

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

555 Walnut Street, 5th Floor, Forum Place
Harrisburg, Pennsylvania 17101-1923
(717) 783-5048
800-684-6560

FAX (717) 783-7152
consumer@paoca.org

February 22, 2016

Rosemary Chiavetta, Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg.
400 North Street
Harrisburg, PA 17120

Re: Petition of Philadelphia Gas Works for
Approval to Establish a Distribution System
Improvement Charge
Docket No. P-2015-2501500

Dear Secretary Chiavetta:

Attached for electronic filing is the Office of Consumer Advocate's Answer to the
Petition for Reconsideration in the above-referenced proceeding.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

A handwritten signature in cursive script, reading "Erin L. Gannon".

Erin L. Gannon
Senior Assistant Consumer Advocate
PA Attorney I.D. # 83487
E-Mail: EGannon@paoca.org

Attachment

cc: Honorable Christopher P. Pell
Honorable Marta Guhl
ra-OSA@pa.gov (Email Only)
Certificate of Service

*217500

CERTIFICATE OF SERVICE

Re: Petition of Philadelphia Gas Works :
for Approval to Establish a Distribution : Docket No. P-2015-2501500
System Improvement Charge :

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Answer to the Petition for Reconsideration in this proceeding in accordance with the requirements of 52 Pa. Code §1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 22nd day of February 2016

SERVICE BY E-MAIL & INTER-OFFICE MAIL

Gina L. Lauffer
Carrie B. Wright
Bureau of Investigation & Enforcement
Pa Public Utility Commission
400 North Street,
Harrisburg, PA 17101

SERVICE BY EMAIL & FIRST CLASS MAIL, POSTAGE PAID

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

Sharon Webb
Office of Small Business Advocate
Suite 202, Commerce Building
300 N. Second Street
Harrisburg, PA 17101

Adeolu A. Bakare, Esquire
McNees Wallace & Nurick, LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166

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

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

SERVICE BY EMAIL

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


Erin L. Gannon
Senior Assistant Consumer Advocate
PA Attorney I.D. # 83487
E-Mail: EGannon@paoca.org

Darryl Lawrence
Senior Assistant Consumer Advocate
PA Attorney I.D. #93682
Email: DLawrence@paoca.org

215489

Counsel for
Tanya McCloskey, Acting Consumer
Advocate
Office of Consumer Advocate
555 Walnut Street, 5th Floor
Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of Philadelphia Gas Works for	:	
Approval of a Distribution System	:	Docket No. P-2015-2501500
Improvement Charge	:	

ANSWER OF THE OFFICE OF CONSUMER ADVOCATE
IN OPPOSITION TO THE PETITION FOR RECONSIDERATION, AMENDMENT
AND/OR CLARIFICATION OF PHILADELPHIA GAS WORKS

I. INTRODUCTION

On February 12, 2016, Philadelphia Gas Works (PGW or Company) filed a Petition for Reconsideration, Amendment and/or Clarification (Petition) of the Opinion and Order of the Pennsylvania Public Utility Commission (Commission) entered on January 28, 2016 in the above-captioned proceedings. In the Order, the Commission granted waiver of the statutory 5% DSIC cap and authorized PGW to increase its DSIC rate to 7.5%. The Commission also determined that the Company did not support its request to increase the DSIC cap to 10% for purposes of reconciliation. First, the Company seeks reconsideration of the latter determination through its Petition. Second, PGW seeks clarification of the Commission's requirements for keeping track of and accounting for DSIC billing and spending above 5% of customers' bills. Third, PGW asks the Commission to amend its Order to stop the accounting/tracking requirement after PGW's revised LTIP is approved.

At the outset, the OCA agrees with PGW's proposal to clarify that the tracking/accounting requirement should apply to DSIC amounts *billed* rather than *collected*. See Ordering Paragraphs 8(c) and (d).

The OCA submits that the Commission should otherwise deny the Company's Petition. PGW presents no new or novel argument or evidence with regard to the DSIC cap. Rather, the Company has quantified the undercollection that results from PGW's transition to annualized, levelized DSIC billing – a transition that *was requested by* PGW in this proceeding and addressed in the record. This one-time, transitional undercollection provides no basis for the Commission to reconsider its denial of PGW's requested 10% DSIC cap on a temporary or permanent basis. The OCA agrees, however, that the Company should recover infrastructure investment that it would have been eligible to recover, but for the transition to annualized/levelized DSIC rate. The OCA is willing to work with the Company to determine a fair and reasonable period over which it can recover the transition costs without increasing the DSIC cap.

With regard to the Commission's tracking and reporting requirements, PGW argues that the Commission did not have evidentiary support for requiring the Company to track and account for its DSIC billing and spending once it has an approved, amended LTIP. The failure to have a supporting LTIP in place is only one reason, however, why the Commission determined that the tracking and accounting requirements are necessary. The principal reason is that, unlike every other Pennsylvania utility with a DSIC, PGW sought and received approval to charge the DSIC on an annualized and levelized basis, *i.e.* to charge customers before the funds are actually spent. Granting this statutory waiver eliminated a fundamental consumer protection in Act 11; the Commission properly determined that, in its place, PGW should provide additional tracking and accounting. The Commission based its determination on substantial record evidence provided by OCA witness Ashley E. Everette.

Accordingly, the OCA submits that the Petition fails to meet the well-established standard for reconsideration, and that the Commission's Order was legally and factually grounded in the evidence presented.

II. LEGAL STANDARD

The standard for reconsideration is found in the Public Utility Code at Section 703(f), 66 Pa. C.S § 703(f), which provides that a party must file for reconsideration within 15 days after service of the order. *See also* 52 Pa. Code § 5.572. In further enunciating the standard for reopening a final order for reconsideration, the Commission has determined as follows:

[B]ecause a grant of relief on such petitions may result in the disturbance of final orders, it should be granted judiciously and only under appropriate circumstances. (*West Penn Power v. Pa. PUC*, 659 A.2d 1055 (Pa. Cmwlth. 1995), petition for allowance of appeal denied, No. 576 W.D., Allocatur Docket (April 9, 1996) (*West Penn Power*); *City of Pittsburgh v. PennDOT*, 490 Pa. 264, 416 A.2d 461 (1980).)

We have held that such petitions must make new or novel arguments not previously considered or raise matters which are designed to convince us to exercise our discretion to rescind or amend the Order under consideration. (*Duick v. PG & W*, 56 Pa. P.U.C. 553, 51 P.U.R. 4th 284 (1982) (*Duick*), (citing *Pa. Railroad Co. v. Pa. PSC*, 118 Pa. Superior Ct. 380, 179 A. 850 (1935).)

Pa. PUC v. PECO Energy Co., 1999 Pa. PUC LEXIS 24, *10-11 (PECO).

In its Order, the Commission fully and completely addressed the legal and factual issues involved in the Company's proposal. The Commission held as follows:

We conclude that allowing PGW to increase its DSIC cap to 7.5% will permit the Company to significantly accelerate its main replacement efforts to address the problems resulting from its aging infrastructure, as discussed above, and PGW has met its burden of proof to demonstrate that an increase to 7.5% is necessary to ensure "adequate, efficient, safe, reliable and reasonable service." This is consistent with the legislative intent of Act 11.

PGW has not, however, met its burden of proof regarding its request for an increase up to 10%. PGW appears to believe that future undercollections will be significant enough to merit an increase to the DSIC of 2.5% above its requested 7.5%. However, we find nothing on the record to indicate that this will be the

case. Rather, we find that levelizing and annualizing PGW's DSIC recovery will mitigate over and undercollections, as PGW has stated, and thus, will alleviate the need to further increase the DSIC. See PGW M.B. at 38-39; PGW St. 2 at 11.

Additionally, we emphasize that our approval of an increased DSIC recovery level must be balanced by the need to consider the impact on the Company's ratepayers. An increase in ratepayer bills is unavoidable if PGW's DSIC is to be raised to a level that is high enough to ensure that significant progress can be made in addressing the poor condition of the Company's infrastructure. **Nevertheless, we see no need to further burden customers by guaranteeing that PGW can raise its DSIC even higher—up to a maximum of 10%, or a 100% increase in the current DSIC—during periods when it must reconcile undercollections from prior years.** As the OCA argues, every other utility that has a DSIC at 5% or 7.5% manages its over and undercollections within that threshold. Thus, we do not find it necessary to eliminate one-hundred percent of the risk to PGW posed by undercollections in order to ensure “adequate, efficient, safe, reliable and reasonable service” under Section 1358(a)(1) of the Code.

...

With regard to accounting controls, we have already stated that we will require PGW to take measures to ensure that the additional money collected above the current 5% DSIC cap will be separately tracked and accounted for, and placed into an escrow account until after the Commission approves the Company's amended LTIP. **In addition**, because a levelized/annualized DSIC will result in PGW's collecting money from customers to cover DSIC-eligible costs that it may not yet have incurred at the time the money is collected, we agree with the OCA that PGW must take measures to ensure that this money is not diverted to other purposes. Therefore, we will require PGW to separately track and account for all DSIC proceeds and expenditures in a separate accounting mechanism, and to specifically designate all revenues collected through the DSIC for future DSIC-related spending, or refunds to customers, if necessary.

Order at 55, 70 (emphasis added). The OCA submits that the Commission addressed the issues based on a thoroughly developed record, fully briefed by the parties. There is nothing in the Petition for Reconsideration that is new, novel, or overlooked. Except for its request to clarify the “billed” versus “collected” language in Ordering Paragraphs 8(c) and 8(d), the Company's Petition for Reconsideration must fail.

III. ARGUMENT

PGW asks the Commission to clarify or otherwise revise Ordering Paragraphs 8(c) and 8(d) to require PGW to track and account for DSIC revenues on the basis of amounts billed rather than amounts collected. The OCA concurs with the Company's statement that use of billed revenues is consistent with Act 11 and prior Commission implementation orders and that the record in the current proceeding did not address the distinction between "billed" and "collected." See 66 Pa. C.S. §§ 1358(a)(1), (d)(1); Implementation of Act 11 of 2012, 299 PUR4th 367 (Pa. PUC 2012); PGW DSIC Annual Reconciliation 1307(e), Docket No. M-2014-2408253 (annual reconciliation for year ending December 31, 2013); PGW DSIC Annual Reconciliation 1307(e), Docket No. M-2015-2466528 (annual reconciliation for year ending December 31, 2014); OCA St. 1 at 12, 15, 20; OCA St. 1S at 9-10.

The OCA submits that the Company's Petition does not otherwise satisfy the standard for reconsideration set forth in Duick and explained by the Commission in PECO. The Company's Petition presents no new or novel argument. Additionally, the Company's argument that the Commission failed to consider evidence is without merit, as demonstrated by the remainder of this Answer. As such, the Company has not raised any matter that would necessitate a reconsideration of the Order.

A. 10% DSIC Cap

In its pleadings and testimony, PGW specified that if its request to annualize and levelize the DSIC was granted, the first "annual" reconciliation would recover 16 months of costs rather than twelve. Waiver Petition at 22; PGW St. 2 at 12-13. The only new information, therefore, is the specific quantification of the costs the first reconciliation will include, *i.e.* \$11.4 million. Petition at 6. PGW acknowledges that all but \$500,000 of this amount is caused by PGW

transitioning to an annualized, levelized DSIC. Petition at 6-7. PGW *asked* the Commission to waive the requirements of Act 11 so that it could transition to an annualized and levelized DSIC, so the situation is of its own making.

Even if PGW satisfied the legal standard for reconsideration, however, there is no basis for the Commission to reverse its decision and allow a 10% DSIC rate. PGW argues that it should always be able to spend 100% of its 7.5% surcharge cap (currently \$33 million) and always be 100% insulated from the risk of undercollections. Petition at 7. There are several problems with PGW's position. First, the statutory standard for waiving the 5% DSIC cap is whether the increase is necessary "to ensure and maintain adequate, efficient, safe, reliable and reasonable service." 66 Pa. C.S. § 1358(a)(1). The Commission correctly determined that it is not necessary to eliminate one-hundred percent of the risk posed by undercollections in order to ensure safe, adequate and reasonable service pursuant to Section 1358(a)(1) of the Code. Specifically, it found no need to raise the DSIC above 7.5% during periods when PGW must reconcile undercollections from prior years, noting that every other utility that has a DSIC at 5% or 7.5% manages its over and undercollections within that threshold.¹ Order at 55. Further, the Commission balanced PGW's risk against the need to burden ratepayers with a DSIC rate of up to 10% and determined that a 7.5% DSIC cap was "high enough to ensure that significant progress can be made in addressing the poor condition of the Company's infrastructure."

Second, if PGW does not recover some or all of an undercollection within the 7.5% DSIC cap, that does not prevent the Company from drawing on other sources of funding such as internally-generated funds, reducing cash-on-hand or seeking a waiver of all or part of the \$18

¹ While the Commission approved other modifications to the DSIC that are directly related to PGW's unique situation as a cash-flow utility, all utilities have seasonal usage variations and limitations on construction, and are subject to reconciliation of their DSIC recovery. The OCA asserts that it would be unreasonable to afford additional preferred treatment to PGW.

million City Fee. PGW St. 3-R at 4-8. The Commission did not require the Company to avail itself of other sources of funding rather than increase the DSIC cap to 7.5%, however, that option is available to PGW in lieu of a further 2.5% increase to the DSIC cap. Order at 43.

Third, there is no guarantee that PGW can or will spend the entire \$33 million it proposes to spend annually, particularly during the first year of ramp up. PGW St. 1R at 2; OCA St. 1S at 6. If the Company spends less than \$33 million annually, it can recover some portion of its undercollection.

Fourth, PGW intends to increase its distribution rates in Fiscal Year 2017. PGW St. 3R at 4. If its distribution rates increase, its 7.5% DSIC cap will allow recovery of more than the \$33 million annual investment contemplated by its modified LTIP. PGW St. 2 at 8.

For each of these reasons, the Company's one-time, transitional undercollection provides no basis for the Commission to reconsider its denial of PGW's requested 10% DSIC cap on a temporary or permanent basis. The OCA recognizes, however, that if PGW had not been permitted to begin billing the DSIC on an annualized, levelized basis that it would have been permitted to recover its eligible October, November and December 2015 costs – up to a 5% DSIC cap – in its April 2016 DSIC rate. Accordingly, the OCA is willing to work with the Company to determine a fair and reasonable means for PGW to recover the transition costs, within the new 7.5% DSIC cap.

PGW's remaining arguments in favor of permanently or temporarily increasing the DSIC cap are an improper repetition of arguments made and already rejected by the Commission and should be dismissed for the same reason. PGW seeks to increase the DSIC to avoid any risk related to any future undercollections – both material and non-material. Petition at 8. The Commission has already determined that the Company should manage its undercollections

within a 7.5% DSIC cap. Order at 55. The Commission has given PGW a special tool to do this – the ability to annualize and levelize its DSIC cost recovery – which is not available to any other utilities using a DSIC. The Commission granted this waiver of Act 11 for the express purpose of minimizing PGW’s undercollections. It stated:

Rather, we find that levelizing and annualizing PGW’s DSIC recovery will mitigate over and undercollections, as PGW has stated, and thus, will alleviate the need to further increase the DSIC. See PGW M.B. at 38-39; PGW St. 2 at 11.

Order at 55, 69-70 (citations in original). PGW cannot argue the reverse now, that because of its special ability to charge the full amount of its construction budget in advance and without regard to seasonal usage variations, which it asked for, it is less able than other utilities to manage its over or undercollections.

Likewise, the Commission has already considered and rejected PGW’s arguments that increasing the DSIC cap above 7.5% should be permitted because the Company thinks that the temporary or permanent bill impact would be “relatively small.” Petition at 9. The Commission already determined that increasing the DSIC rate higher than 7.5% to address prior year undercollections is an unnecessary burden. Order at 55.

B. Additional Accounting Requirements for Annualized, Levelized DSIC Recovery

Act 11 provides that the quarterly calculation of the DSIC rate will recover only the fixed cost of eligible property that has “[b]een placed in service during the three-month period ending one month prior to the effective date of the distribution improvement system charge.” 66 Pa. C.S. § 1357(a)(1)(ii). The requirement that eligible property to be placed in service before it can be recovered in the DSIC rate is one of the consumer protections that accompany DSIC recovery,

like the rate cap.² The OCA recommended that, if the Commission eliminated this protection, steps should be taken to mitigate any potential harm to customers. OCA St. 1 at 12-15. *Inter alia*, the OCA recommended that PGW put accounting controls in place to ensure that DSIC revenues that are collected in advance of DSIC-eligible spending are designated for this purpose and available. *Id.* at 14-15. The OCA argued that simply tracking the dollars is not sufficient because, as a cash-flow company, if PGW is not required to designate the revenue collected through the DSIC for future spending, it could easily divert such funds for other purposes and seek relief from the Commission to address any shortfall. OCA Exc. at 19-20.

The Commission found the OCA's testimony and arguments compelling and, over PGW's objections, reversed the Presiding Officers' recommendation. Order at 69-70. The Commission stated:

[B]ecause a levelized/annualized DSIC will result in PGW's collecting money from customers to cover DSIC-eligible costs that it may not yet have incurred at the time the money is collected, we agree with the OCA that PGW must take measures to ensure that this money is not diverted to other purposes. Therefore, we will require PGW to separately track and account for all DSIC proceeds and expenditures in a separate accounting mechanism, and to specifically designate all revenues collected through the DSIC for future DSIC-related spending, or refunds to customers, if necessary.

Id. at 70.

PGW asks the Commission to eliminate the ongoing requirement for separate tracking and accounting but does not offer any new or novel arguments or evidence not already considered by the Commission. Throughout the case, the Company argued that no separate accounting mechanism is necessary because the standard tracking used for its other automatic adjustment clause revenues and expenses will prevent diversion of DSIC revenues for any other

² The General Assembly included the requirement that costs be incurred prior to recovery in rates in Act 11 without exception for PGW even though another provision of the Act specifically recognized PGW's unique ratemaking methodology. 66 Pa. C.S. § 1357(a)(3).

purpose. See Order at 66, citing PGW R. Exc. at 22. The Company agrees to separately track and account for DSIC revenues billed in excess of 5% until its modified LTIIP is approved by the Commission. Specifically, PGW states:

PGW will comply with the “escrow provision” in Ordering Paragraph 8(c) by establishing on its balance sheet an account entitled “Deferred Outflow of Resources,” recording billed DSIC revenues above 5% into that account, and segregating those billings from its general revenue account until the Modified LTIIP is approved.

Petition at 11. The Company argues, however, that there is no evidentiary support for requiring the Company to track and account for its DSIC billing and spending once it has an approved, amended LTIIP.

The Commission’s decision to impose an ongoing reporting requirement, however, was not based on the Company’s failure to have an LTIIP supporting spending over the 5% cap. The OCA’s witness recommended, and the Commission agreed, that allowing PGW to charge a DSIC based on potential, estimated costs warranted additional accounting measures. OCA St. 1 at 12-15; OCA St. 1S at 8-10; Tr. 119-120; Order at 70, 72. As long as PGW annualizes and levelizes its DSIC rate, those additional accounting measures should remain in place. Specifically, the Commission determined that the Company should separately track and account for all DSIC proceeds and expenditures in a separate accounting mechanism and specifically designate all revenues collected through the DSIC for future DSIC-related spending or, if necessary, refunds to customers. Order at 70, 72, 74. It agreed with the recommendation of OCA witness Everette that simply tracking the dollars is not sufficient to hold PGW accountable. Order at 70; OCA St. 1 at 12-15; OCA St. 1S at 8-10; Tr. 119-20. As a cash flow company, PGW is not required to designate the dollars collected through the DSIC for future DSIC spending or refund, nothing prevents the utility from diverting the amounts for other purposes and then seeking relief from the Commission to address the shortfall. Id.

The OCA points out that PGW cites no record evidence supporting its claims that establishing a special Deferred Outflow of Resources account will add (unquantified) costs or could be confusing to analysts or auditors. Petition at 13. The OCA put on evidence, however, that additional accounting protections are a fair counterbalance to allowing PGW to charge a 7.5% DSIC and to annualize and levelize its DSIC rate. See OCA St. 1 at 12-15; OCA St. 1S at 8-10.

The OCA does not object to PGW's proposal to implement those additional protections through creation of a special account, as it has proposed. See Petition at 11, 14. The OCA also does not object to the Company's request that the Commission recognize its commitments to add information to its quarterly reconciliation updates:

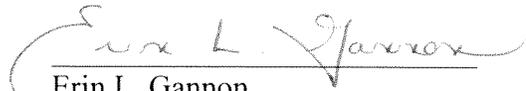
- (i) PGW's quarterly reconciliation updates shall include the amount actually billed to customers in the quarter as well as the amount of actual DSIC main replacement placed in service during the quarter;
- (ii) In addition to the requirements set forth in Paragraph 8(e), below, PGW shall also review all quarterly results to monitor for projected year-end material over or undercollections and propose an adjustment to its Distribution System Improvement Charge percentage when warranted.
- (iii) PGW shall file all quarterly reconciliation updates upon the Office of Consumer Advocate, the Office of Small Business Advocate and the PUC's Bureau of Investigation and Enforcement.

Petition at 14. These requirements, however, should be an addition to and not in place of the Commission's requirement that PGW separately track and account for all DSIC proceeds and expenditures in a separate accounting mechanism and specifically designate all revenues collected through the DSIC for future DSIC-related spending or, if necessary, refunds to customers. Order at 70, 72, 74. PGW presented no new or novel argument – nor any compelling reasoning that the Commission overlooked evidence – that warrants reconsideration of its ongoing, additional tracking and accounting requirement.

IV. CONCLUSION

Philadelphia Gas Works' Petition for Reconsideration, Amendment and/or Clarification of the Opinion and Order of the Pennsylvania Public Utility Commission entered on January 28, 2016 should be denied, consistent with the OCA's Answer. The Company has not met the standard required for reconsideration and further, its positions have already been considered and properly denied by the Commission.

Respectfully Submitted,



Erin L. Gannon
Senior Assistant Consumer Advocate
PA Attorney I.D. #83487
E-Mail: EGannon@paoca.org

Counsel for:
Tanya J. McCloskey
Acting Consumer Advocate

Office of Consumer Advocate
555 Walnut Street 5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152
February 22, 2016
217339