

Environmental Defense Fund  
128 Winding Brook Lane  
Terrace Park, Ohio 45174

January 4, 2016

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

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

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Dear Secretary Chiavetta:

Enclosed, please find an original copy of Environmental Defense Fund's Reply to Exceptions of the Office of Consumer Advocate in the above-captioned matter.

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

Sincerely,

/s/ John Finnigan

John Finnigan

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

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**REPLY OF ENVIRONMENTAL DEFENSE FUND  
TO EXCEPTIONS OF  
OFFICE OF CONSUMER ADVOCATE**

For its Reply to the Exceptions of the Office of Consumer Advocate (OCA), the Environmental Defense Fund (EDF) states as follows:

**I. OCA’S EXCEPTION NO. 1: THE ALJs ERRED IN FINDING THAT PGW MET THE BURDEN FOR WAIVER OF THE 5% CAP AND INCREASING THE DSIC RATE TO 5%.**

OCA’s first exception to the ALJs’ decision is that the ALJs erred in finding that Philadelphia Gas Works (PGW) met its burden of proof to obtain a waiver of the 5% Distribution System Improvement Charge (DSIC) cap and increasing the DSIC rate to 5%.

First, OCA argues that the DSIC increase was not necessary because PGW could have funded the pipe replacement from alternative sources of funding. OCA cites the following sources as available funding that would have allowed PGW to finance the main replacement program without increasing the DSIC: available funds from the revenue bond refunding; cash on hand; issuing short-term financing and seeking a waiver of PGW’s \$18 million annual payment to the City of Philadelphia. This argument is without merit. The Commission Staff recommended that PGW seek an increase to its DSIC charge. The Staff is familiar with PGW’s financial condition and PGW’s need to replace its gas mains. The Staff’s recommendation

supports the ALJs' conclusion that the DSIC increase was necessary, and that it was appropriate to increase the DSIC as opposed to using alternative sources of funding.

In addition to the Staff's recommendation, Mr. Golden testified in support of the DSIC charge increase.

Mr. Golden testified that using alternative sources of funding would impair PGW's financial condition and would not pay for a significant increase in PGW's pipeline replacement program. PGW's internal funding and ability to raise short-term financing are needed to meet expected increases in ordinary operating expenses as well as any unplanned expenses that may arise during the course of the year. The cash on hand is reflected as an asset in PGW's balance sheet. If PGW used its cash on hand to pay for the pipeline replacement program, then PGW might not have enough cash on hand to pay for other budgeted expenses and unplanned expenses with might arise during the course of the year. The revenue bond refunding is a one-time savings and the amount of the savings would not be enough to pay for the gas main replacement program. If PGW would issue short-term financing, then PGW might not be able to avail itself of short-term financing if some unexpected contingency or increased expense would occur. Excessive borrowing, moreover, could impair PGW's financial condition and put it at greater risk for a downgrade

Using the alternative sources of funding suggested by OCA to pay for the pipeline replacement program would significantly impair PGW's balance sheet. With an impaired balance sheet, the credit rating agencies could downgrade PGW's financial condition. This would make it more costly for PGW to borrow funds for ongoing operations. The higher borrowing costs would be passed on to customers in the form of higher utility rates. This certainly would not be in the customers' best interests. PGW necessarily had to increase its

DSIC charge to pay for the main replacement program because using cash on hand to finance the program would ultimately cost customers more money than using a higher DSIC charge to finance the program.

OCA also argues that the DSIC charge increase was not necessary because PGW failed to formally request a waiver of its annual \$18 million payment to the City of Philadelphia. This argument is without merit. PGW was not required to show that it repeated this request to the City on multiple occasions, or that the request was formally made by PGW's CEO directly to the Mayor. It is undisputed that PGW made this request to the City and PGW's request was denied.

OCA next argues that the ALJs should not have allowed PGW to immediately implement a 7.5% DSIC increase because PGW will not be able to immediately mobilize the needed contractors to expand its gas main replacement program to match the new funding level. This argument is without merit. PGW's witnesses testified that many experienced and qualified contractors are available to perform this work because so many other area gas utilities have implemented similar programs, and that PGW would be able to mobilize these contractors and ramp up the rate of its gas main replacement program without any difficulty.

OCA additionally argues that the ALJs should not have approved the DSIC increase until after PGW obtained approval for revisions to its long-term infrastructure improvement plan (LTIIIP). PGW committed to filing the revised LTIIIP within 15 days after the Commission's order approving the DSIC increase. PGW's witnesses also testified that they were using a consultant to help prepare the revised LTIIIP and that these revisions would mirror the existing LTIIIP, except that the gas main replacement rates would be increased as a result of the higher level of funding from the DSIC increase.

The ALJs accepted PGW's rationale for not obtaining approval for a revised LTIIIP before seeking permission to increase its DSIC charge. As OCA notes in its exceptions, the Legislature did not explicitly require that a revised LTIIIP be approved before a company obtains a DSIC increase. Instead, the law simply requires that the company must have an LTIIIP in place. PGW met this requirement because it does have an existing, approved LTIIIP in place, as OCA has acknowledged. If the Legislature had wanted a company to obtain approval for a revised LTIIIP before implementing a DSIC increase, then the Legislature could have required this in the statute, but they did not do so. OCA has not cited any Commission decision where this has been required. PGW's approach to file the revised LTIIIP immediately after the Commission approves the DSIC increase is reasonable, as the ALJs appropriately decided.

Finally, OCA argues that if the DSIC increase is approved, then PGW should submit quarterly reports on its implementation of the program. EDF takes no position on this point.

Based on the foregoing, OCA's first exception should be overruled.

## **II. OCA'S EXCEPTION NO. 2: THE ALJs ERRED IN FINDING THAT THE DSIC RATE SHOULD BE INCREASED TO 10% FOR RECONCILIATION.**

OCA claims that the ALJs erred by finding that the DSIC rate should be increased to 10% for reconciliation. This argument is without merit. The ALJs explained the need for the 10% cap for reconciliation at page 79 of their recommended decision. As they discussed, the purpose of the additional 2.5% cap for reconciliation adjustments is to accommodate under-collections that may occur from one year to the next. OCA cites no statute or decision to support its contention that this violates Act 129. Based on the foregoing, OCA's second exception should be overruled.

**III. OCA’S EXCEPTION NO. 3: THE ALJs ERRED BY NOT APPLYING THE CORRECT STANDARD FOR ALLOWING PGW TO ANNUALIZE AND LEVELIZE THE DSIC RATE AND NOT REQUIRING PGW TO MITIGATE POTENTIAL HARM TO CUSTOMERS.**

OCA’s third exception argues that the ALJs erred by applying an incorrect standard for PGW’s request to annualize and levelize the DSIC rate, and not requiring PGW to take steps to mitigate any potential harm to customers.

OCA states that the standard for granting PGW’s request to annualize and levelize the DSIC charge is whether this would be in the public interest and whether it would result in just and reasonable rates. OCA acknowledges that the ALJs correctly recited this standard in their decision. OCA contends, however, that the ALJs incorrectly applied the standard by not applying the following consumer protections: (1) requiring PGW to implement certain accounting controls; (2) requiring PGW to update the DSIC rate quarterly; and (3) requiring PGW to make increased use of budget billing. OCA presented these arguments at hearing and in its brief. The ALJs considered and rejected these arguments. OCA has not cited any Commission precedent where these steps have been required of other companies seeking to increase their DSIC charge. As a result, OCA’s exception should be overruled.

For all the reasons explained above, EDF respectfully requests that the Commission overrule OCA’s exceptions and approve PGW’s application as recommended in the ALJs’ proposed decision.

Date: January 4, 2016

/s/ George Jurgovich  
George Jurgovich  
Pa. Bar Id. No. 39586  
200 First Avenue, Suite 200  
Pittsburgh, PA 15222  
Phone: 412-456-3785  
Fax: 412-258-6685  
[jugovich@pennfuture.org](mailto:jugovich@pennfuture.org)

Counsel for Environmental Defense Fund

/s/ Michael Panfil

Michael Panfil  
1875 Connecticut Ave., NW  
Suite 600  
Washington, DC 20009.  
(202) 572-3280  
[mpanfil@edf.org](mailto:mpanfil@edf.org)

/s/ John Finnigan

John Finnigan  
128 Winding Brook Lane  
Terrace Park, Ohio 45174  
(513) 226-9558  
[jfinnigan@edf.org](mailto:jfinnigan@edf.org)

### **CERTIFICATE OF SERVICE**

I hereby certify that on January 4, 2016, I served a true copy of the foregoing document upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), via email and first class mail, upon the persons listed below:

/s/ John Finnigan

Darryl Lawrence, Esq.  
Erin Gannon, Esq.  
Ashley Everette  
Valerie Hironimus  
Office of Consumer Advocate  
5<sup>th</sup> Floor, Forum Place Bldg.  
555 Walnut Street  
Harrisburg, PA 17101-1921  
[dlawrence@paoca.org](mailto:dlawrence@paoca.org)  
[egannon@paoca.org](mailto:egannon@paoca.org)  
[aeverette@paoca.org](mailto:aeverette@paoca.org)  
[vhironimus@paoca.org](mailto:vhironimus@paoca.org)

Sharon Webb, Esq.  
Office of Small Business Advocate  
Commerce Building, Suite 202  
300 North 2<sup>nd</sup> Street  
Harrisburg, PA 17101  
[swebb@state.pa.us](mailto:swebb@state.pa.us)

Robert D. Knecht  
Industrial Economics Inc.  
2067 Massachusetts Ave.  
Cambridge, MA 2140  
[rdk@indecon.com](mailto:rdk@indecon.com)

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Gina L. Laufer, Esq.  
Carrie Wright, Esq.  
Bureau of Investigation & Enforcement  
PA Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor  
Harrisburg, PA 17120  
[ginlaufer@pa.gov](mailto:ginlaufer@pa.gov)  
[carwright@pa.gov](mailto:carwright@pa.gov)

Charis Mincavage, Esq.  
Adelou Bakare, Esq.  
Elizabeth Trinkle, Esq.  
McNees Wallace & Nurick, LLC  
100 Pine Street  
P.O. Box 1166  
Harrisburg, PA 17108-1166  
[cmincava@mwn.com](mailto:cmincava@mwn.com)  
[ABakare@mwn.com](mailto:ABakare@mwn.com)  
[etrinkle@mwn.com](mailto:etrinkle@mwn.com)

Carl Shultz, Esq.  
Daniel Clearfield, Esq.  
Eckert, Seamans, Cherin & Mellott LLC  
213 Market Street, Eighth Floor  
Harrisburg, PA 17101  
[cshultz@eckertseamans.com](mailto:cshultz@eckertseamans.com)  
[dclearfield@eckertseamans.com](mailto:dclearfield@eckertseamans.com)