introduced the following statements of testimony:

- I&E Statement No. 1, the Direct Testimony of Rachel Maurer, who addressed PGW’s requested waiver on its obligation to pay interest on overcollections;
  - I&E Statement No. 2, the Direct Testimony of Terri C. Cooper Smith, who addressed concerns related to PGW’s LTIP and DIMP;
- and

- I&E Statement No. 3, the Direct Testimony of Robert Horensky, who addressed the Operator Qualification Requirement and additional staffing requirements for PGW.

On November 4, 2015, I&E entered into a stipulation with PGW that fully resolved all of I&E's issues in this proceeding ("Stipulation"). On November 5, 2015, a full evidentiary hearing was held in Philadelphia. At the Hearing, the parties moved for the admission of evidence into the record. I&E entered the above-referenced testimony into the record.<sup>9</sup> Additionally, PGW and I&E jointly admitted their Stipulation into the record, which resolved all issues between the two parties.<sup>10</sup> Also, both orally during the hearing,<sup>11</sup> and through the rebuttal testimony of its witness, Kenneth S. Dybalski,<sup>12</sup> PGW agreed to withdraw its request to waive the requirements of Act 11 to exempt PGW from paying interest on DSIC over-collections.

### **III. BURDEN OF PROOF**

As the petitioner, PGW has the burden of proof in this proceeding to establish that it is entitled to the relief it is seeking.<sup>13</sup> In a case such as this one, pending before an administrative tribunal, Courts have held that a "litigant's burden of proof is satisfied by establishing a preponderance of evidence which is substantial and legally credible."<sup>14</sup> Therefore, to meet its burden of proof in this proceeding, PGW must "present evidence more convincing, by even the smallest amount, than that presented by any opposing

---

<sup>9</sup> Hearing Tr., p. 122.

<sup>10</sup> Hearing Tr., p. 124.

<sup>11</sup> Hearing Tr. P. 43, ln. 3-11.

<sup>12</sup> PGW St.2-R, p. 3, ln. 2-10.

<sup>13</sup> 66 Pa. C.S. § 332(a).

<sup>14</sup> *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

party.”<sup>15</sup> I&E submits that PGW has presented evidence that the requests made in its Petition, as modified in and now reflected in the Stipulation, is more convincing than the evidence offered by any other party opposing the requests<sup>16</sup> and therefore met its burden in this proceeding.

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

In its Petition, PGW seeks a waiver of the provisions of Act 11 to increase its DSIC Cap to 7.5% (not including reconciliation) so as to allow it to bill an annualized amount to customers that represents 7.5% of its distribution revenues. Pursuant to Act 11, PGW’s distribution system improvement charge may not exceed 5% of the amount billed to its customers under its distribution rates. However, the Commission may grant a waiver of the 5% limitation in this proceeding to ensure and maintain PGW’s adequate, efficient, safe, reliable and reasonable service, and PGW’s Petition seeks such an outcome.

##### **A. Summary of Briefing Party’s Position**

Subject to the terms of the Stipulation, I&E recommends the approval of PGW’s Petition for waiver of provisions of Act 11 to increase its DSIC cap to 7.5% (not including reconciliation). Accordingly, I&E recommends that the proposed waivers of portions of 66 Pa. C.S. §§ 1358 and 2212(c) should be granted.

I&E avers that increasing PGW’s DSIC to 7.5%, independent of reconciliation, is in the public interest because it will facilitate PGW’s replacement of dangerous cast iron

---

<sup>15</sup> *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

<sup>16</sup> EDF and CAC did not enter evidence in the proceeding.

mains in a more timely manner, ultimately promoting safe and effective service to PGW's customers. At the outset of this proceeding, I&E was concerned that PGW lacked an appropriate plan and had inadequate staffing to implement the cast iron main replacement for which DSIC funds can be used. Furthermore, I&E opposed PGW's request to waive its obligation under Act 11 to pay interest on its overcollections at the residential mortgage lending rate. I&E opposed this request because it could act as a disincentive for PGW to make accurate sales and cost estimations for DSIC purposes, it would lead to a failed recognition of the time value of ratepayers' money, and because, due to the uncertainty surrounding PGW's ability to complete its intended main replacement, the amount of overcollection could be substantial.

During the course of the proceeding, PGW acknowledged each of I&E's concerns. PGW subsequently withdrew its request to waive the Act 11 obligation to pay interest on overcollections. In addition, pursuant to the terms of the Stipulation, PGW has addressed and resolved all existing issues to I&E's satisfaction so as to enable I&E to opine that the requested waiver is in the public interest. As such, I&E recommends that PGW's request for a waiver of the DSIC cap be granted. I&E further recommends that PGW's request to set its DSIC cap, inclusive of reconciliation, at 10%, be granted. The increased DSIC cap will enable PGW to fully bill the amounts it intends to spend on infrastructure improvement in order to replace pipeline as expeditiously as possible, thus insuring the safety of PGW's customers and the reliability of PGW's service.

## **B. Standard for Granting the Waiver**

A natural gas distribution organization's DSIC may not exceed 5% of the amount it bills to customers under its applicable rates.<sup>17</sup> However, the Commission may, upon petition, grant a waiver of a utility's 5% limit in order to ensure and maintain adequate, efficient, safe, reliable and reasonable service.<sup>18</sup> The denial of a waiver in this proceeding would result in the unnecessary delay in future infrastructure improvements and is contrary to the purpose of the DSIC.<sup>19</sup> Additionally, because PGW is a city natural gas distribution operation, the Commission may suspend or waive the application of provisions of the Public Utility Code to PGW.<sup>20</sup> The Commission previously articulated that its standard for granting waivers pursuant to 66 Pa. C.S. § 2212(c) mandates that such waivers "will be just and reasonable and in the public interest."<sup>21</sup>

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

I&E submits that PGW has met its standard for waiver of the 5% cap. PGW's existing infrastructure implicates a myriad of safety concerns. PGW has shown that it can, and will, prudently employ additional DSIC funding to address those concerns by accelerating its replacement of cast iron and unprotected coated steel mains. Furthermore, as denying the waiver would result in the unnecessary delay in cast iron main and unprotected steel main replacement, which is not only contrary to the purpose of the

---

<sup>17</sup> 66 Pa.C.S.A. § 1358(a)(1).

<sup>18</sup> 66 Pa.C.S.A. § 1358(a)(1).

<sup>19</sup> *Petition of PPL Elec. Utilities Corp. for Approval of A Distribution Sys. Improvement Charge PPL. Elec. Utilities Corp.*, C-2013-2345729, 2015 WL 1754563, at \*40 (Apr. 9, 2015).

<sup>20</sup> 66 Pa. C.S. § 2212(c).

<sup>21</sup> *Pennsylvania Pub. Util. Comm'n v. PGW*, R-2008-2073938, 2009 WL 884424 (Mar. 26, 2009).

DSIC, but it would produce a result that is unjust, unreasonable, and contrary to the public interest because it would expose the public to the unnecessary danger of untimely main replacement.

Of paramount importance in this matter is the concern for public safety. On April 21, 2015, the Commission released its *Staff Report: Inquiry into Philadelphia Gas Works' Pipeline Replacement Program* ("Staff Report") whereby the Commission independently determined that an assessment of PGW's infrastructure had become warranted. The Commission stated that: "an assessment of PGW's pipeline infrastructure is necessary because approximately 66 percent of its system is comprised of cast iron and unprotected steel, both of which are high-risk pipe that pose a potential threat to life and property in PGW's service territory."<sup>22</sup> In the Staff Report, the Commission identified opportunities that PGW should consider implementing to facilitate its main replacement rate. The first opportunity identified was for PGW to seek a DSIC increase above the current 5% cap.<sup>23</sup> Moreover, and independently of the Commission, the Philadelphia City Council recommended that PGW consider accelerating its cast iron main replacement by seeking a DSIC increase to 7.5%.<sup>24</sup> With recognition from both the Commission, charged with regulating PGW, and Philadelphia City Council, a governing body within PGW's service territory, it is obvious that PGW's infrastructure has raised public safety concerns.

---

<sup>22</sup> Staff Report, p. 3.

<sup>23</sup> Staff Report, p. 4.

<sup>24</sup> Petition, ¶18.

Aside from general safety concerns, PGW witness Daniel Murray testified that leaks are increasing in PGW's system resulting from natural forces or corrosion on its cast iron and unprotected coated steel mains.<sup>25</sup> Mr. Murray also presented a chart that illustrates that the extremely high number of leaks it has recently experienced in its cast iron mains. PGW recorded 2,826 leaks in 2014 alone,<sup>26</sup> which is cause for alarm. Mr. Murray indicates that the best way for PGW to improve its leak and broken main incidents is to accelerate main replacement, and he recognized that the best way that PGW could accomplish this end would be by obtaining an increase in its DSIC funding for accelerated replacement.<sup>27</sup> According to Mr. Murray, if PGW's DSIC waiver is approved, PGW projects that it will be able to reduce its replacement time for all cast iron mains by a period of 38 years, resulting in a 44% decrease in PGW's replacement time.<sup>28</sup> I&E avers that Mr. Murray's testimony demonstrates, by the preponderance of evidence, that PGW's aged cast iron and unprotected steel mains must be replaced in a more expedited manner than PGW's current financial position allows, and that an increase in DSIC funding to a 7.5% cap would likely cut the replacement time almost in half. Accordingly, PGW's request to increase its DSIC cap from 5% to 7.5% should be granted.

Additionally, through the terms of the Stipulation, PGW has alleviated I&E concerns about PGW's ability to move forward with its main replacement program in the

---

<sup>25</sup> PGW ST. 1, p. 5, ln. 24- p. 6, ln 2.

<sup>26</sup> PGW St. 1, p. 8.

<sup>27</sup> PGW. St. 1, p. 9, ln. 14-p. 10, ln. 4.

<sup>28</sup> PGW St. 1, p. 10, ln. 4-8.

manner proposed. As discussed below, via the Stipulation, PGW spoke specifically to the concerns raised by I&E's Gas Safety Engineers in a manner that not only details PGW's plan to address such concerns, but also that provides I&E with a level of oversight that will enable I&E to determine any plan inadequacies or non-compliance issues and to address such issues in a timely fashion. Accordingly, I&E respectfully requests that the Commission approve PGW's Petition, as modified by and in accordance with the Stipulation.

### **1. Operator Qualifications and Staffing Plan**

I&E witness Robert Horensky, an engineer in I&E's Gas Safety Division, pointed out that PGW's Petition failed to address the additional staffing needs that PGW would need to carry out the unprecedented acceleration of its replacement of cast iron and unprotected steel mains, as proposed.<sup>29</sup> Mr. Horensky acknowledged that in its quest to accelerate pipeline replacement, PGW would be obligated to follow the regulations contained in Title 49 of the Code of Federal Regulations, Part 192, "Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards, which will ultimately require that PGW have additional trained personnel to meet the minimum requirements for Operator Qualifications.<sup>30</sup> In his testimony, Mr. Horensky explained that PGW's employees who would be performing "covered tasks" on the pipeline facility must have and follow a written qualification plan, which he detailed.<sup>31</sup> "Covered tasks" within the meaning of 49 CFR 192.801 are activities that an operator identifies, that: (1)

---

<sup>29</sup> I&E Statement No. 3, p. 2, ln 17-22.

<sup>30</sup> I&E Statement No. 3, p. 3, ln 1-10.

<sup>31</sup> I&E Statement No. 3, p. 4, ln 1- p. 5, ln 6.

is performed on a pipeline facility: (2) is an operations or maintenance task; (3) is performed as a requirement of 49 CFR 192.801; and affects the operation or integrity of the pipeline.<sup>32</sup>

After outlining these requirements, Mr. Horensky opined that PGW could not commence or continue to accelerate its pipeline replacement without a trained workforce, and that an increased workforce and more training would be needed to ensure that PGW's contractors could complete the covered tasks in compliance with applicable regulations.<sup>33</sup> Because of his concerns, Mr. Horensky recommended that in order to demonstrate to the Commission that it has taken measures to increase its training of staff and contractors in accordance with the applicable regulations, that PGW should be required to submit a detailed plan setting forth its plan to comply with such regulations and to describe its increased training.<sup>34</sup>

Mr. Horensky further recommended that PGW's five-year plan should include a blueprint of anticipated projects as well as a "staffing study that marries the accelerated pipeline projects and training with the necessary level of PGW laborers, foremen, inspectors, and subcontractors."<sup>35</sup> According to Mr. Horensky, PGW's plan should also address construction workers' role in projects as well as staffing levels of any required subcontractor crews, PGW's training demand and capacity, training methods, and it

---

<sup>32</sup> I&E Statement No. 3, p. 3, ln 7-20.

<sup>33</sup> I&E Statement No. 3, p. 6, ln 16-p. 7, ln. 7.

<sup>34</sup> I&E Statement No. 3, p. 6, ln 1-11.

<sup>35</sup> I&E Statement No. 3, p. 6, ln 11-14.

should indicate whether staff training would occur on an in-house basis or include outside training.<sup>36</sup>

Aside from compiling the five-year plan, Mr. Horensky also recommended that PGW provide I&E's Gas Safety Division with both annual updates detailing the procedures it would use to meet its projected year's accelerated pipeline goals and training school demands, as well as an update that identifies that number of working subcontractor crews and the corresponding amount of main installed, on both a proposed and actual basis.<sup>37</sup> Mr. Horensky stressed the need for PGW to immediately establish a baseline for staffing and training needs and assess PGW's capacity to provide necessary Operator Qualification training tied to those staffing needs and he asked that PGW provide this information to I&E's Gas Safety Division on an annual basis.<sup>38</sup>

Later in this proceeding, and in response to Mr. Horensky's recommendations, PGW agreed to acknowledge the concerns raised in Mr. Horensky's direct testimony pursuant to the Stipulation. More specifically, PGW agreed that to file its LTIP on that latter of December 31, 2015 or within 15 days of a Commission Order approving PGW's Petition, and PGW agreed "[t]o the extent feasible, PGW shall consult with I&E about the contents of its revised LTIP prior to its formal filing with the Commission."<sup>39</sup> This provision will afford I&E's Gas Safety Division with the opportunity to identify any deficiencies or concerns about the LTIP and provide it with an opportunity to address

---

<sup>36</sup> I&E Statement No. 3, p. 7, ln 12-21.

<sup>37</sup> I&E Statement No. 3, p. 8, ln. 15- p. 9, ln 6.

<sup>38</sup> I&E Statement No. 3, p. 8, ln 9-11.

<sup>39</sup> Stipulation, ¶1(B)(2).

those issues before the LTIP is presented for the Commission's consideration. Beyond agreeing to consult with I&E regarding the revised LTIP, PGW specifically addressed Mr. Horensky's concerns regarding PGW's Operator Qualification requirements and training capacity by agreeing that in its revised LTIP, PGW will:

[p]rovide a plan showing how PGW intends to train staff and contractors to meet the Operator Qualification requirements of 49 CFR Subpart N and to otherwise demonstrate that it will have qualified personnel available to accomplish the accelerated main replacement authorized by the PGW Petition.<sup>40</sup>

PGW's inclusion of the aforementioned clause is a key provision in the Stipulation. As Mr. Horensky explained in detail, PGW must prove that it can train and provide qualified staff to accomplish its intended pipeline replacement. Now that PGW has agreed that its revised LTIP will set forth its plan to comply with training and Operator Qualification requirements, an appropriate level of oversight is possible and there will be a mechanism to monitor and gauge PGW's compliance.

Additionally, PGW spoke directly to Mr. Horensky's concerns of an additional layer of accountability by agreeing to "provide to I&E on a quarterly basis: all quarterly reconciliation updates and [PGW] shall agree to honor all of I&E's appropriate requests for back-up information."<sup>41</sup> This provision will allow I&E's Gas Safety Engineers to monitor PGW's compliance with regulations and training procedures, to ensure that PGW's pipeline replacement progress is being made appropriately and in a manner that complies with all applicable regulations. Alongside its agreement to provide I&E with

---

<sup>40</sup> Stipulation, ¶1(B)(1)(c).

<sup>41</sup> Stipulation, ¶1(D)(a).

quarterly updates, PGW conceded to an additional mechanism of oversight by agreeing to provide the following staffing information:

[PGW will provide]for a period of three years from the date the PUC approves PGW's Amended LTIP (or a shorter time period by mutual, PGW/I&E agreement), the actual number of: a) personnel (by job description); and b) contractors that are OQ qualified to work on live gas, compared to the numbers for each identified in PGW's Amended, approved LTIP.<sup>42</sup>

PGW's agreement to provide these detailed staffing reports allows I&E to ensure that PGW is equipped to carry out the replacement project as anticipated and that it has the qualified personnel necessary to advance the replacement. Again, this concession by PGW speaks directly to Mr. Horensky's expressed concerns about PGW's ability to train qualified personnel in a way that is commensurate with planned pipeline replacement levels. I&E is satisfied that, combined with the previously mentioned Stipulation terms, that this provision will provide I&E with an adequate level of oversight to ensure that PGW can meet necessary staffing needs and requirements. Though PGW initially posited that only one year of such reports were necessary because its initial ramp-up would be complete within such time, it ultimately agreed to allow I&E with an additional two years of reporting, if necessary so that oversight could be continued as a safeguard.

I&E avers that the aforementioned control features will afford its Gas Safety Division adequate oversight to ensure PGW's compliance with all appropriate regulations. It is imperative that the Gas Safety Division, which is charged, in part, with

---

<sup>42</sup> Stipulation, ¶I(D)(b).

enforcing both safety standards for pipeline facilities and federal safety standards, be able to accurately assess PGW's compliance with the referenced regulations. Accordingly, PGW's agreement to provide I&E's Gas Safety Division with the additional information outlined above will protect the public, guard the safety of PGW's employees and its ratepayers, and is thereby in the public interest.

#### **D. 7.5% Cap for DSIC Expenditures**

PGW has agreed to implement its 7.5% DSIC and to begin to bill customers at this increased level on or after January 1, 2016.<sup>43</sup> PGW has further agreed that prior to the DSIC implementation, it will submit a Petition to the Commission to amend its LTIP. Among other things, its LTIP will address non-compliance issues that were previously identified by I&E's Gas Safety Division.<sup>44</sup> Taking into account PGW's aforementioned plan, as well as other safeguards that are addressed below, I&E supports PGW's plan to implement its 7.5% cap for DSIC expenditures as modified by and in accordance with the Stipulation.

I&E makes its recommendation for several reasons. First, adequate safeguards already exist under Act 11 and through existing federal requirement to ensure that if PGW is permitted to bill customers at the increased level and in the timeframe proposed, ratepayer money will not be misspent. Furthermore, via the Stipulation, PGW has added additional guarantees of compliance with federal regulations and it has also articulated a plan to provide reports that will allow I&E's Gas Safety Division to monitor its

---

<sup>43</sup> Stipulation, ¶1.

<sup>44</sup> Stipulation, ¶1(B)(1)(b).

compliance. Finally, additional opportunities for oversight and comment by interested parties are already included in the LTIP process that PGW must undertake, and PGW has agreed not to undertake any main replacement made possible by any incremental increase in DSIC funding unless and until the Commission approves its revised LTIP. Quite simply, time is of the essence in this matter, and now that appropriate avenues of oversight exist, PGW's request should be approved. Accordingly, I&E recommends approval of the 7.5% DSIC cap in accordance with the process outlined in the Stipulation because it will facilitate PGW safe, and expedited replacement of at-risk pipeline, which is in the public interest.

### **1. Act 11 and Federal Requirements**

At the outset, Act 11 requires that as a precondition to the implementation of a DSIC, a utility must file a LTIP with the Commission.<sup>45</sup> The utility's LTIP should include the following: (1) identification of the types and age of eligible property owned or operated by the utility for which the utility would seek recovery; (2) an initial schedule for the planned repair and replacement of eligible property; (3) a general description of the location of the eligible property; (4) a reasonable estimate of the quantity of eligible property to be improved; (5) projected annual expenditures to implement the plan and measures taken to ensure that the plan is cost effective; and (6) an explanation of 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,

---

<sup>45</sup> 66 Pa. C.S. §1352.

reliable and reasonable service.<sup>46</sup> Moreover, 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.<sup>47</sup>

Furthermore, PGW's LTIP must incorporate its framework for prioritization of investment improvements via its Distribution Integrity Management Program ("DIMP").<sup>48</sup> If PGW's DSIC and LTIP are ultimately approved, it would then also be required to file an annual AOP that would include a description of all eligible property repaired, improved and replaced in the immediately preceding 12-month period pursuant to its approved LTIP and its prior year's AOP, as well as a detailed description of all the facilities to be improved in the upcoming 12-month period.<sup>49</sup>

## **2. DIMP and LTIP Concerns**

I&E witness Terri C. Cooper Smith, an engineer within I&E's Gas Safety Division, expressed multiple concerns about deficiencies in PGW's DIMP and its impact upon any revised LTIP filed by PGW in conjunction with its Petition. As Ms. Cooper Smith explained, federal regulations require PGW's DIMP to identify risks to its pipeline facilities and to create a plan to mitigate such risks.<sup>50</sup> Ms. Cooper Smith additionally notes that PGW determines its pipeline replacements by risk and through the ranking of various type of pipeline, and then determines the pipe replacement based on the highest

---

<sup>46</sup> 66 Pa. C.S. §1352.

<sup>47</sup> 66 Pa. C.S. §1352.

<sup>48</sup> Chapter 49 Part 192.1001-192.1015 of the Code of Federal Regulations.

<sup>49</sup> 66 Pa.C.S.A. §1356.

<sup>50</sup> I&E Statement No. 2, p. 4, ln 5-6.

risk ranking.<sup>51</sup> Compliance with a DIMP is necessary because the regulations were created by the Pipeline and Hazardous Materials Safety Administration to reduce reportable incidents, which include leaks from corrosion and third party damages.<sup>52</sup>

According to Ms. Cooper Smith, the Gas Safety Division performed PGW's most recent DIMP inspections on January 28, January 29, February 5, 6, and 17, 2015, and again on March 4, 2015. These inspections resulted in a finding that PGW was in violation of two Federal Regulations.<sup>53</sup> As a result of its findings, the Gas Safety Division issued a non-compliance letter to PGW on May 7, 2015 notifying PGW that it was out of compliance.<sup>54</sup> In order to comply with the federal code, PGW needed to take the following actions and submit a corrective plan to the Gas Safety Division by June 4, 2015: (1) update the applicable procedures in the DIMP; (2) Develop a thorough review process of the DIMP effectiveness based on quantitative benchmark measures; (3) Develop a thorough strategy to achieve risk reduction thresholds and review; (4) Schedule quarterly DIMP meetings to review statistics; (5) Detailed minutes and follow up actions should be recorded; (6) Reevaluate the composition, or topic experts, and number of Subject Matter Experts used on the DIMP team; and (7) Schedule a follow-up inspection by the Commission of the revised DIMP.<sup>55</sup>

---

<sup>51</sup> I&E Statement No. 2, p. 4, ln 7-8.

<sup>52</sup> I&E Statement No. 2, p. 4, ln 10-14.

<sup>53</sup> I&E Statement No. 2, p. 4, ln 16 – p. 5, ln. 10. The two Federal Regulations included 49 CFR §192.1007: “What are the required elements of an integrity management plan?” and 49 CFR §192.1009: “What must an operator report when a mechanical fitting fails?”

<sup>54</sup> I&E Statement No. 2, p. 5, ln 11-12.

<sup>55</sup> I&E Statement No. 2, p. 5, ln 14- p. 6, ln. 12.

Although PGW responded to the Gas Safety Division by the stated deadline, it remained non-compliant because it failed to file a revised DIMP which adequately assigns risk rankings based on available data and which documents threats to its pipeline threats.<sup>56</sup> Ms. Cooper Smith further explained that because PGW's LTIP is driven by its DIMP, if PGW's DIMP remains non-compliant, it will hinder PGW's ability to conduct a successful replacement program, as the LTIP would be inaccurate or incomplete.<sup>57</sup>

Although Ms. Cooper Smith opines that PGW should submit a revised DIMP and therefore, become compliant, before its LTIP is approved by the Commission, she recommends that the lack of a compliant DIMP should not stop PGW's pipeline replacement that is underway.<sup>58</sup> Instead, Ms. Cooper Smith recommends that PGW's inaccurate, and possibly incomplete, LTIP should be resolved immediately, to ensure that any additional DSIC monies are not misspent. Furthermore, the Commission should not authorize PGW to file a revised LTIP on one day's notice unless and until DIMP insufficiencies are corrected.<sup>59</sup>

Later in this proceeding, and in response to Ms. Cooper Smith's recommendations, PGW agreed to address the concerns raised in Ms. Cooper Smith's direct testimony pursuant to the Stipulation. More specifically, PGW agreed that its revised LTIP will address its non-compliant DIMP in the following manner:

- (a) Identify how PGW proposes to expend the increased DSIC revenues, including identifying the types and

---

<sup>56</sup> I&E Statement No. 2, p. 6, ln.18 – p. 7, ln. 7.

<sup>57</sup> I&E Statement No. 2, p. 7, ln 17-22.

<sup>58</sup> I&E Statement No. 2, p. 8, ln 1-5.

<sup>59</sup> I&E Statement No. 2, p. 8, ln 7-20.

sizes of at risk main PGW proposes to target with the increased revenues;

- (b) Utilize PGW's Distribution Integrity Management Program ("DIMP") risk scores, as modified by PGW to respond to issues raised by the PUC's Gas Safety Division's Non-Compliance letter to PGW dated May 7, 2015.<sup>60</sup>

Aside from these terms, PGW also agreed to the extent feasible, it will consult with I & E about the contents of its revised LTIP prior to its formal filing with the Commission.<sup>61</sup>

In an ideal world, PGW would have presented a revised LTIP either prior to or simultaneously with its Petition, and DSIC recovery would not occur until approval of that LTIP. However, PGW has presented a valid explanation for its failure to provide an LTIP in conjunction with its Petition, as PGW witness Murray explained that PGW is working with an outside company, DNV GL, to have a prioritization/benchmark study completed, and the study would be completed on or before December of 2015.<sup>62</sup> During the Hearing in this matter, Mr. Murray indicated the report would contain more recent, updated information regarding PGW's prioritization and benchmarking studies.<sup>63</sup>

According to Mr. Murray, the DNV GL study will form the basis of PGW's DIMP, which PGW will make available to I&E's Gas Safety Division in December of 2015. In addition, PGW will arrange a meeting with the Gas Safety Division to review the DIMP

---

<sup>60</sup> Stipulation, ¶(1)(B)(1)(a)-(b)).

<sup>61</sup> Stipulation, ¶(1)(B)(2).

<sup>62</sup> PGW Statement 1-R, p. 5, ln. 11-14.

<sup>63</sup> Hearing Tr., p. 41, ln. 3-8.

revisions and to determine PGW's compliance status under the applicable Pipeline Hazardous Materials Safety Administration regulations.<sup>64</sup>

PGW further notes that the Gas Safety Division's review of PGW's revised DIMP should precede the Commission's approval of its Petition, and that after Commission approval is granted, PGW will file a revised LTIP that will further expound upon the DIMP implications in that revised LTIP.<sup>65</sup> Importantly, Mr. Murray noted that PGW does not expect to spend any incremental DSIC monies until it completes the steps in the plan that he summarized.<sup>66</sup> Mr. Murray notes that costs associated with the revised LTIP will trigger an opportunity for interested parties to be heard in relation to the plan.<sup>67</sup>

Mr. Murray is correct in his assertion that interested parties will have an opportunity to address their concerns regarding PGW's LTIP. If a utility elects to modify a Commission-approved LTIP during its term to incorporate an increase in the total estimated cost of the LTIP by more than 20%, the utility must file a separate petition for modification, and the petition will be subject to notice and an opportunity to be heard by interested parties, and interested parties shall have 30 days to file comments to the petition.<sup>68</sup> In this case, as PGW is electing to modify its LTIP prior to its expiration and the resulting LTIP will increase the cost of the LTIP by more than 20%, the parties to this proceeding will not forfeit their ability to provide their feedback on the

---

<sup>64</sup> PGW Statement 1-R, p. 5, ln. 14-20.

<sup>65</sup> PGW Statement 1-R, p. 5, ln 20-p.6, ln.1.

<sup>66</sup> PGW Statement 1-R, p. 6, ln. 6-7.

<sup>67</sup> PGW Statement 1-R, p. 6, ln. 1-4.

<sup>68</sup> 52 Pa.Code §123.5, 52 Pa. Code §121.5.

revised LTIP. Beyond this opportunity for input, and of utmost importance, PGW has agreed that it will not undertake any main replacement made possible by the incremental DSIC funding awarded in this proceeding unless and until the Commission has approved its Amended LTIP.<sup>69</sup>

I&E opines that PGW's articulated plan, which will lead to the incorporation of more recent, reliable data, as well as its agreement to honor the above-referenced Stipulation terms, satisfies the concerns addressed by Ms. Cooper Smith. First, PGW's agreement to expend increased DSIC revenues in a manner that identifies and targets the types and sizes of at risk main will ensure that any additional DSIC funding is not misspent as a result of an inaccurate LTIP. Furthermore, the benefit of PGW's identification and targeting of at risk main is compounded by the fact that PGW has also agreed to respond to issues raised by I&E's Gas Safety Division's Non-Compliance letter to PGW dated May 7, 2015. This concession by PGW specifically addresses Ms. Cooper Smith's concerns of PGW's non-compliant DIMP and its ability to hinder the success of any revised LTIP. PGW's agreement to address non-compliance in conjunction with its revised LTIP will ensure that precious DSIC funding is spent in a manner that prioritizes pipeline replacement according to risk. In addition, PGW's agreement to consult with I &E about the contents of its revised LTIP before its filing, to the extent feasible, represents PGW's good-faith effort to include I&E input and

---

<sup>69</sup> Stipulation, ¶1(B)(4)

oversight in the LTIP process, which represents an additional layer of protection to assuage any remaining issues.

Because PGW's agreed actions ensure that any awarded DSIC funds will be spent to replace the riskiest pipeline, and additional opportunities for oversight are included in the LTIP process, I&E opines that the terms of the Stipulation both promote public safety and maximize the use ratepayer funds, and is therefore in the public interest. Furthermore, in order to maximize the benefit of additional DSIC funding,<sup>70</sup> I&E supports PGW's request to collect DSIC funding while its LTIP is pending final Commission approval. Accordingly, I&E recommends approval of the terms of the Stipulation relating to PGW's planned LTIP revision process.

#### **E. 10% Cap for Reconciliation**

In its Petition PGW requests that it be permitted to modify its DSIC tariff so that if an undercollection of the annual DSIC billing occurs at the 7.5% of distribution revenue level PGW will be permitted to adjust the DSIC to a charge higher than 7.5%, but not to exceed 10%. This provision will permit recovery of undercollections. In its Petition, PGW indicates that if it is not allowed to exceed the 7.5% cap, it may not be able to fully bill the amounts that it plans to spend on pipeline replacement.<sup>71</sup> By way of explanation PGW Witness Dybalski notes:

Any over or undercollection from the previous year will be calculated in an annual reconciliation based on actual billed

---

<sup>70</sup> PGW St. No. 2-R, p. 10, 4, ln. 21-25: PGW witness Dybalski explains that due to the highly seasonal nature of PGW's billings, if it cannot collect DSIC funds until its LTIP is approved, it will only be able to collect 44% of the incremental \$11 million intended.

<sup>71</sup> Petition ¶ 49.

DSIC revenues and DSIC recoverable costs during each month of the calendar year. At present, the annual reconciliation of the DSIC results in a lag in which recoverable costs for the months of September to December are not included in the current year annual reconciliation. Note that in the first year the annual reconciliation will have 16 months of recoverable costs due to this lag. For any undercollection, the DSIC may be increased by an additional 2.5% (up to 10%) in order to recover the undercollection. Any under or over collection will be reconciled and filed by January 31 of each year and will be billed or credited from April 1 to March 31 each year.<sup>72</sup>

At the 7.5% level, it's indicated that PGW's pipeline replacement program will be shortened from the current 86 years to around 48 years.<sup>73</sup> The same standard for granting a waiver as articulated above would apply to the instant request. That standard being that a gas company's DSIC may not exceed 5% revenues unless the Commission grants a waiver of that limit to ensure and maintain adequate, efficient, safe, reliable and reasonable service to the company's customers.<sup>74</sup>

It should be noted that PGW has requested a firm maximum allowable DSIC of 10% for reconciliation purposes only. Moreover, PGW's budget for accelerated main replacement has a cap of \$33 million.<sup>75</sup> PGW's request is not to collect at the 10% level, as it sees fit, but simply to be able to collect at a level higher than 7.5% should it experience an undercollection. In fact, PGW will only change the rate if the dollar amount difference is considered to be material.<sup>76</sup> According to PGW Witness Dybalski, if PGW is unable to collect the full \$33 million it intends to spend on pipeline

---

<sup>72</sup> PGW St. 2, pp. 12-13.

<sup>73</sup> Petition pg. 3.

<sup>74</sup> 66 Pa.C.S.A. §1358(a)(1).

<sup>75</sup> PGW St. 2-R, p. 5.

<sup>76</sup> Tr. at 56.

replacement, PGW may be required to cut its construction budget by the amount that it was unable to collect.<sup>77</sup> It follows that if the construction budget is cut, the time needed to replace the pipeline will be extended as well. This is not the outcome contemplated in the Commission's Staff Report. The goal for PGW, with its aging infrastructure, should be to replace its cast iron and bare steel pipe as quickly as it is safely possible to do so.

As previously stated, 66 Pa. C.S. § 1358(a)(1) contemplates a waiver of the DSIC cap in order for the utility to maintain adequate, efficient, safe, reliable, and reasonable service. According to the Commission's Staff Report:

...PGW experienced more than double the number of hazardous leaks than any other NGDC in 2013. Furthermore, PGW's leak rate increased in 2014. PGW discovered approximately 6,200 total leaks in 2013, of which 3,122 leaks were classified as hazardous. In 2014, PGW discovered 7,600 total leaks and its hazardous leaks increased to 3,448. PGW's aging infrastructure and leak rates are particularly concerning, given that its territory is largely urban and is a high-population area, which can pose a potential threat to life and property.<sup>78</sup>

It is clear that in order for PGW to maintain safe and reliable service money must be spent to accelerate its main replacement program. To be clear, PGW is not asking to adjust its DSIC to 10% should it experience an undercollection, but to adjust its DSIC to the amount it needs to in order to be able to fully bill the amounts that it hoped to spend on main replacement if a material undercollection is experienced. Further the Company has made it clear that adjustment to the DSIC works both ways. PGW Witness Dybalski

---

<sup>77</sup> Tr. at 54.

<sup>78</sup> Staff Report p. 4.

noted that if revenues were to exceed projections, the DSIC would also be adjusted to reflect that overcollection.<sup>79</sup>

As noted above, the chief concern in this proceeding is the concern for public safety. Further, as contained in the Stipulation between I&E and PGW and as discussed above, PGW agreed to provide I&E with quarterly reports that contain all quarterly reconciliation updates and provide back-up information as necessary.<sup>80</sup> I&E is confident that PGW's agreement to provide these detailed staffing reports allows I&E to ensure that PGW is carrying out the replacement project as anticipated and that it has the qualified personnel necessary to advance the replacement. Therefore, any concerns that PGW's request to modify its DSIC tariff so that if an undercollection of the DSIC occurs at the 7.5% PGW will be permitted to adjust the DSIC to no more than 10% will allow PGW to increase its spending up to that 10% level is effectively eliminated by the Stipulation, as a specific budget has been set and PGW will be reporting to I&E with reconciliation updates and staffing reports. These safeguards will help to ensure the money is being spent in the manner in which it was intended. This, thereby, promotes the main goal of providing the public with safe and reliable service. Therefore, I&E believes the 10% cap for reconciliation of undercollections should be approved in order to allow PGW to make the most efficient use of its DSIC funds.

---

<sup>79</sup> Tr. at 52.

<sup>80</sup> Stipulation, ¶1(D).

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

In its Petition, PGW seeks a waiver of certain Act 11 provisions under 66 Pa. C.S. 2212(c) so as to allow it to bill an annualized amount to customers that represents 7.5% of PGW's distribution revenues.<sup>81</sup> Under Act 11, the distribution system improvement charge must be updated on a quarterly basis to reflect eligible property placed in service during the three-month period ending one month prior to the effective date of each distribution system improvement charge update.<sup>82</sup> Furthermore, Act 11 also permits DSIC recovery only for eligible property that placed in service during the three-month period ending one month prior to the effective date of the distribution improvement system charge.<sup>83</sup> PGW seeks to waive the application of each of the aforementioned provisions, and proposes to bill its customers a uniform amount each quarter so as to collect a projected DSIC-funded construction budget over a 12-month period.

### A. Summary of Briefing Party's Position

I&E supports PGW's request for a waiver of the applicable Act 11 provisions and recommends the approval of PGW's request to bill its customers a uniform amount each quarter so as to collect a projected DSIC-funded construction budget over a 12-month period. Although normally, the DSIC for a natural gas utility is adjusted quarterly to reflect the amount of facilities placed into service in the prior quarter, such an adjustment is not conducive to the realities of PGW's business or in the interest of its ratepayers.

---

<sup>81</sup> Petition, ¶35.

<sup>82</sup> 66 Pa.C.S.A. § 1357(a)(2).

<sup>83</sup> 66 Pa.C.S.A. § 1357(a)(1)(ii).

Because of the quarterly billing requirement, PGW is less likely to be able to bill even its full, current 5% DSIC.<sup>84</sup>

Allowing PGW to annualize and levelize the DSIC will ensure that PGW can bill a flat 7.5% of distribution revenues each month regardless of the amount of plant installed in the prior quarter. This will result in more predictable bills that are easier for the average customer to understand. It further provides a more predictable cash flow to PGW and, as such, will allow for a reduction to pipeline replacement times. Accordingly, I&E avers that this provision is in the public interest and I&E therefore recommends approval of this request.

### **B. Standard for Granting the Waiver**

As discussed earlier, because PGW is a city natural gas distribution operation, the Commission may suspend or waive the application of provisions of the Public Utility Code to PGW.<sup>85</sup> The Commission previously articulated that its standard for granting waivers under this provisions mandates that such waivers “will be just and reasonable and in the public interest.”<sup>86</sup>

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

PGW has met its burden of proving that its requested waivers should be granted, and that the grant of these waivers is just, reasonable and in the public interest. More

---

<sup>84</sup> PGW St. No. 2, p. 7, ln17-p. 8, ln. 1.

<sup>85</sup> 66 Pa. C.S. 2212(c).

<sup>86</sup> *Pennsylvania Pub. Util. Comm'n v. PGW*, R-2008-2073938, 2009 WL 884424 (Mar. 26, 2009).

specifically, PGW has presented evidence to explain that its current DSIC, which operates without the benefit of annualization and levelization, is impacted by a number of variables which hinder its ability to timely bill all funds available at the cap level. On a practical basis, this hindrance could mitigate the benefit for which DSIC funds are intended: the accelerated replacement of PGW's case iron mains. Permitting PGW to collect a DSIC while simultaneously imposing an obstacle upon its ability to collect that DSIC reduces the intended benefit for both PGW and its ratepayers, thereby producing a result that is unjust, unreasonable, and contrary to the public interest.

In support, PGW witness Kenneth Dybalski, PGW's Director of Gas Planning & Rates, testified that, as a municipally-owned cash flow company, PGW's experience with DSIC increases is different than that of investor-owned utilities.<sup>87</sup> Mr. Dybalski notes that a key difference for PGW is that DSIC funding for investor-owned utilities "gradually and progressively" increases each quarter, while PGW's existing non-levelized DSIC structure fails to produce such increases.<sup>88</sup> According to Mr. Dybalski, PGW's current DSIC structure is volatile in that it is impacted by seasonal usage variations, leading to its lowest DSIC being applied during the highest sales volume quarter.<sup>89</sup> As a result, PGW has billed less annual DSIC revenue than intended during certain months or been unable to bill for the total amount of property placed into service.<sup>90</sup> These factors not only complicate DSIC billing for PGW and cause customer

---

<sup>87</sup> PGW St 2, p. 6, ln 11-12.

<sup>88</sup> PGW St 2, p. 6, ln 12- p. 7, ln. 6.

<sup>89</sup> PGW St. 2, p. 7, ln. 7-11.

<sup>90</sup> PGW Statement 2, p. 7, ln. 11-14.

confusion, but they also “make[s] it very likely that PGW will not be able to timely bill all funds available at the cap level, whether 5% or 7.5%.”<sup>91</sup>

I&E witness Rachel Maurer agreed with Mr. Dybalski that PGW’s proposal to annualize and levelize its DSIC is appropriate. According to Ms. Maurer, [a]nnualizing and levelizing the charge should allow DSIC billings to remain relatively level throughout the year and pass DSIC costs equally to all customers.<sup>92</sup> Ms. Maurer also recommended that PGW be permitted to levelize and annualize its DSIC-eligible costs because those options are consistent with the Staff Report.<sup>93</sup>

OCA witness Ashley Everette also acknowledged that levelizing its DSIC would prove beneficial for PGW, which operates using a cash flow method, meaning that its DSIC fluctuates each quarter depending on the amount of plant that PGW placed and booked into service during the previous quarter.<sup>94</sup> According to Ms. Everette, “[T]he levelized approach would reduce the fluctuations in the DSIC rate, making its DSIC more similar to that of other natural gas distribution utilities.”<sup>95</sup>

Accordingly, permitting PGW to levelize and annualize its DSIC will result in an outcome that is both beneficial to PGW and to its ratepayers. Reducing DSIC fluctuations and allowing PGW’s DSIC billings to remain level throughout the year will provide a more predictable revenue stream to PGW and allow PGW to pass DSIC costs

---

<sup>91</sup> PGW St. 2, p. 7, ln. 17-p. 8, ln. 1.

<sup>92</sup> I&E Statement No. 1, p. 4, ln. 10-12.

<sup>93</sup> I&E Statement No. 1, p. 5, ln. 8-11).

<sup>94</sup> OCA St. No. 1, p. 13, ln. 7-9.

<sup>95</sup> OCA St. No. 1, ln. 9-11.

equally to all customers. Accordingly, this provision results in a more predictable and equitable result for all parties, and it is thereby in the public interest.

**D. Implementation of and Conditions on the Levelization/Annualization**

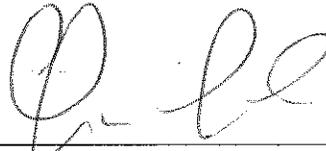
**Waiver**

For the reasons articulated above, I&E recommends that PGW's request for the levelization should be implemented as proposed in PGW's Petition.

## VI. CONCLUSION

The Commission's Bureau of Investigation and Enforcement represents that it supports the PGW and I&E Stipulation as being in the public interest. Therefore, the Bureau of Investigation and Enforcement respectfully requests that Administrative Law Judges Christopher P. Pell and Marta Guhl recommend, and the Commission subsequently approve, the foregoing Stipulation, including all terms and conditions contained therein, in full resolution of Philadelphia Gas Works' Petition for Waiver of Provisions of Act 11 to Increase the Distribution System Improvement Charge CAP and to Permit Levelization of its DSIC.

Respectfully submitted,



---

Carrie B. Wright  
Prosecutor  
Attorney ID #208185

Gina L. Lauffer  
Prosecutor  
Attorney ID # 313863

Pennsylvania Public Utility Commission  
Bureau of Investigation and Enforcement  
Post Office Box 3265  
Harrisburg, Pennsylvania 17105-3265  
(717) 787-1976

Dated: November 13, 2015

**PROPOSED FINDINGS OF FACT**

1. PGW's current Distribution System Infrastructure Charge is capped at 5% of billed distribution revenues and collects 100% of the cost of facilities placed into service in the previous quarter on a "pay- as-you-go" basis. I&E St. 1, p. 2, ln. 7-10.
2. PGW can to improve its leak and broken main incidents by accelerating its main replacement. PGW. St. 1, p. 9, ln. 10-16.
3. PGW can accelerate main replacement is by obtaining in increase in its Distribution System Infrastructure Charge funding for accelerated replacement. PGW. St. 1, p. 10, ln. 1-3.
4. If PGW's Distribution System Infrastructure Charge waiver is approved, PGW projects that it will be able to replace all of its cast iron main within 48 years instead of the current projection of 86 years, resulting in a 44% decrease in PGW's replacement time. PGW St. 1, p. 10, ln. 4-8.
5. The Commission's April 21, 2015 *Staff Report: Inquiry into Philadelphia Gas Works' Pipeline Replacement Program* recognized the need for PGW to accelerate its main replacement program and outlined several options that PGW could use to enable the acceleration. PGW's requests to increase the present DSIC cap to 7.5% and to implement an annualized and levelized charge are two of the options listed in the Staff Report. I&E St. No. 1, p. 3, ln. 14 –p. 4, ln. 2.
6. PGW's experience with Distribution System Infrastructure Charge increases is different than that of investor-owned utilities. A key difference for PGW is that Distribution System Infrastructure Charge funding for investor-owned utilities "gradually and progressively" increases each quarter, while PGW's existing non-levelized DSIC structure fails to produce such increases. PGW St 2, p. 6, ln 11-12-p. 7, ln. 6.
7. Due to the highly seasonal nature of PGW's billings, if PGW's Distribution System Infrastructure is increased to 7.5% of its billed revenues, but it is not permitted to Distribution System Infrastructure Charge funds until its Long Term Infrastructure Improvement Plan is approved, it will only be able to collect 44% of the incremental \$11 million intended. PGW St. No. 2-R, p. 10, 4, ln. 21-25.

8. Annualizing and levelizing the PGW's Distribution System Infrastructure Charge should allow Distribution System Infrastructure Charge billings to remain relatively level throughout the year and pass Distribution System Infrastructure Charge costs equally to all customers. I&E Statement No. 1, p. 4, ln. 10-12.
9. PGW's current Distribution System Infrastructure Charge structure is volatile in that it is impacted by seasonal usage variations, leading to its lowest DSIC being applied during the highest sales volume quarter, and this has prevented PGW from being able to bill less annual DSIC revenue than intended during certain months or unable to bill for the total amount of property placed into service. PGW St. 2, p. 7, ln. 8-14.
10. Under PGW's current DSIC structure, it is very likely that PGW will not be able to timely bill all funds available at the cap level, whether 5% or 7.5%. PGW St. 2, p. 7, ln. 17-p. 8, ln. 1.
11. Pursuant to the PGW and I&E Stipulation, PGW has agreed to withdraw its proposal to waive the requirement to pay interest on overcollections of Distribution System Infrastructure Charges and shall retain the provision relating to the payment of interest in its Tariff. PGW and I&E Stipulation, ¶1(A).
12. Pursuant to the PGW and I&E Stipulation, PGW has agreed that to the extent feasible, PGW shall consult with the Bureau of Investigation & Enforcement about the contents of its revised Long Term Infrastructure Improvement Plan prior to its formal filing with the Commission. PGW and I&E Stipulation, ¶1(B)(2).
13. Pursuant to the PGW and I&E Stipulation, PGW and the Bureau of Investigation & Enforcement have agreed that by December 31, 2015, or fifteen (15) days after the entry of the Commission's Order approving PGW's Petition whichever is later, PGW shall submit a Petition to the PUC to amend its Long Term Infrastructure Improvement Plan. PGW and I&E Stipulation, ¶1(B)(1).
14. Pursuant to the PGW and I&E Stipulation, PGW has afforded the following mechanisms of oversight to the Bureau of Investigation & Enforcement and its Gas Safety Division by agreeing that its Amended Long Term Infrastructure Improvement Plan will:
  - (a) Identify how PGW proposes to expend the increased DSIC revenues, including identifying the types and sizes of at risk main PGW proposes to target with the increased revenues;

- (b) Utilize PGW's Distribution Integrity Management Program ("DIMP") risk scores, as modified by PGW to respond to issues raised by the PUC's Gas Safety Division's Non-Compliance letter to PGW dated May 7, 2015; and
- (c) Provide a plan showing how PGW intends to train staff and contractors to meet the Operator Qualification requirements of 49 CFR Subpart N and to otherwise demonstrate that it will have qualified personnel available to accomplish the accelerated main replacement authorized by the PGW Petition.

PGW and I&E Stipulation, ¶1(B)(1)(a)-(c).

15. Pursuant to the PGW and I&E Stipulation, PGW has agreed that its Annual Asset Optimization Plan filings shall include, *inter alia*: (1) a description that specifies all eligible property repaired, improved and replaced in the immediately preceding 12-month period pursuant to the Long Term Infrastructure Improvement Plan, and, in particular, those portions replaced as part of the accelerated main replacement authorized by the PGW's Petition; and (2) information on its success in training qualified staff and contractors to satisfy those goals. PGW and I&E Stipulation, ¶1(C)(1)-(2).
16. Pursuant to the PGW and I&E Stipulation, PGW has agreed that it shall not undertake any main replacement made possible by the incremental Distribution System Infrastructure Charge funding (\$11 million) authorized by the PGW Petition unless and until the Commission has approved PGW's Amended Long Term Infrastructure Improvement Plan. PGW and I&E Stipulation, ¶1(B)(4).
17. Pursuant to the PGW and I&E Stipulation, PGW has agreed to provide the Bureau of Investigation & Enforcement with the following, on a quarterly basis: all quarterly reconciliation updates and shall agree to honor all appropriate requests for back-up information. PGW and I&E Stipulation, ¶1(D)(a).
18. Pursuant to the PGW and I&E Stipulation, PGW has agreed that, for a period of two years from the date that the Commission approves PGW's Amended Long Term Infrastructure Improvement Plan, it will provide the Bureau of Investigation & Enforcement with the actual number of: a) personnel (by job description); and b) contractors that are OQ qualified to work on live gas, compared to the numbers for each identified in PGW's Amended, approved Long Term Infrastructure Improvement Plan. PGW and I&E Stipulation, ¶1(D)(b).

19. Pursuant to the PGW and I&E Stipulation, PGW and I&E agree that that PGW's Distribution System Infrastructure Charge, as modified by the terms and conditions of this Stipulation, includes and/or addresses all of the elements prescribed by Act 11, the Commission's regulations, and the Commission's policies for a Distribution System Infrastructure Charge.

**PROPOSED CONCLUSIONS OF LAW**

1. As the petitioner, PGW has the burden of proof in this proceeding to establish that it is entitled to the relief it is seeking. 66 Pa. C.S. § 332(a).
2. To meet its burden of proof in this proceeding, PGW must “present evidence more convincing, by even the smallest amount, than that presented by any opposing party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).
3. The Commission may, upon petition, may grant a waiver of a utility’s 5% limit for a utility in order to ensure and maintain adequate, efficient, safe, reliable and reasonable service. 66 Pa.C.S.A. § 1358(a)(1).
4. The denial of a waiver which would result in the unnecessarily delay in future infrastructural improvements is contrary to the purpose of the DSIC. *Petition of PPL Elec. Utilities Corp. for Approval of A Distribution Sys. Improvement Charge PPL Elec. Utilities Corp.*, C-2013-2345729, 2015 WL 1754563, at \*40 (Apr. 9, 2015).
5. Because PGW is a city natural gas distribution operation, the Commission may suspend or waive the application of provisions of the Public Utility Code to PGW. 66 Pa. C.S. § 2212(c).
6. The Commission’s standard for granting waivers pursuant to 66 Pa. C.S. § 2212(c) mandates that such waivers “will be just and reasonable and in the public interest. *Pennsylvania Pub. Util. Comm’n v. PGW*, R-2008-2073938, 2009 WL 884424 (Mar. 26, 2009).
7. If PGW’s Long Term Infrastructure Improvement Plan is not adequate and sufficient to ensure and maintain adequate, efficient, safe, reliable and reasonable service, the Commission has the authority to and shall order a new or revised plan. 66 Pa. C.S. §1352
8. PGW’s Long Term Infrastructure Improvement Plan must incorporate its framework for prioritization of investment improvements via its Distribution Integrity Management Program. Chapter 49 Part 192.1001-192.1015 of the Code of Federal Regulations.
9. If a utility elects to modify a Commission-approved LTIP during its term to incorporate an increases in the total estimated cost of the LTIP by more than

20%, the utility must file a separate petition for modification, and the petition will be subject to notice and an opportunity to be heard by interested parties, and interested parties shall have 30 days to file comments to the petition. 52 Pa.Code §123.5, 52 Pa. Code §121.5.

10. If PGW's Distribution System Improvement Charge and Long Term Infrastructure Improvement Plan are approved by the Commission, PGW would then also be required to file an annual asset optimization plan that would include a description of all eligible property repaired, improved and replaced in the immediately preceding 12-month period pursuant to its approved LTIP and its prior year's asset optimization plan, as well as a detailed description of all the facilities to be improved in the upcoming 12-month period. 66 Pa.C.S.A. § 1356.
11. PGW's Petition for Waiver of Provisions of Act 11 to Increase the Distribution System Improvement Charge CAP and to Permit Levelization of its DSIC, as modified by the terms and conditions of its Stipulation with the Bureau of Investigation & Enforcement, includes and/or addresses all of the elements prescribed by Act 11, the Commission's regulations, and the Commission's policies for a Distribution System Infrastructure Charge, and promotes a result that is just, reasonable, and in the public interest. *Pa. PUC v. PGW*, R-2008-2073938, 2009 WL 884424 (Mar. 26, 2009).

**PROPOSED ORDERING PARAGRAPH**

THEREFORE, IT IS RECOMMENDED:

1. That the PGW and I&E Stipulation, including all terms and conditions contained therein, shall be adopted in full resolution of Philadelphia Gas Works' Petition for Waiver of Provisions of Act 11 to Increase the Distribution System Improvement Charge CAP and to Permit Levelization of its DSIC.

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission :  
 :  
 v. : Docket No. P-2015-2501500  
 :  
 Philadelphia Gas Works :

**CERTIFICATE OF SERVICE**

I hereby certify that I am serving the foregoing **Main Brief** dated November 13, 2015, in the manner and upon the persons listed below, in accordance with the requirements of § 1.54 (relating to service by a party):

**Served via Electronic and First Class Mail**

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

Erin L. Gannon, Esquire  
Darryl Lawrence, Esquire  
Office of Consumer Advocate  
555 Walnut Street  
5th Floor Forum Place  
Harrisburg, PA 17101-1923

Abby Pozefsky, Esq.  
Chief Administrative Officer and General  
Counsel  
Philadelphia Gas Works  
800 W. Montgomery Ave.  
Philadelphia, PA 19122

Sharon E. Webb, Esquire  
Office of Small Business Advocate  
300 North Second Street  
Suite 202  
Harrisburg, PA 17101

Adeolu A. Bakare, Esquire  
McNees Wallace & Nurick, LLC  
100 Pine Street  
P.O. Box 1166  
Harrisburg, PA 17108-1166  
(*Counsel to the PICGUG*)

Heather M. Langeland, Esquire  
Environmental Defense Fund  
200 First Avenue, Suite 200  
Pittsburgh, PA 15222

Joseph Otis Minott, Esquire  
Ernest Logan Welde, Esquire  
Clean Air Council  
135 S. 19<sup>th</sup> Street  
Suite 300  
Philadelphia, PA 19103

Michael Panfil, Esquire  
Environmental Defense Fund  
1875 Connecticut Ave., N.W.  
Washington, D.C. 20009

John Finigan, Esquire  
Environmental Defense Fund  
128 Winding Brook Lane  
Terrace Park, OH 45174



Gina L. Lauffer  
Prosecutor  
Bureau of Investigation and Enforcement  
PA Attorney I.D. #313863

Carrie B. Wright  
Prosecutor  
Bureau of Investigation and Enforcement  
PA Attorney I.D. #208185