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December 31, 2015

Via Electronic Filing

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

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

Dear Secretary Chiavetta:

Oh behalf of Philadelphia Gas Works ("PGW") enclosed for filing please find its Exception with regard to the above-referenced matter. Copies of the above filing have been served in accordance with the attached Certificate of Service.

Sincerely,



Carl R. Shultz

CRS/lww
Enclosure

cc: Hon. Christopher P. Pell w/enc.
Hon. Marta Guhl, w/enc.
Cert. of Service w/enc.
Office of Special Assistants w/enc. (ra-OSA@pa.gov)

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of PGW's Exception upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

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Dated: December 31, 2015



Carl R. Shultz, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**EXCEPTION OF
PHILADELPHIA GAS WORKS**

I. INTRODUCTION

On behalf of Philadelphia Gas Works (“PGW”), this exception is submitted in response to the December 7, 2015 Recommended Decision (“RD”) of Administrative Law Judges Christopher P. Pell and Marta Guhl (“ALJs”). PGW fully supports the bottom line recommendation of the ALJs which recommend that the Commission approve PGW’s Petition: (1) to increase the DSIC cap to 7.5%, not including reconciliation, with an additional 2.5% cap for a total of 10%, to solely cover reconciliation amounts; (2) to permit levelization and annualization of DSIC charges; and, (3) to grant the waivers of the Public Utility Code needed to effectuate those changes.¹ Importantly, these recommendations will permit PGW to begin the process of accelerating PGW’s “at risk” main replacement to decrease the projected time for full replacement from the present 86 years to 48 years by permitting PGW to immediately begin to bill customers at the 7.5% level. As the ALJs concluded,

PGW has established that the Commission should allow it to increase the DSIC to 7.5%. PGW has established that the accelerated rate of pipeline replacement is necessary to ensure safe and reliable service for its ratepayers. PGW has

¹ RD at 105-06. The ALJs properly recommended approval of the Petition, as modified by the November 4, 2015 Stipulation between PGW and the Commission’s Bureau of Investigation and Enforcement.

determined that it would be prudent to accelerate the pace of its “at risk” distribution mains, currently 66% of its 3,024 miles of main. PGW expects that the timeline to replace all cast iron main in the system would decrease from its current projection of 86 years to 48 years with the increase of the DSIC to 7.5%. This represents a 44% reduction in the timeline for cast iron main replacement.

Further, as we previously noted in our Discussion of PGW’s request for waiver of the DSIC cap, the impact on the customers’ bills will be minimal. Moreover, it would allow the Company an opportunity to ensure that it can properly spend the additional \$11 million in DSIC funds in a manner that is both prudent and cost effective.²

The single issue with which PGW submits this exception is regarding Ordering Paragraph 5 which recommended that the Commission require PGW to formally request the City of Philadelphia (“City”) to waive its City Fee.³ Notably, the ALJs correctly found that requesting the City waive its City Fee is not a viable alternative to increasing PGW’s DSIC.⁴ The ALJs also correctly concluded that the Commission is not authorized to interfere with the payment of the \$18 million City Fee by PGW.⁵ Notwithstanding these sound conclusions, though, the ALJs’ erroneously recommended in Ordering Paragraph 5 that the Commission require PGW to formally request the City to waive its fee.⁶ The RD does not offer any context or direction about when or how this formal request is to be submitted. PGW must respectfully except to this recommended ordering paragraph.

The City Fee – the only compensation that the City receives from its ownership of PGW – is statutorily required to be paid by PGW to the City and recovered in rates.⁷ Moreover, the

² RD at 69-70.

³ RD at 106.

⁴ RD at 57, 59.

⁵ RD at 105.

⁶ RD at 106.

⁷ 66 Pa. C.S. § 2212(f).

DSIC is the mechanism established by the Legislature to finance accelerated infrastructure replacement. In addition, PGW has already raised this issue with City officials several times, and the City has declined to consider this course.⁸ Therefore – and to the extent this is what the ALJs recommend – PGW submits that it would not be reasonable or in the public interest to avoid or delay increasing PGW’s DSIC cap on the hope that the City might voluntarily agree to waive the payment PGW is statutorily required to make.

Accordingly PGW respectfully excepts to the ALJs’ recommendation in this regard and urges the Commission to not include any such directive in its final order, but to otherwise adopt the Recommended Decision to permit PGW to immediately start the billing of its increased DSIC at 7.5% (with a reconciliation cap of 2.5% for a total of 10%) on an annualized, levelized basis. In so doing, PGW will be able immediately to begin the process of accelerating its cast iron main replacement program and enhance the safety, reliability and reasonableness of its distribution system. In addition, PGW is willing to work cooperatively with the Commission to find efficient and reasonable ways to fund additional cast iron main replacement going-forward.

II. EXCEPTION NO. 1: THE ALJS ERRED BY RECOMMENDING THAT THE COMMISSION REQUIRE PGW TO FORMALLY REQUEST THAT THE CITY OF PHILADELPHIA RETURN THE CITY FEE, (ORDERING PARAGRAPH ¶5)

The Recommended Decision rejected the demand of several parties’ that PGW should request that the City waive its City Fee as a substitute for increasing its DSIC, indicating that this “was not a viable alternative to PGW’s request to increase its DSIC.” The decision went on to state:

In this case, PGW already received a response, albeit to an informal request, indicating that the current administration would not grant such a request. Additionally, there is no guarantee that the City would agree to waive this fee

⁸ PGW St. 3-R at 10-12; PGW Main Brief at 30.

even when a new administration takes over in January 2016. Moreover, even supposing that the City would agree to waive the fee in 2016, there is no guarantee that the City would continue to waive the fee for the next 48 years until PGW completes its main replacement. While in theory this sounds like an option, it is speculative at best. Considering that there are several thousand miles of mains to be replaced, that the existing mains impose a safety risk, and that it will still take 48 years to complete the replacement with \$11 million additional dollars for the first year, PGW needs guaranteed funding to expedite its main replacement. As there is no guarantee with a request of the City, either formal or informal, we will not deny PGW's request to increase its DSIC on this basis. Of course, we do encourage PGW to explore such requests on an ongoing basis. Should the City grant the request, PGW can use additional funds to further expedite main replacement.⁹

The Recommended Decision also stated:

In regards to the \$18 million dollar payment that PGW makes to the City of Philadelphia, we note that Section 2212(f) of the Public Utility Code does not authorize the Commission to interfere with the payment of the \$18 million City fee by PGW, and requires it to be collected in rates from customers. PGW has indicated that City is well aware of the suggestion in the Commission Staff Report, as well as similar suggestions made by the witnesses in this proceeding to waive the City Fee, and has considered and rejected them under the present circumstances. As recently as the day before the hearing in this case, PGW asked the City to voluntarily agree to waive the City Fee to pay for accelerated main replacement and the City rejected the request. We do not believe that having the Company make a formal request for the City to waive the \$18 million payment will have any affect and there is nothing that we can do to force the City's hand in this matter.¹⁰

Notwithstanding this reasoned analysis, the Recommended Decision nonetheless included the following sentence in its ordering paragraph: "That Philadelphia Gas Works shall also make a formal request of the City of Philadelphia to waive its City fee."¹¹ This ordering paragraph appears inconsistent with the conclusions contained in the Recommended Decision itself, and is unclear as to timing or structure. Accordingly PGW respectfully excepts to the inclusion of any such directive in the ordering paragraphs of the Commission's Order.

⁹ RD at 57.

¹⁰ *Id.* at 70-71.

¹¹ *Id.* at 107, Ordering Para. 5.

As the ALJs themselves appeared to find, any such directive would be inadvisable and unreasonable. First, the City's waiving or granting back of the City Fee is not within the power of the Commission to order. The City of Philadelphia has an Ordinance requiring PGW to make a payment of \$18 million to the City.¹² By law, the Commission does not have the authority to forcibly appropriate the only compensation the City receives for owning the Gas Works.¹³

Public Utility Code Section 2212(f) provides as follows:

The Commission shall permit the city natural gas distribution operation to impose, charge or collect rates and charges as necessary to permit the city natural gas distribution operation to transfer or pay to the city that is the owner of the city natural gas distribution operation, on an annual basis, such amount as may be specified from time to time in the applicable ordinances of the city or agreement of the city approved by ordinances.¹⁴

Section 2212(f) permits the Commission to review and approve only that portion of the City payment that exceeds 110% of the amount authorized (\$18 million), if that were to occur, but it does not grant the Commission any authority to direct the City to waive (or grant back) its City Fee.¹⁵ Accordingly, PGW is unable to unilaterally waive its own obligation to pay the fee.¹⁶ While the City voluntarily granted back the \$18 million payment from 2004-2010, when PGW was in financial crisis, those payments were in recognition of the dire financial circumstances and are not relevant here.

¹² PGW St. No. 3-R at 11.

¹³ PGW MB at 1.

¹⁴ 66 Pa. C.S. § 2212(f).

¹⁵ *Id.*

¹⁶ Hearing Tr., p.78, ln. 8-12.

Moreover, as PGW has explained throughout this proceeding, it would be unfair and inappropriate for the City to fund capital improvements by granting back the City Fee.¹⁷ Since the City is the owner of the Gas Works, the City Fee is comparable to a modest return on the City's investment.¹⁸ The return of the City Fee for capital improvements is: (i) substantially similar to demanding an investor owned utility fund distribution infrastructure investments from shareholder equity or an appropriation of dividends; and, (ii) results in no net gain to PGW ratepayers, who are also Philadelphia taxpayers.¹⁹ In addition, the City undoubtedly has other budgetary issues that it needs to prioritize for the benefit of Philadelphia taxpayers (PGW customers).

Further, as PGW witness Mr. Golden explained, PGW has already inquired of the City whether it was willing to grant back its City Fee in lieu of a DSIC increase, and the City declined.²⁰ Consistent with the suggestion in the Commission's Staff Report, PGW explored the opportunity of receiving a waiver of the \$18 million payment to the City in order to fund cast iron main replacement.²¹ PGW Witness Golden testified that, on November 4, 2015, he contacted the Deputy Finance Director of the City and confirmed that the City was not willing to waive the fee.²² He also testified that other PGW employees had previously contacted the City on the same basis.²³

¹⁷ PGW St. 3-R at 10-12; PGW Main Brief at 29-31; PGW Reply Brief at 17.

¹⁸ *Public Advocate v. Philadelphia Gas Commission*, 674 A. 2d 1056, 1059-60 (Pa. 1996); PGW Main Brief at 29-31.

¹⁹ PGW St. 3-R at 10-12; PGW Main Brief at 29-31.

²⁰ PGW St. 3-R at 10-12; PGW Main Brief at 30.

²¹ *Staff Report: Inquiry into Philadelphia Gas Works' Pipeline Replacement Program* at 6 (dated April 21, 2015).

²² Hearing Tr., p. 88, ln. 17-24, Tr. p. 92, ln. 15-20.

²³ *Id.*

Notwithstanding these facts, the ALJs felt compelled to recommend that the Commission require PGW to formally request return of the City Fee, even while recognizing that PGW received confirmation that the City is not currently willing to waive the City Fee.²⁴ The ALJs state that they “do not believe that having the Company make a formal request for the City to waive the \$18 million payment will have any affect and there is nothing that we can do to force the City’s hand in this matter.”²⁵ Based on the foregoing, it is unclear why the ALJs recommend that the Commission require PGW to make a formal request to the City for return of the City Fee. There are many reasons why the City could justly conclude that using the City Fee for accelerated main replacement is unfair and inappropriate. PGW finds it unlikely that the City will be willing to grant its request for waiver based on recent responses to its inquiries.

Accordingly, PGW respectfully excepts to this recommendation and urges the Commission to otherwise adopt the ALJ’s Recommended Decision to permit PGW to immediately start the billing of its increased DSIC and the process of accelerating its cast iron main replacement program in order to enhance the safety, reliability and reasonableness of its distribution system. In addition, PGW is willing to work cooperatively with the Commission to find efficient and reasonable ways to fund additional cast iron main replacement going-forward.

²⁴ RD at 57.

²⁵ RD at 71.

III. CONCLUSION

For the reasons set forth above, PGW respectfully requests that the Commission adopt the Recommended Decision with the exception of the ALJs' recommendation that the Commission require that it formally request the City of Philadelphia to waive its City Fee.

Respectfully submitted,



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