



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

IN REPLY PLEASE  
REFER TO OUR FILE

November 17, 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) **Reply Brief**.

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

Sincerely,

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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>
v.	:	
	:	
<b>Philadelphia Gas Works</b>	:	

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

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Dated: November 17, 2015

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## **I. INTRODUCTION**

The Bureau of Investigation & Enforcement (“I&E”) incorporates, by reference, the Introduction section contained in its Main Brief of November 13, 2015.<sup>1</sup>

## **II. PROCEDURAL HISTORY**

I&E incorporates, by reference, the Procedural History section contained in its Main Brief of November 13, 2015.<sup>2</sup> On November 13, 2015, Philadelphia Gas Works (“PGW”), I&E, the Office of the Small Business Advocate (“OSBA”), the Office of the Consumer Advocate (“OCA”), Philadelphia Commercial and Industrial Gas Users Group (“PICGUG”), and the Environmental Defense Fund filed Main Briefs in this matter. Pursuant to and in compliance with the litigation schedule memorialized in Prehearing Order #1 and the Briefing Order previously entered in this proceeding, I&E submits this Reply Brief.

## **III. BURDEN OF PROOF**

As more fully articulated in I&E’s Main Brief,<sup>3</sup> PGW, as the petitioner in this case, has the burden of proof in this proceeding to establish that it is entitled to the relief it is seeking.<sup>4</sup> The Commission may grant PGW’s requested waiver of the 5% DSIC limit in order to enable PGW to ensure and maintain adequate, efficient, safe, reliable and reasonable service.<sup>5</sup> In order to meet its burden of proof in this proceeding, PGW must “present evidence more convincing, by even the smallest amount, than that presented by

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<sup>1</sup> Main Brief, p. 1-3.

<sup>2</sup> Main Brief, p. 3-5.

<sup>3</sup> Main Brief, p. 5-6.

<sup>4</sup> 66 Pa. C.S. § 332(a).

<sup>5</sup> 66 Pa.C.S.A. § 1358(a)(1).

any opposing party.”<sup>6</sup> I&E submits that PGW has met its burden in this case because PGW has proven that increasing its DSIC levels is the most efficient way to address its pipeline replacement in the manner requested. No other party has rebutted that proof, nor has any party rebutted the evidence presented by I&E’s Gas Safety Division, which demonstrates the need to address its infrastructure improvement plan. Accordingly, PGW has satisfied its burden of demonstrating the need increase its DSIC to 7.5% in order to ensure and maintain adequate, efficient, safe, reliable and reasonable service.

#### **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. Additionally, although under Act 11, PGW’s current distribution system improvement charge may not exceed 5% of the amount that PGW bills to its customers under its distribution rates, the Commission may grant PGW’s waiver of the 5% cap to enable PGW to ensure and maintain adequate, efficient, safe, reliable and reasonable service.<sup>7</sup>

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

I&E recommends the approval of PGW’s waiver of the DSIC cap and supports PGW’s request to increase its DSIC cap to 7.5%, not including reconciliation. I&E

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<sup>6</sup> *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

<sup>7</sup> 66 Pa. C.S. §1358(a)(1).

submits that approval of PGW's waiver is not only necessary to enable PGW to maintain adequate, efficient, safe, reliable and reasonable service, but that PGW's ability to provide such service will be compromised absent approval of its waiver request.

Although I&E initially had a myriad of concerns regarding PGW's ability to safely and effectively use additional DSIC funding to reach its stated pipeline replacement goal, during the course of this proceeding, PGW adequately addressed each of I&E's concerns. Aside from withdrawing its request for a waiver of the Act 11 obligation to pay interest on overcollections, pursuant to the terms of the PGW and I&E Stipulation ("Stipulation"), PGW has addressed and resolved all existing issues to I&E's satisfaction. These additional safeguards, combined with existing mechanisms of oversight that are already in place through the Public Utility Code and the Commission's regulations, ensure that ratepayers will be protected. Accordingly, with the additional protections offered through the Stipulation, I&E opines that approval of the waivers requested by PGW is in the public interest.

I&E disagrees with the OSBA's and PICGUC's recommendation that PGW's Petition should be denied in its entirety.<sup>8</sup> I&E argues that acceptance of OSBA's and PICGUC's recommendation would result in an outcome that is not only contrary to the public interest, but it would hinder PGW's ability to ensure and maintain efficient, safe, reliable, and reasonable service. Furthermore, I&E opposes the OCA's recommendation

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<sup>8</sup> OSBA Main Brief, p. 13; PICGUC Main Brief, p. 14.

that PGW's requests should only be approved upon the imposition of additional conditions.<sup>9</sup> I&E contends that the conditions that OCA seeks to impose either are already adequately addressed through the Stipulation or are unwarranted and unsupported in this proceeding.

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

As stated above and in I&E's Main Brief,<sup>10</sup> the Commission may grant PGW's requested waiver of the 5% DSIC limit in order to ensure and maintain adequate, efficient, safe, reliable and reasonable service.<sup>11</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>12</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>13</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>14</sup>

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

I&E submits that PGW has met its standard for waiver of the 5% cap, and incorporates, by reference, the reasoning presented in this corresponding section of the

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<sup>9</sup> OCA Main Brief, p. 32-33.

<sup>10</sup> Main Brief, p. 8.

<sup>11</sup> 66 Pa.C.S.A. § 1358(a)(1).

<sup>12</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>13</sup> 66 Pa. C.S. § 2212(c).

<sup>14</sup> *Pennsylvania Pub. Util. Comm'n v. PGW*, R-2008-2073938, 2009 WL 884424 (Mar. 26, 2009).

Main Brief.<sup>15</sup> Although previously discussed in more detail in its Main Brief, I&E reiterates that PGW has proven that denying the waiver would result in the unnecessary delay in cast iron main and unprotected steel main replacement. I&E avers that such denial of PGW's requested waiver is not only contrary to the purpose of the DSIC, but it would produce a result that is unjust, unreasonable, and contrary to the public interest.

As I&E previously explained, PGW's unprecedented amount of hazardous cast iron and unprotected steel mains are a danger to public safety. PGW's existing main replacement program, which is, in part, driven by its available DSIC funding, contemplates an 86-year replacement timeline, placing its ratepayers in a very compromised position for a very long time. With the approval of its DSIC cap waiver, PGW estimates that it will be able to reduce its at-risk main replacement by 38 years, with a minimal rate impact. This is an outcome that is in the public interest.

Accordingly, I&E submits that PGW's Petition presents exactly the type of infrastructure issues that the waiver provision was designed to address.

Despite the compelling case that PGW has presented, PICGUC, OCA, and OSBA have argued that PGW has failed to meet the standard for the waiver of the 5% cap primarily because it has failed to show that it has pursued other sources of funding in a manner deemed acceptable by those parties. I&E summarily submits that PGW has met the standard for its requested waiver.

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<sup>15</sup> Main Brief, pp. 8-18.

**1. A 25% Reduction of PGW's Cash-on-Hand by 25% Would Compromise PGW's Financial Position and Hinder its Ongoing Financial Recovery**

PICGUC claims that evidence was presented in this proceeding to show that PGW failed to "adequately investigate" its ability to reduce its cash-on-hand from \$100 million to \$75 million, freeing up \$25 million for pipeline replacement.<sup>16</sup> I&E disagrees with the assertion that PGW failed to investigate its ability to make the reduction.

PGW witness Joseph Golden presented substantial evidence explaining that the use of existing internal funds is not prudent because that use would reduce PGW's level of available year-end cash, eroding its financial indicators to unacceptable levels. This result would impact PGW's current bond ratings.<sup>17</sup> Mr. Golden correctly noted that PGW has only recently emerged from a decade of extreme financial distress which triggered it to request, and be awarded, at least three emergency or extraordinary rate increases.<sup>18</sup> Furthermore, Mr. Golden noted that because of PGW's lack of internal funds, it was forced to issue long-term debt that resulted in a capitalization level of approximately 85%.<sup>19</sup> Though Mr. Golden acknowledged that while PGW's financial position has only recently improved, it still had a debt ratio of 71.7% at the end of this fiscal year of 2014.<sup>20</sup> Furthermore, PGW still has only about 65 days of cash on hand, and claims that it should be increased by 25%-50% to provide for financial flexibility and

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<sup>16</sup> PICGUC Main Brief, p. 9.

<sup>17</sup> PGW St. 3-R, p. 4., ln. 19- p. 5, ln. 2.

<sup>18</sup> PGW St. 3-R, p. 5, ln. 16-18.

<sup>19</sup> PGW St. 3-R, p. 5, ln. 19- p. 6, ln. 1.

<sup>20</sup> PGW St. 3-R, p. 6, ln. 6-11.

to protect, or increase, its bond rating.<sup>21</sup> As Mr. Golden aptly stated during the hearing in this matter “PGW’s goal is not to aspire to become a weaker company.”<sup>22</sup>

I&E agrees with Mr. Golden that reduction of PGW’s cash-on-hand would not be prudent at this time. As Mr. Golden pointed out, PGW is just emerging from a ten-year period of financial distress. PGW’s reduction of its cash-on-hand, in the manner recommended, will result in PGW returning to its pre-2000 financial condition. Per the recommendation, PGW could use its 65 days of cash for infrastructure improvement, which would ultimately result in PGW incurring additional debt to fund its operations. This could lead to PGW again needing to seek emergency rate relief because of cash flow issues. That alternative is not a position that the Commission should take when the General Assembly has enacted a statute to address infrastructure improvement, commonly known as the DSIC. Accordingly, evidence suggests that PGW has considered the option of reducing its cash-on-hand and correctly determined that it is not an appropriate course of action under present circumstances.

## **2. Accumulation of Short-term Debt will be Detrimental to PGW and its Ratepayers**

OSBA alleges that PGW should be able to accomplish the acceleration of its pipeline replacement “through short-term debt increases with no negative impact on the

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<sup>21</sup> PGW St. 3-R, p. 6, ln. 14-19.

<sup>22</sup> Hearing Tr., p. 84, ln. 19-20.

Company's financial statements."<sup>23</sup> According to the OSBA witness, PGW could increase its temporary financing of about \$8 million in 2016 and \$10 million in 2017, and then repay those funds in 2018 with the proceeds of PGW's prospective base rate case.<sup>24</sup> OCA adopts the OSBA position and concludes that it would allow PGW to "readily finance the proposed infrastructure spending without turning to ratepayers and with no material impact in its financial position relative to its current forecast."<sup>25</sup> I&E fundamentally disagrees with this position.

First, I&E disagrees that OSBA's short term debt recommendation could be accomplished without turning to ratepayers. Although rates will not immediately change, OSBA's recommendation requires PGW to accumulate debt. Ultimately that debt will be paid by PGW's ratepayers with an additional requirement of interest that will undoubtedly be incurred in any debt transaction. PGW's ratepayers would eventually pay the resulting debt service obligations. OSBA acknowledges that its entire short-term debt recommendation is premised upon PGW filing a base rate case in future year 2018.<sup>26</sup> I&E submits that ratepayers would benefit more from the implementation of PGW's proposal, which would require them only to pay for the actual cost of the accelerated replacement.

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<sup>23</sup> OSBA, St. No. 1, p. 8, ln. 7-8.

<sup>24</sup> OSBA, St. No. 1, p. 8.

<sup>25</sup> OCA Main Brief, p. 10.

<sup>26</sup> OSBA, St. No. 1, p. 8, ln. 10-16.

Furthermore, I&E disagrees that incurring short-term debt in the manner described by the OSBA would not have a material impact on PGW's financial statement. On the contrary, PGW witness Dybalski testified that short-term borrowing, even in the amount of \$11 million, which is \$7 million less than the amount recommended by the OSBA, would compromise PGW's available commercial paper program.<sup>27</sup> Mr. Dybalski indicated that considering existing obligations, PGW will have only \$40 million of its \$120 million commercial paper program funds that are intended for working capital through the winter and for operating needs.<sup>28</sup> Additionally, adding a debt component to the DSIC would actually raise the DSIC, because PGW could include the debt service coverage in the DSIC, and would also decrease available funds for capital expenditures.<sup>29</sup> I&E submits that such a result is not only contrary to the purposes of the DSIC, but that it also exposes the public to unnecessary danger. Accordingly, PGW has demonstrated that incurring short-term debt would impact its ratepayers and compromise capital expenditures, and it is therefore not a viable alternative to PGW's waiver request.

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<sup>27</sup> Hearing Tr., p 72, ln. 11-17.

<sup>28</sup> Hearing TR., p. 72, ln.17- p. 73, ln. 2.

<sup>29</sup> Hearing Tr., p. 73, ln. 13-22.

### 3. The Recommendation for PGW to Issue Bonds is Impractical

Another alternative to increasing PGW's DSIC funding has been identified in the form of additional bond refunding and bond reissuances by PGW.<sup>30</sup> I&E disagrees that this is a viable option for PGW.

First and foremost, PGW points out that its bond issuances involve a laborious process that is contingent on City Council approval, and as a result, it cannot simply unilaterally issue bonds.<sup>31</sup> This is an inconvenient fact that has not been addressed.

Furthermore, to the extent that PGW is able to issue bonds in the future, the proceeds must be used to meet PGW's other obligations. PGW has indicated that in fiscal year 2017, it is anticipating a bond sale of \$250 million and also anticipates another bond sale in fiscal year 2020 for \$100 million.<sup>32</sup> The proceeds of the bonds will be devoted to the cost of issuance and for capital expenditures that are over and above the DSIC-financed capital expenditures.<sup>33</sup> Accordingly, as PGW has operational obligations outside of those associated with its DSIC, the proceeds of planned bond issuances are already devoted to other uses and are not available for DSIC-related expenses.

Therefore, PGW has demonstrated that to the extent the recommended bond issuance is even possible, it is an impractical source of immediate infrastructure improvement funding.

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<sup>30</sup> OCA St. No. 1, p. 10, ln. 16-18.

<sup>31</sup> Hearing Tr., p. 73, ln. 6-8.

<sup>32</sup> Hearing Tr., p. 76, ln. 8-13.

<sup>33</sup> Hearing Tr., p. 76, ln. 14-21.

#### **4. PGW's Request to Waive its \$18 Million Payment to the City of Philadelphia was Denied**

OCA, OSBA, and PICGUC further argue that PGW has failed to meet its burden in this case, in part because it failed to prove that it made an appropriate effort to obtain a waiver or grant-back of all or a portion of its \$18 million payment to the City of Philadelphia ("City"). At the outset, it should be noted that I&E supports a waiver of the fee, but recognizes that PGW is without authority to withhold the fee, absent the City's permission. PGW offered testimony in this proceeding that explained its inability to unilaterally waive its own obligation to pay the fee.<sup>34</sup>

I&E disagrees with the assertion that PGW failed to investigate its ability to obtain the payment waiver. While opposing parties argue that PGW failed to make any formal request for a waiver from the City, PGW witness Golden testified that he had personally spoken with the City's Deputy Director of Finance, Catherine Paster, by telephone on November 4, 2015 to request a waiver of the \$18 million fee.<sup>35</sup> Mr. Golden indicated that Ms. Paster informed him that the fee could not be waived at that time, because the waiver was not something that could be done through the term of the existing Administration.<sup>36</sup> Mr. Golden admitted that his conversation with Ms. Paster was his own first inquiry into waiver of the fee while PGW's petition was pending, but he also indicated that other

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<sup>34</sup> PGW St. 3, p. 10.

<sup>35</sup> Hearing Tr., p. 84-88.

<sup>36</sup> Hearing Tr., p. 84.

PGW employees had also contacted the City of Philadelphia on the same basis.<sup>37</sup>

Additionally, no party questioned any other PGW witness at the hearing about those witnesses' contacts with the City to discuss a potential payment waiver, even though two other witnesses, Daniel Murray and Kenneth Dybalski, were present. Therefore, it is an unsupported allegation that Mr. Golden's call with Ms. Paster represented PGW's sole and insufficient effort to obtain a payment waiver from the City. Accordingly, PGW has demonstrated that though it is without authority to unilaterally waive its payment to the City, it has requested that the City waive the payment and that request was not granted. Whether the request was formal or informal is inconsequential. The fact is that Mr. Golden testified that he had spoken to the appropriate contact regarding the required payment. Accordingly, PGW is unable to obtain a waiver from the City and it is still obligated to make its \$18 million payment to the City.

Although I&E agrees that PGW's DSIC waiver is warranted, I&E cannot deny that the approval of PGW's DSIC waiver will raise the rates of PGW's customers. However, I&E opines that the increase is necessary to guarantee the safety of those customers. By reference, I&E incorporates its discussion of the dangers associated with PGW's at-risk pipeline and the necessity of expediting the replacement time for such pipeline.<sup>38</sup>

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<sup>37</sup> Hearing Tr., p. 88, ln. 17-24, Tr. p. 92, ln. 15-20.

<sup>38</sup> Main Brief, p. 9.

PGW's calculation of the rate impact shows only a slight increase for average heating customers.<sup>39</sup> OCA alleges that the actual customer impact is higher than that presented by PGW.<sup>40</sup> I&E opines that the dangers posed by PGW's at-risk pipeline justify the increase. I&E notes that the OSBA has indicated that if PGW "is either unwilling or unable to accelerate its main replacement program without the proposed changes to the DSIC mechanism, [the OSBA submits that] public safety considerations trump rate impact."<sup>41</sup> I&E agrees with this representation.

I&E has considered the rate impact that the DSIC increase will have upon PGW's ratepayers, but recognizes its necessity. The impact on ratepayers is somewhat mitigated as the proposal would be implemented at a time when gas costs have decreased, causing PGW to predict that even with an increased DSIC, customers "will actually see a net decrease in their rates."<sup>42</sup> Additionally, although the OCA rightly expresses concerns about the impact upon PGW's customers who are in "deep poverty,"<sup>43</sup> PGW has presented evidence to address those concerns. Specifically, PGW has detailed opportunities for low-income customers to seek assistance through PGW's Customer

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<sup>39</sup> PGW St. No. 2, p.6: showing a monthly increase of \$1.65 per month for an average heating customer using 83 MCF per year at June 2015 rates.

<sup>40</sup> OCA Main Brief, p. 13: alleging an increase of \$2.86 per month.

<sup>41</sup> OSBA Main Brief, p. 7-8.

<sup>42</sup> PGW St. 2R, p. 10.

<sup>43</sup> OCA Brief, p. 14

Responsibility Program, as well as the opportunities to enroll in payment agreement and in budget billing.<sup>44</sup>

Accordingly, I&E opines that while a rate increase is never ideal, it is necessary in this proceeding to ensure that PGW can provide safe and effective service. Furthermore, I&E believes that the PGW's decrease in gas costs will help to mitigate the impact of the increase, and that PGW is offering assistance to those who are truly in deep poverty.

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

For the reasons articulated in its Main Brief,<sup>45</sup> I&E supports PGW's plan to implement its 7.5% cap for DSIC expenditures as modified by and in accordance with the Stipulation. Although opposing parties fail to address the protections afforded through the Stipulation, their failure to acknowledge these protections does not minimize the impact of the Stipulation's terms. Accordingly, I&E avers that this increased DSIC cap will facilitate PGW's safe and expedited replacement of at-risk pipeline, which is in the public interest.

##### **1. With the Added Protections Contained in Stipulation, an Amended LTIP Should Not be Required Before the DSIC Increased**

I&E acknowledges that Act 11 requires that, as a precondition to the implementation of PGW's DSIC, it must file a Long-Term Infrastructure Improvement

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<sup>44</sup> PGW St. 2-R, p. 9, ln. 1-11.

<sup>45</sup> Main Brief, pp. 16-23.

Plan (“LTIP”) with the Commission.<sup>46</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, because PGW has agreed to conditions that will result in any awarded DSIC funds being 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 of ratepayer funds. Therefore, deviation from the typical LTIP process is warranted in this case. Also, it must be recognized that I&E is the only party that comprehensively addressed deficiencies in PGW’s LTIP and in its Distribution Integrity Management Program (“DIMP”). Because I&E’s Gas Safety Division is in the best position to determine DIMP compliance and if the DIMP is not functioning properly, I&E is in the best position to address any deficiencies.

## **2. Stipulated Protections Already Ensure that Main Replacement is Prioritized by Risk**

OCA argues that the point of accelerating the replacement of PGW’s at-risk infrastructure is “not to accelerate for acceleration’s sake,”<sup>47</sup> but this argument ignores the fact that the Stipulation contains terms to ensure that acceleration is targeted to replacing at-risk main in a manner that addressed the riskiest pipeline first. More specifically, PGW has agreed that its Amended LTIP will:

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<sup>46</sup> 66 Pa. C.S. §1352.

<sup>47</sup> OCA Main Brief, p. 16; Hearing Tr. 103-104.

- (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.

Furthermore, to ensure that increased DSIC funds are not misspent on unprioritized replacements, PGW has also agreed that it will not undertake any main replacement made possible by the incremental DSIC funding authorized by the Petition unless and until the Commission has approved its LTIP.<sup>48</sup> As previously noted, PGW's LTIP must incorporate its framework for prioritization of investment improvements via its DIMP.<sup>49</sup> When PGW's DSIC and LTIP are ultimately approved, it would also be required to file an annual Asset Optimization Plan ("AOP"). The AOP would include a description of all eligible property that was repaired, improved and replaced in the immediately preceding 12-month period pursuant to its approved LTIP and its prior year's AOP. In addition, a detailed description of all the facilities to be improved in the upcoming 12-month period will be included.<sup>50</sup> This multi-layer process will ensure that pipeline is properly prioritized for replacement.

Finally, PGW has also agreed to respond to issues raised in the I&E Gas Safety Division's Non-Compliance letter to PGW dated May 7, 2015. This concession by PGW specifically addresses the Gas Safety Division's concerns of PGW's non-compliant DIMP, which is designed to identify pipeline risks, and its ability to hinder the success of

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<sup>48</sup> Stipulation, 1(B)(4).

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

<sup>50</sup> 66 Pa.C.S.A. §1356.

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.

**3. The Stipulation Ensures that PGW Will Employ an Adequate Amount of Qualified, and Trained Employees**

OCA argues that if PGW's DSIC waiver is granted and it recovers costs before plant is in service, that PGW should be required to provide regular reports about its training efforts, and the qualifications and performance of contractors.<sup>51</sup> I&E supports this recommendation and offers that PGW has already assented to this request as represented in the Stipulation. More specifically, PGW has agreed that its revised LTIP 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>52</sup>

As 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 now possible and there will be a mechanism to monitor and gauge PGW's compliance with employing adequate and qualified personnel. Furthermore, PGW has also agreed that:

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<sup>51</sup> OCA Main Brief, p. 22.

<sup>52</sup> Stipulation, ¶1(B)(1)(c)

“[PGW will provide]for a period of three years from the date the PUC approves PGW’s Amended LTIIP (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 LTIIP.”<sup>53</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.

#### **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%. As thoroughly explained in its Main Brief,<sup>54</sup> I&E recommends that, subject to the terms of the Stipulation, 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.

Although PICGUG claims that PGW’s request to increase its DSIC cap for reconciliation expenses “is particularly inappropriate and unnecessary,” it fails to offer

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<sup>53</sup> Stipulation, ¶1(D)(b).

<sup>54</sup> Main Brief, pp. 24-28.

any evidence for its position.<sup>55</sup> OCA argues that PGW has not undercollected with a DSIC cap at 5%, and therefore PGW will not undercollect with a DSIC cap at 10%, negating the need for the additional 2.5% layer of protection.<sup>56</sup> In support of its position, and along with OSBA, OCA argues that PGW's historical undercollection figure of \$4.1 million is flawed due to timing issues and that PGW's assessment does not comport with the annual reconciliation that PGW has filed with the Commission.<sup>57</sup> OSBA witness Knecht goes further, alleging that his analysis revealed that PGW has actually over-recovered DSIC-eligible costs.<sup>58</sup>

There is no data to suggest that future undercollections will not occur. Accordingly, I&E recommends erring on the side of caution and approving PGW's request as an additional safeguard to maximize any DSIC funding. If PGW's opponents are incorrect and undercollection occurs, PGW will have the ability to recover the undercollection and the funding of its critical main replacement will not be impacted. Therefore, PGW's request maximizes the use of DSIC funding and should be approved.

#### **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%

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<sup>55</sup> PICGUC Main Brief, p. 13-14.

<sup>56</sup> OCA Main Brief, p. 24-25.

<sup>57</sup> OCA Main Brief, p. 24.

<sup>58</sup> OSBA St. IS, p. 12.

of PGW's distribution revenues.<sup>59</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>60</sup> Furthermore, Act 11 also permits DSIC recovery only for eligible property that was placed in service during the three-month period ending one month prior to the effective date of the distribution improvement system charge.<sup>61</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.

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<sup>59</sup> Petition, ¶35.

<sup>60</sup> 66 Pa.C.S.A. § 1357(a)(2).

<sup>61</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>62</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, enables it to address financing concerns associated with pipeline replacement. 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>63</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>64</sup>

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<sup>62</sup> PGW St. No. 2, p. 7, ln17-p. 8, ln. 1.

<sup>63</sup> 66 Pa. C.S. 2212(c).

<sup>64</sup> *Pa. P.U.C. v. PGW*, R-2008-2073938, 2009 WL 884424 (Mar. 26, 2009).

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

As discussed in I&E's Main Brief,<sup>65</sup> 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. In its Main Brief, I&E explained that PGW has presented evidence to prove 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. I&E now reiterates that 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.

#### **1. The Argument Against Annualization/Levelization is Based on Incomplete Information**

OSBA argues that PGW's requested annualization and levelization is barred by application of 66 Pa. C.S. §1357 because that provision of the Public Utility Code is written in the past tense, clearly indicating that "the DSIC must be limited to costs related to the actual expenditures and not forecast expenditures."<sup>66</sup> I&E disagrees with OSBA's interpretation of 66 Pa. C.S. §1357. However, assuming, arguendo, that the textual analysis is correct, it does not address that PGW is also making its waiver request under

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<sup>65</sup> Main Brief, pp. 29-31.

<sup>66</sup> OSBA Main Brief, p. 12.

66 Pa. C.S. 2212(c), which enables the Commission to grant waivers that “will be just and reasonable and in the public interest.”

The OSBA relies upon the Commission’s Order entered on April 4, 2013 at Docket No. P-2012-2337737, which, in part, denied PGW’s previous request to annualize and levelize its DSIC, as support that the instant proposal should be denied, too.

However, this position fails to address the Commission’s recent comments regarding the potential for PGW to use projected, annualized costs in its DSIC:

It is noteworthy that PGW requested use of projected annualized costs in its DSIC Petition at Docket No. P-2012-2337737. At that time, certain parties objected to PGW’s request, noting that Act 11 only permits costs that are actually incurred to be eligible for DSIC recovery. While the Commission agreed that PGW had not presented legal or factual basis to recover annualized costs through the DSIC, it noted that PGW has the opportunity to seek a waiver or suspension of Act 11, pursuant to Section 2212(c) of the Public Utility Code.<sup>56</sup> Based on actual experience with PGW’s unique DSIC mechanism and circumstances over the past two years, Staff recognizes that it may be beneficial to reconsider this option if re-proposed by PGW.<sup>67</sup>

I&E contends that the Commission’s statement makes it clear that its past denial of PGW’s use of projected, annualized costs is not determinative of the outcome of any such future request. The Staff Report also addressed a safeguard that PGW could implement to ensure that its projections materialized:

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<sup>67</sup> Staff Report, p. 44.

To provide an additional consumer assurance that PGW will strive to complete installation of pipe and other infrastructure improvements at the levels included in its projections used to compute the annualized DSIC, PGW could be required to pay interest on over-collections to discourage intentional over-projection of infrastructure expenditures.<sup>68</sup>

As previously indicated, PGW has agreed to pay interest on overcollections, and has therefore instituted the additional level of protection contemplated in the Staff Report.

Furthermore, in this case, PGW has not only presented a legal basis, under Section 2212(c) of the Public Utility Code, to recover its cost, but, through its testimony in this case, it has also presented a factual basis for such recovery, which speaks directly to the Commission's concern that these bases were lacking in the prior petition. Finally, and as the Commission contemplated, PGW's unique DSIC mechanism and the circumstances surrounding PGW's operation over the last two years, as presented in PGW's Petition and the evidence submitted in this case, all combine to prove that PGW's use of annualized, projected costs in its DSIC would be beneficial to both PGW and its ratepayers.

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

For the reasons articulated in its Main Brief and addressed above, I&E supports PGW's requested waiver, as amended by the Stipulation. Accordingly, I&E opines that no further conditions upon PGW's request are warranted.

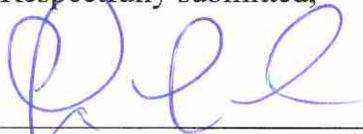
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<sup>68</sup> Staff Report, p. 44.

## VI. CONCLUSION

The Commission's Bureau of Investigation and Enforcement represents that it supports the 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 and the accompanying 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 Philadelphia Gas Works' Petition, subject to the Stipulation, including all terms and conditions contained therein, in full resolution of this matter.

Respectfully submitted,



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Dated: November 17, 2015

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 **Reply Brief** dated November 17, 2015, in the manner and upon the persons listed below, in accordance with the requirements of § 1.54 (relating to service by a party):

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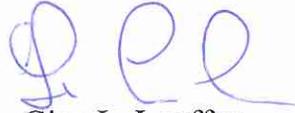
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