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December 30, 2015

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

VIA ELECTRONIC FILING

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

Dear Secretary Chiavetta:

Please find enclosed for filing with the Pennsylvania Public Utility Commission the Exceptions of the Philadelphia Industrial and Commercial Gas Users Group ("PICGUG"), in the above-referenced proceeding.

As evidenced by the attached Certificate of Service, all parties to this proceeding are being duly served.

Sincerely,

McNEES WALLACE & NURICK LLC

By

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

Adeolu A. Bakare

Counsel to the Philadelphia Industrial and Commercial Gas Users Group

Enclosure

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

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CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a true copy of the foregoing document upon the participants listed below in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant).

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Dated this 30th day of December, 2015, at Harrisburg, Pennsylvania

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PETITION OF PHILADELPHIA GAS :
WORKS FOR WAIVER OF PROVISIONS : Docket No. P-2015-2501500
OF ACT 11 TO INCREASE THE :
DISTRIBUTION SYSTEM :
IMPROVEMENT CHARGE CAP AND TO :
PERMIT LEVELIZATION OF DSIC :
CHARGES :

**EXCEPTIONS OF THE
PHILADELPHIA INDUSTRIAL AND
COMMERCIAL GAS USERS GROUP**

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

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December 30, 2015

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I. INTRODUCTION

On September 1, 2015, Philadelphia Gas Works ("PGW" or "Company") filed a Petition for Waiver of Provisions of Act 11 to Increase the Distribution System Improvement Charge ("DSIC") Cap and to Permit Levelization of DSIC Charges ("Petition").¹

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

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

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

Pursuant to the procedural schedule, OCA, OSBA, I&E, and EDF submitted Direct Testimony on October 19, 2015.² PGW submitted Rebuttal Testimony on October 29, 2015. OCA and OSBA submitted Surrebuttal Testimony on November 3, 2015.

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

¹ The Petition bases its recommendations in large part on the Pennsylvania Public Utility Commission's ("PUC" or "Commission") April 21, 2015, *Inquiry into Philadelphia Gas Works' Pipeline Replacement Program* ("Staff Report").

² I&E filed a Motion to Strike the Direct Testimony submitted by EDF on October 26, 2015. On October 30, 2015, the ALJs issued an Order granting I&E's Motion to Strike.

Pursuant to the procedural schedule established at the Prehearing Conference and the Briefing Order issued on November 6, 2015, PICGUG, PGW, OCA, OSBA, I&E, and EDF filed Main Briefs on November 13. Additionally, PGW, OCA, OSBA, I&E, and EDF filed Reply Briefs on November 17.

On December 11, 2015, the presiding ALJs issued a Recommended Decision ("R.D.") recommending approval of PGW's Petition. PICGUG now files these Exceptions ("Exc.") to address the ALJs' R.D. As discussed more fully herein, PICGUG excepts to the the ALJs finding that PGW met its burden of providing that an increase to the DSIC cap is necessary. Specifically, the ALJs did not fully recognize that PGW can modify its cash on hand and still remain financially viable. *See* PICGUG Exc. 1, A. Similarly, the ALJs failed to find that PGW did not make adequate effort to seek relief from the City of Philadelphia prior to turning to ratepayers for financial relief. *See* PICGUG Exc. 1, B. PICGUG also excepts to the ALJs' finding that PGW should be permitted to apply a separate 2.5% cap for reconciliation adjustments. As discussed more fully herein, the ALJs overlooked the fact that PGW's proposal is not supported by Act 11. *See* PICGUG Exc. 2.

II. EXCEPTIONS

Exception No. 1. The ALJ Erred in Finding That PGW Met its Burden of Proving an Increase to the DSIC Cap to Be Necessary. (R.D., pp. 56-57).

The R.D. overlooks record evidence in this proceeding showing that PGW failed to show waiver of the statutory 5% DSIC Cap to be necessary at this time.³ PGW has not met its burden of proving, by a preponderance of the evidence, that it lacks reasonable alternatives or other funding sources besides increasing DSIC collections from customers. *See* R.D., pp. 56-57.

³ As set forth in PICGUG's Main Brief and confirmed in the R.D., PGW must address its pursuit of reasonable funding alternatives and sources to show the requested DSIC waiver is necessary pursuant to Act 11. *See* PICGUG Main Brief, pp. 4-6; *see* R.D., pp. 16-17.

A. Reducing PGW's Cash-on-Hand is a Viable Option to Generate Funding For Main Replacements in the Interim Period Between PGW's Next Base Rate Case.

The R.D. denies PICGUG's argument that PGW failed to adequately investigate the viability of reducing cash on hand from \$100 million to \$75 million in order to generate \$25 million to fund pipeline replacements. In doing so, the ALJ cites testimony from PGW and overlooks cross-examination showing PGW's representations to be inaccurate. R.D., p. 56. As the party bearing the burden of proving that a waiver of the 5% DSIC is necessary, PGW must provide evidence to show why reducing its cash-on-hand would not be a readily available source for infrastructural funding.

The R.D. concludes that PGW adequately investigated the Staff Report recommendation to reduce its cash-on-hand by \$25 million and further determined that a reduction to PGW's cash-on-hand would not be a viable alternative to increasing the DSIC Cap. *See* R.D., p. 56. Both statements conflict with the record in this proceeding.

As noted in the R.D., PGW based its claim, that cash-on-hand cannot be reduced, on purported indications that rating agencies have suggested that PGW should actually raise its year-end cash balance goals to \$125 million or more. *See* R.D., pp. 42, 56. This statement misleadingly suggests that one or more rating agencies have conducted a specific analysis of PGW's financial situation. To the contrary, the only evidence produced by PGW to support this statement was a US Public Power Rating Criteria report prepared by FitchRatings ("Public Power Report").⁴ Transcript (hereinafter, "Tr.") at 87 (confirming that PGW produced no further

⁴ During cross-examination, PGW Witness Joseph F. Golden, Jr. testified as to his impressions of the relevance of the Public Power Report to PGW's credit quality stating that "I think it was indicative of our discussions we had with the three rating agencies when we went for our rating on our recent bond sale in August, and the three rating agencies thought that strength of cash is very important." Tr. at 87. Following an oral motion to strike on grounds of hearsay by counsel for PICGUG, the ALJs overruled the motion only after counsel for PGW clarified that the statement was not offered "for truth of the Statement that the rating agencies believe that" but only as an indication of Mr. Golden's basis for his belief. Tr. at 90.

documentation from any rating agency other than the Public Power Report). As indicated by the title, the Public Power Report is a sector-specific analysis of the credit quality of municipal and cooperative power entities. *See id.* at 82-83; *see also* PGW Statement No. 3-R, Exhibit JFG-1, p. 1. Further, to the extent deemed applicable to natural gas operations, the Public Power Report provides general industry guidelines, not specific recommendations for any individual entity. *See Tr.* at 83-84. As such, PGW's representation that "the report has *made clear* that... PGW needs to have at least 60-90 days of cash-on-hand at fiscal year-end" is misleading and unsupported.⁵ PGW Statement No. 3-R, p. 5 (*emphasis added*); *see also* R.D., p. 42 note 94 *citing* Public Power Report, p. 9.

The possibility of PGW pursuing a means by which to keep less cash on hand remains viable and would provide another avenue for funding pipeline replacement. PGW's claim, that it cannot legally be directed to reduce cash-on-hand, misunderstands the nature of this proceeding. R.D., p. 42. The General Assembly granted the PUC broad latitude to determine when a DSIC waiver is "necessary." *See* PICGUG Main Brief, p. 4. Considering that PGW has already announced an imminent base rate proceeding, which still remains the preferred source of funding under Act 11, the Company cannot show the proposed DSIC is necessary, without fully investigating potential to generate \$25 million in funding through a cash-on-hand reduction. *See* R.D., Finding of Fact No. 65 (noting that "PGW expects to file a base rate case that will go into effect in Fiscal Year 2017"); *see also* 66 Pa. C.S. § 1353(b)(4)-(5).

⁵ For example, the Public Power Report also confirms that "[l]ess than 60 days cash indicates less financial flexibility, but can be adequate if a utility is subject to less cash flow volatility." Public Power Report, p. 9. Ironically, the Public Power Report identifies automatic rate adjustments, such as the DSIC, as a favorable indicator of financial stability. *Id.* at 6.

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

B. PGW Must Be Required to Formally Request Waiver of \$18 Million Annual Payment to the City.

The R.D. erroneously declined to direct PGW to formally request a waiver of its annual \$18 million payment to the City. In principal part, the R.D. concludes that denying PGW's proposed DSIC increase on such grounds would be unreasonable because there is no guarantee the City would waive the annual payment. R.D., p. 57. However, the issue before the Commission is whether PGW has met its burden of demonstrating that the requested DSIC waiver is necessary. By making only a rushed informal inquiry to a single City administrator, on the eve of evidentiary hearings, PGW has failed to show a bonafide effort to obtain waiver of the \$18 million payment from the City. *See* R.D., pp. 44, 57.

PGW has declined to vigorously seek a waiver of the Company's annual payment to the City. As detailed in PICGUG's Main Brief, PGW initially dismissed the recommendation to seek a waiver of the \$18 million payment as "pointless." PGW Statement No. 3-R, p. 10. PGW based this conclusion solely on its assertion that the Company lacks the ability or authority to require waiver of the \$18 million payment. *Id.* PGW appeared to reconsider the reasonableness of its initial position at the evidentiary hearings held on November 5, 2015, where PGW Witness Joseph Golden confirmed the following:

I did mention that in this testimony; however, I did take the liberty of contacting a Deputy Director of Finance yesterday afternoon in anticipation of this hearing and posed the question, would the \$18 million be something they would consider granting back to PGW. And their response was that it would not be something they would do through the term of this Administration.

Tr. at 85. Notably, Mr. Golden's "contact" consisted of one telephone call to a single city Deputy Director.⁶ *See id.*; *see also* R.D., p. 44. As could be expected of an informal and unsubstantiated request, the City did not respond favorably or elaborate as to whether even a partial release from the payment could be considered. *See id.*

PICGUG submits that PGW's efforts fail the reasonableness test. PGW cannot expect the City to seriously consider waiving the \$18 million payment without presenting a detailed proposal for Council's consideration, which Mr. Golden confirmed was not done.⁷ *See* Tr. at 86. Moreover, considering that PGW is requesting an \$11 million rate increase from ratepayers, serious consideration should be given regarding whether at least a portion, if not all, of this burden could also be shouldered by the City.

Finally, the additional observation in the R.D., concerning the uncertainty of future waivers, should not be considered. The fact that there is no guarantee the City would waive the \$18 million payment in each of the next 48 years has no bearing on the question of whether a DSIC increase is necessary at this time. The same speculative logic could apply equally to DSIC funding in general, as there is no guarantee that the General Assembly will not eliminate the DSIC mechanism at some point in the future. The only way to confirm the availability and

⁶ Mr. Golden also averred that the issue of waiving the \$18 million payment was discussed in prior meetings with the Philadelphia Facilities Management Corporation Board, noting only that "those conversations do come up in our budget process when they approve our budget." *See* Tr. at 92. Such generalized "conversations" should not be considered relevant to the question of whether PGW has formally prepared a request to waive the \$18 million annual payment before seeking Commission authority to recover an additional \$11 million or more in ratepayer revenue through waivers of Act 11.

⁷ I&E argues that because no party questioned PGW witnesses Kenneth Dybalski or Daniel Murray regarding the \$18 million payment, any allegations that Mr. Golden's inquiry represents the sole efforts of the Company are unfounded. *See* R.D., p. 47. I&E's claim should be disregarded as Mr. Golden sponsored all of PGW's testimony concerning the \$18 million payment to the City and, as the acting Chief Financial Officer, testified that he is responsible for PGW's treasury, accounting, and budget activities. *See* PGW Statement No. 3-R, pp. 1-2.

duration of a payment waiver from the City is to compel PGW to make a formal request to the City.⁸

Accordingly, before any increase to the DSIC may take effect, PGW should be directed to present a formal written request to Council, complete with supporting testimony and analysis for Council's review.

Exception No. 2: The ALJs Erred in Finding that PGW's Proposal to Add a Separate 2.5% Cap for Reconciliation Adjustments is Acceptable, as PGW's Proposal Does Not Comport with the Requirements of Act 129. (R.D., p. 79).

PGW's proposal to apply a separate 2.5% cap for reconciliation adjustments is not supported by Act 11. The R.D. fails to explain why PGW should be entitled to a separate 2.5% cap for reconciliations, other than noting that the separate cap would allow PGW to spend all of its DSIC revenue up to 7.5% on pipeline replacements. *See* R.D., p. 79. Approval of this argument would completely overturns the intended operation of the DSIC under Act 11. As described by OCA Witness Ashley Everette, "[u]nlike other proposals by PGW that are directly and narrowly tied to its unique situation, all utilities are subject to reconciliation of their DSIC recovery." OCA Statement No. 1, p. 16. Accordingly, PGW's request for an additional 2.5% increase to the DSIC Cap for reconciliation expenses is particularly inappropriate and unnecessary. *See id.* at 17. As PGW has failed to meet the standard for waiver of the 5% DSIC, the Commission must deny the Company's request to increase the DSIC Cap by an additional 2.5%.

III. CONCLUSION

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

⁸ As documented in PICGUG's Main Brief, Section 2212(f) of the Public Utility Code does not prohibit the Commission from directing PGW to request waiver of the \$18 million payment to the City. *See* PICGUG Main Brief, pp. 12-13.

the Philadelphia Industrial and Commercial Gas Users Group and deny PGW's proposal to increase the 5% DSIC Cap to 7.5% and deny the further proposal to implement a separate 2.5% Cap for reconciliation expenses

Respectfully submitted,

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