**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of UGI Central Penn Gas, Inc. for Waiver : P-2016-2537609

of the Distribution System Improvement Charge Cap :

of 5% of Billed Distribution Revenues and Approval :

to Increase the Maximum Allowable DSIC to 10% of :

Billed Distribution Revenues :

**RECOMMENDED DECISION**

Before

Angela T. Jones

Administrative Law Judge

I. INTRODUCTION

 For the reasons set forth below, this Recommended Decision concludes that

UGI Central Penn Gas (UGI-CPG or Company or Petitioner) has met its burden of proof with respect to waiver of the 5% cap on its Distribution System Improvement Charge (DSIC). However, the Company has not met its burden of proof through substantial evidence to raise the cap to 10%. Based on the record evidence, it is recommended to raise the cap to 8.65%.

II. HISTORY OF THE PROCEEDINGS

 On February 14, 2012, Governor Corbett signed into law Act 11 of 2012 (Act 11), effective in sixty (60) days, which, among other things, amended Chapter 13 of Title 66 of the Public Utility Code (Code) to approve a DSIC for electric distribution companies (EDCs). See, 66  Pa.C.S. §§ 1350-1360. Act 11 provides utilities with the ability to implement a DSIC to recover reasonable and prudent costs incurred to repair, improve or replace certain eligible property that is part of the utility’s distribution system. 66 Pa.C.S. § 1353. Eligible property for EDCs is defined in Section 1351(1) of the Code, 66 Pa.C.S. § 1351(1).

 As a precondition to the implementation of a DSIC, each utility is required to file a Long-Term Infrastructure Improvement Plan (LTIIP) with the Pennsylvania Public Utility Commission (Commission), consistent with 66 Pa.C.S. § 1352. Certain limitations are included in Act 11; specifically, the DSIC may not exceed 5% of distribution rates unless a Commission waiver is requested and approved, and is to be reset to zero upon the effective date of new base rates and if overearning is shown in any quarter. 66 Pa.C.S. §§ 1358(a)(1) and (b). In addition, Act 11 sets out specific audit and reconciliation procedures, including refunds with interest to customers of any over-collections.

 On August 2, 2012, the Commission issued its *Final Implementation Order*, at Docket No. M-2012-2293611, establishing procedures necessary to implement Act 11. The *Final Implementation Order* adopted the requirements established in Act 11, provided additional standards that each utility must meet in developing a LTIIP and DSIC, and gave guidance to utilities for meeting the Commission’s standards.

 On December 13, 2013, UGI-CPG filed a LTIIP with the Commission, pursuant to Section 1352 of the Code, 66 Pa.C.S. § 1352, to set the Company’s plans to repair and replace distribution infrastructure for the year 2014 through 2018. Concurrent with the LTIIP the Company filed a petition for approval to implement its DSIC. The Commission approved both the LTIIP and the DSIC on September 11, 2014, subject to refund pending the resolution of DSIC-related issues. The DSIC-related issues were resolved by Commission Order entered July 8, 2015. *See Petition of UGI Central Penn Gas, Inc. for Approval of its Long-Term Infrastructure Improvement Plan; Petition of UGI Penn Natural Gas, Inc. for Approval of a Distribution System Improvement Charge,* Docket No. P-2013-2398835 (Opinion and Order entered July 8, 2015).

The Company implemented the DSIC on October 1, 2014, in compliance with Commission order and set the DSIC at 0.0% of distribution revenues. On July 1, 2016, the DSIC rate reached 5% of the distribution revenues. The Company has alleged that the DISC calculation would go beyond 5% for DSIC-eligible property but for the cap, and thus, has petitioned for the waiver of the 5% cap.

On February 29, 2016, the Company filed a petition to modify its LTIIP at Docket No. P-2013-2398835. This modified LTIIP was filed in compliance with 52 Pa.Code § 121.5(a), which recognizes a major modification as increasing total estimated cost of the LTIIP by more than 20% (“major modification” is defined at 52 Pa.Code § 121.2(iii)). The Commission approved the Company’s modified LTIIP on June 30, 2016. See *Petition of UGI Central Penn Gas, Inc. for Approval of their Modified Long-Term Infrastructure Improvement Plan*, Docket No. P-2013-2398835 (Order entered June 30, 2016)(*UGI-CPG Modified LTIIP)*. The Company has stated the “work has contributed to a 54.3% increase in the planned spending on DSIC-eligible plant over the remaining three years of the plan.” UGI-CPG M.B. at 20, citing, *UGI-CPG Modified LTIIP* at 5.[[1]](#footnote-1)

 On March 31, 2016, UGI-CPG filed a Petition for a Waiver of the Distribution System Improvement Charge Cap of 5% of Billed Distribution Revenues and Approval to Increase the DSIC to a maximum of 10% of Billed Distribution Revenues (DSIC Waiver Petition), pursuant to 66 Pa.C.S. § 1358(a). The DSIC Waiver Petition sought implementation of the waiver to be effective July 1, 2016, subject to hearing and refund, since the DSIC rate is projected to have passed the capped 5% at that time.

On April 20, 2016, the Office of Consumer Advocate (OCA) filed an answer, notice of intervention and a public statement opposing the DSIC Waiver Petition. OCA contended that the Petitioner did not demonstrate that a waiver to the current cap and an increase in the cap up to 10% was necessary, and therefore, the Petitioner failed to meet the standard “in order to ensure and maintain adequate, efficient, safe, reliable and reasonable service” consistent with Section 1358(a) of the Code for a waiver to be granted. 66 Pa.C.S. § 1358(a).

Also on April 20, 2016, the Office of Small Business Advocate (OSBA) filed an answer, notice of intervention and public statement. OSBA contended that the 5% DSIC cap was sufficient for UGI-CPG to maintain its level of investment for the DSIC-eligible plant identified in the Modified LTIIP and requested proof otherwise. OSBA stated that the Petitioners failed to offer reasons why it cannot meet its obligation without a waiver and claimed that alternative methods other than a waiver are available to the Company. Consequently, OSBA submitted that the DSIC Waiver Petition be dismissed.

On May 6, 2016, the Commission’s Bureau of Investigation and Enforcement (I&E) filed a Notice of Appearance in this proceeding.

By Notice dated May 31, 2016, an Initial Prehearing Conference was scheduled for Friday, June 17, 2016, at 10:00 a.m. regarding this proceeding.[[2]](#footnote-2) The Prehearing Conference convened as scheduled and the parties agreed to a procedural schedule.

By Order dated June 21, 2016, the procedural schedule agreed to by the parties was approved.

On June 29, 2016, the CPGLUG filed a Petition to Intervene and Answer in opposition to the DSIC Waiver Petition.

By Order dated July 20, 2016, the undersigned granted the intervention of CPGLUG as there was no objection and confirmed the procedural schedule agreed to by the parties.

On July 22, 2016, UGI-CPG filed a Motion for Protective Order. On July 27, 2016, UGI-CPG’s Motion for a Protective Order was granted which defined and implemented the procedure for proprietary information at this docket. On August 25, 2016, Prehearing Order #5 was issued, which addressed the relevant procedure that was raised by OSBA.

All parties submitted direct, rebuttal and surrebuttal testimony pursuant to the established procedural schedule. UGI-CPG submitted direct, rebuttal and surrebuttal testimony of Mr. William McAllister with supporting exhibits and rebuttal testimony of Mr. Hans G. Bell. I&E submitted direct and surrebuttal testimony of Mr. Sunil R. Patel. OCA submitted direct, rebuttal and surrebuttal testimony of Mr. Jerome Mierzwa. OSBA submitted direct, rebuttal and surrebuttal testimony of Mr. Robert D. Knecht.

 A hearing was held on Thursday, September 8, 2016, for the purpose of cross examining witnesses and admitting into the record the prepared testimony and exhibits after timely motions and objections were addressed. The following statements and exhibits were admitted into evidence:

1. UGI-CPG Stmt. 1 (direct testimony of Mr. McAllister with exhibits WJM-1, WJM-2, WJM-3 and WJM-4);
2. UGI-CPG Stmt. 1-R (rebuttal testimony of Mr. McAllister);
3. UGI-CPG Stmt. 1-SR (surrebuttal testimony of Mr. McAllister with exhibit WJM-1S);
4. UGI-CPG Stmt. 2-R (rebuttal testimony of Mr. Bell with exhibit HGB-1R);
5. I&E Stmt. 1 (direct testimony of Mr. Patel both non-proprietary and proprietary with exhibit 1 both non-proprietary and proprietary);
6. I&E Stmt. SR-1 (surrebuttal testimony of Mr. Patel);
7. I&E cross exhibit 1 (OSBA responses to I&E interrogatories Set 1);
8. OCA Stmt. 1 (direct testimony of Mr. Mierzwa);
9. OCA Stmt. 1R (rebuttal testimony of Mr. Mierzwa);
10. OCA Stmt. 1S (surrebuttal of Mr. Mierzwa);
11. OSBA Stmt. 1 (direct testimony of Mr. Knecht and exhibits);
12. OSBA Stmt. 1-R (redacted rebuttal testimony of Mr. Knecht);[[3]](#footnote-3)
13. OSBA Stmt. 1-S (surrebuttal testimony of Mr. Knecht); and
14. OSBA Exhibit I-5 (late-filed exhibit).[[4]](#footnote-4)

 By Order dated September 12, 2016, the undersigned admitted OSBA’s late filed exhibit as there were no objections from the other participating parties.

 By written request dated September 21, 2016, counsel for UGI-CPG presented corrections to the transcript for accuracy pursuant to 52 Pa.Code § 5.253(b). No party to the proceeding opposed the proposed transcript corrections. Since pursuant to 52 Pa.Code § 5.253(f)(2), “a request for corrections not acted upon within 20 days is deemed to be granted if unopposed,” the corrections are granted.

 All parties filed Main Briefs on September 22, 2016 and all parties with the exception of CPGLUG filed Reply Briefs by September 30, 2016 in accordance with the established procedural schedule.

 The evidentiary record closed on September 30, 2016, which was the due date of the Reply Briefs. The evidentiary hearing generated 136 pages of transcribed testimony.

By Order dated October 26, 2016, the undersigned notified the parties of official notice of the modified LTIIP of UGI-CNG at *UGI-CPG Modified LTIIP,* Docket No. P-2013-2398835, at appendix B, pursuant to 52 Pa.Code § 5.408. Because of the official notice, the record was reopened pursuant to 52 Pa.Code § 5.571(d)(1).

By letter dated November 3, 2016, OSBA responded that while it did not object to the official notice, it suggested that the entire Petition should be noticed so that the information can be placed in context. OSBA also suggested that the Commission Order approving the Petition at Docket No. P-2013-2398835 be given official notice as well. No other party objected or otherwise requested alternatives to the official notice.

By Order dated November 4, 2016, the undersigned granted the suggestion by OSBA and modified the official notice to the entire Petition including the appendices at *UGI-CPG Modified LTIIP,* but the undersigned denied the suggestion by OSBA to take official notice of the Commission’s approval of the UGI-CPG Modified LTIIP by Order entered June 30, 2016. The record was closed on November 4, 2016 with the ruling on the official notice. This matter is ripe for recommended decision.

 This Recommended Decision addresses every pertinent issue raised in each parties’ Briefs. It is noted that the Commission is not required to consider expressly and at length each contention and authority brought forth by a party to the proceeding. *University of Pennsylvania v. Pa. Pub. Util. Comm’n*, 485 A.2d 1217 (Pa.Cmwlth. 1984). When parties have been ordered to file briefs and fail to include all issues they wish to have reviewed, the unbriefed issues may properly be viewed as having been waived. *Jackson v. Kassab*, 812 A.2d 1233 (Pa.Super. 2002), *appeal denied*, 825 A.2d 1261, 2003 Pa. LEXIS 1128 (Pa. 2003).

III. FINDINGS OF FACT

1. The Petitioner is UGI-CPG.
2. I&E is a party of record.
3. OCA is a party of record.
4. OSBA is a party of record.
5. A prerequisite for a utility to implement a DSIC is a Commission-approved LTIIP. UGI-CPG Stmt. 1 at 4.
6. The Commission approved the LTIIP and DSIC for UGI-CPG by Order entered September 11, 2014. UGI-CPG Stmt. 1 at 4.
7. UGI-CPG filed a modified LTIIP in compliance with 52 Pa.Code § 121.5(a) on February 29, 2016. UGI-CPG Stmt. 1 at 4.
8. The Commission approved UGI-CPG’s modified LTIIP by Order entered June 30, 2016. UGI-CPG Stmt. 2-R at 3.
9. UGI-CPG filed Supplement No. 21 to UGI Central Penn Gas, Inc. Tariff Gas—Pa. P.U.C. No. 4, which implemented the DSIC rate for bills rendered on or after October 1, 2014. UGI-CPG Stmt. 1 at 5.
10. As of April 1, 2016, the UGI-CPG DSIC rate reached 4.65%. UGI-CPG Stmt. 1 at 5-7 and UGI-CPG Exhibits WJM-1 and WJM-3.
11. As of July 1, 2016, UGI-CPG projected the 5% DSIC cap rate would be reached and UGI-CPG would no longer recover new investment associated with repair and replacement work of infrastructure pursuant to the Commission-approved modified LTIIP. UGI-CPG Stmt. 1 at 5, 7, UGI-CPG Exhibit WJM-3.
12. Without a waiver to increase the DSIC capped rate, the Company will fail to recover between July 1, 2016 and the end of year 2018 approximately $9 million, which is the expenditure associated with the Commission-approved modified LTIIP. UGI-CPG Stmt. 1 at 7 and UGI-CPG Exhibit WJM-3.
13. Based on the modified LTIIP, UGI-CPG is replacing gas and transmission mains, valves, fittings, couplings, service lines, meter sets, regulator stations, city gates and addresses mandatory relocations on Pennsylvania Department of Transportation projects. UGI-CPG Stmt. 1 at 8.
14. The accelerated infrastructure expenditures over the five year term of the UGI-CPG modified LTIIP are as follows:

|  |  |
| --- | --- |
| Year | Investment(in millions of dollars) |
| 2014 | $8.4 actual |
| 2015 | $18.6 actual |
| 2016 | $27.1 projected |
| 2017 | $20.4 projected |
| 2018 | $20.4 projected |

UGI-CPG Stmt. 1 at 8.

1. The accelerated repair and improvements of the infrastructure contained in the modified LTIIP will help UGI-CPG address and reduce the number of leaks in its piping, install additional safety mechanisms and relocate meters that are currently inside customers’ buildings. UGI-CPG Stmt. 2-R at 2-5.
2. UGI-CPG’s level of cast iron and bare steel piping exceeds the Commission’s desired level of zero percent. Tr. 90, 104.
3. UGI-CPG plans to continue its aggressive investment in the repair and replacement of its infrastructure whether or not the waiver of the capped DSIC rate is granted. OSBA Stmt. 1 at 7, OSBA Exhibit IEc-2 at OCA-I-1 response.
4. Moving meters located inside houses of customers is a safety issue and is a category of expense in the Company’s modified LTIIP. Tr. 104.
5. During the period from 2012 to 2015, risk associated with UGI-CPG cast iron mains has decreased by approximately 8%, but risk associated with steel mains increased by approximately 3% and total risk for all types of mains increased by approximately 2% over the same period. UGI-CPG Stmt. 2-R at 3-4.
6. UGI-CPG has reduced risk with the capped DSIC rate at 5%. OCA Stmt. 1R at 2.
7. The first full year the DSIC was active was 2015 at the capped rate of 5%. OCA Stmt. 1R at 2.
8. The modified LTIIP increased the expenditure over the total five year term of the LTIIP from $68.5 million to $94.9 million or a 54.3% increase in planned spending on DSIC-eligible plant over the remaining three years of the plan. *UGI-CPG Modified LTIIP at 5*.
9. UGI-CPG plans to continue the aggressive repair and replacement of its infrastructure regardless of whether the capped DSIC rate is increased. OSBA Stmt. 1 at 7; OSBA Exhibit IEc-2 at OCA-I-1.
10. Every 1% increase in the DSIC rate corresponds to an additional $0.56 per month for the typical residential heating customer. UGI-CPG Stmt. 1 at 9; UGI-CPG Exhibit WJM-3.
11. Any increase in the DSIC rate does not mean that UGI-CPG will avoid a base rate case during the remaining term of its modified LTIIP, which is through the end of 2018. UGI-CPG Stmt. 1-R at 10.
12. A base rate case requires the Company to schedule internal labor resources and is a significant financial commitment. UGI-CPG Stmt. 1-R at 12; Tr. 52.
13. The DSIC mechanism affords the Company with an opportunity to decrease the need for frequent base rate cases. UGI-CPG Stmt. 1 at 10.
14. Some of the factors that determine the frequency with which UGI-CPG must file a base rate case are within the control of the Company. OCA Stmt. 1 at 7; OSBA Stmt. 1 at 11.
15. UGI-CPG estimates under the requested 10% capped DSIC rate it would recover its investment on DSIC-eligible plant up to October 2017. UGI-CPG Exhibit WJM-3.

# LEGAL STANDARDS

 UGI-CPG is the petitioner and proponent of a rule or order that would modify the Company’s existing DSIC. Therefore, UGI-CPG bears the burden to prove that it is entitled to the waiver that is sought. Sections 315(a) and 332(a) of the Code, 66 Pa.C.S. §§ 315(a), 332(a) provide that the burden of establishing the justness and reasonableness of waiving the capped DSIC rate is clearly on UGI-CPG in this proceeding. UGI-CPG must persuade the Commission by a preponderance of the substantial evidence that the relief sought is proper and justified under the circumstances. *Se-Ling Hosiery, Inc. v. Margulies,* 70 A.2d 854, 855-56 (Pa. 1950)(*Se-Ling Hosiery)*.

 The Pennsylvania Commonwealth Court has interpreted Section 315(a) of the Code as follows:

Section 315(a) of the Public Utility Code, 66 Pa.C.S. § 315(a), places the burden of proving the justness and reasonableness of a proposed rate hike squarely on the public utility. **It is well established that the evidence adduced by a utility to meet this burden must be substantial.**

*Lower Frederick Twp. v. Pa. Pub. Util. Comm’n*, 409 A.2d 505, 507 (Pa.Cmwlth. 1980) (emphasis added). See also, *Brockway Glass v. Pa. Pub. Util. Comm’n*,  437 A.2d 1067 (Pa.Cmwlth. 1981).

 A preponderance of the evidence is that which is more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery,* 70 A.2d 854 (1950); *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm’n,* 578 A.2d 600 (Pa.Cmwlth. 1990) *alloc. den.*, 602 A.2d 863 (Pa. 1992).

In addition, the Commission’s decision must be supported by “substantial evidence,” which consists of evidence that a reasonable mind might accept as adequate to support a conclusion. *Dutchland Tours, Inc. v. Pa. Pub. Util. Comm’n*, 337 A.2d 922 (Pa.Cmwlth. 1975). A mere "trace of evidence or a suspicion of the existence of a fact" is insufficient. *Norfolk and Western Railway Co. v. Pa. Pub. Util. Comm’n*, 413 A.2d 1037 (Pa. 1980).

 If the petitioner presents evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of the petitioner shifts to the opposing parties. If the evidence presented by the opposition is of co-equal weight, the Petitioner has not satisfied the burden of proof. The petitioner would be required to provide additional evidence to rebut the evidence of the opposition. *Burleson v. Pa. Pub. Util. Comm’n*, 443 A.2d 1373 (Pa.Cmwlth. 1982), *aff'd*, 461 A.2d 1234 (Pa. 1983).

 While the burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. Pub. Util. Comm’n*, 768 A.2d 1217 (Pa.Cmwlth. 2001). Thus, if competing evidence exists regarding any issue, the petitioner has the burden to establish by a preponderance of substantial evidence, the issue based on the overall weight of the evidence.

This does not mean, however, that in proving its case, a public utility must affirmatively defend claims that no party has questioned. As held by the Pennsylvania Commonwealth Court:

While it is axiomatic that a utility has the burden of proving the justness and reasonableness of its proposed rates, it cannot be called upon to account for every action absent prior notice that such action is to be challenged.

*Allegheny Center Assocs. v. Pa. Pub. Util. Comm’n*, 570 A.2d 149, 53 (Pa.Cmwlth. 1990); see also, *Pa. Pub. Util. Comm’n v. Equitable Gas Co.*, 73 Pa. PUC 301, 359-60 (Order entered November 21, 1990).

 In the final analysis, a utility’s rates must be just and reasonable, as required by Section 1301 of the Code, 66 Pa.C.S. § 1301, and it is UGI-CPG’s burden in this proceeding to demonstrate that, with respect to its request for a waiver of the DSIC cap up to 10%, that the granting of the request will yield just and reasonable utility rates.

Furthermore, any opposition to the position does not need to show that the Petition to waive the 5% DSIC cap and implement up to a 10% cap on distribution revenues for the DSIC rate is unfair, unreasonable or not in the public interest. Rather, the opposition prevails by showing by a preponderance of substantial evidence that the Petitioner failed to meet its burden of proof.

# V. DISCUSSION

1. What is the appropriate standard for waiver of the capped DSIC rate and whether it was met
2. The Statute

Section 1358 of the Public Utility Code is entitled Customer protections and states in relevant part,

1. Limitation.—As follows:
2. Except as provided under paragraph (2), the distribution system improvement charge may not exceed 5% of the amount billed to customers under the applicable rates of the …distribution rates of the … natural gas distribution company or city natural gas distribution operation. The commission may upon petition grant a waiver of the 5% limit under this paragraph for a utility in order to ensure and maintain adequate, efficient, safe, reliable and reasonable service.

\* \* \*

(d) Commission.—The commission, by regulation or order, shall prescribe the specific procedures to be followed to approve a distribution systems improvement charge. A distribution system improvement charge approved by the commission shall provide:

 \* \* \*

(3) A cap on the amount that may be collected from customers under this subchapter.

66 Pa.C.S. § 1358(a)(1) & (d)(3).

 The 5% revenue cap for the DSIC is a statutory consumer protection mechanism to prevent utilities from bypassing the traditional ratemaking process and to ensure that the DSIC supplements rather than replaces base rate proceedings. OCA M.B. at 4-5 citations omitted.

The Petition by UGI-CPG requests the Commission to invoke its statutory authority under Section 1358(a) to waive the current cap on the DSIC, which is 5% of the distribution revenues, to 10%. Consequently the new cap on the DSIC would be 10% in compliance with 1358(d)(3) if the Petition is approved.

1. Parties’ Positions
	1. UGI-CPG

UGI-CPG contends that waiver of the 5% DSIC is appropriate where the utility has identified the DSIC-eligible plant in a LTIIP, and the established 5% cap on the DSIC rate is insufficient for the Company to recover revenues associated with the LTIIP projects. UGI-CPG M.B. at 9. UGI-CPG states that it has shown such insufficiency of the current 5% cap to recover DSIC-eligible property because the Company has exceeded expenditure beyond the capped DSIC as of July 1, 2016 in compliance with the June 30, 2016, Commission-approved modified LTIIP. UGI-CPG M.B. at 22 citing UGI-CPG Stmt. 1 at 5, 7; UGI-CPG Exhibit WJM-3. Thus, the Company as of July 1, 2016, has failed to receive timely cost recovery of DSIC-eligible investments, which is what the DSIC was to address. The DSIC is an alternative ratemaking mechanism where utilities timely recover costs related to repair, improvement and replacement of eligible projects outside of a ratemaking case. *McCloskey v. Pa. Pub. Util. Comm’n,* 127 A.3d 860, 863 (Pa.Cmwlth. 2015).

UGI-CPG notes that the language in Section 1358(a) of the Code, *supra* at 11, matches the language at Section 1353(a) regarding the Commission’s authority to approve the DSIC and the standard by which such approval is to be given. 66 Pa.C.S. § 1353(a). The Company further notes the same language is found in the standard to approve the LTIIP in Section 1352(a)(6) and (7) of the Code. 66 Pa.C.S. § 1352(a)(6) and (7). The Company posits where the same language is used in the statute, the same standard should be used to correspond to the language. UGI-PNG M.B. at 10-11.

UGI-CPG argues that its spending is in compliance with the Commission-approved, modified LTIIP “that ensures and maintains adequate, efficient, safe, reliable, and reasonable service is sufficient to support a request to increase the DSIC rate cap to recover spending on the projects in that plan.” UGI-CPG M.B. at 11-12. The Company states the standard used for the Commission-approved modified LTIIP is the same standard for the waiver. The Company has shown that the 5% capped DSIC rate is insufficient to support its current planned levels of plant replacement and DSIC-eligible spending under the modified LTIIP. UGI-CPG M.B. at 22. Consequently, the Company contends that it has met the standard to obtain a waiver for an increase in the capped DSIC-rate. UGI-CPG M.B. at 19.

* 1. I&E

I&E states that the Commission is given statutory authority to grant a waiver of the 5% capped DSIC rate and said waiver must be necessary to provide “adequate, efficient, safe, reliable and reasonable service.” I&E M.B. at 9, citing 66 Pa.C.S. § 1358(a)(1). I&E posits that denial of the waiver that results in unnecessary delay in future infrastructure improvements is contrary to the purpose of the DSIC. I&E M.B. at 9, citing *Petition of PPL Electric Util. Corp. for Approval of a Distribution System Improvement Charge,* Docket No. C-2013-2345729, 2015 WL 1754563 (April 9, 2015).

I&E finds that the LTIIP proceedings addressed the safety concerns that for which UGI-CPG needs the DSIC funding and any delay to obtain that funding may result in “unnecessary delay in cast iron and unprotected steel main replacement which is…contrary to the public interest.” I&E M.B. at 9-10. I&E states implicit in a Commission-approved LTIIP is that the repairs, improvements and replacements it contains are eligible for recovery under the DSIC. I&E M.B. at 3. I&E states that increasing UGI-CPG’s currently capped DSIC rate will facilitate replacement of dangerous cast iron mains in a more timely manner promoting safe and effective service to the Company’s customers. I&E M.B. at 8. I&E argues that the DSIC will facilitate recovery of expenses used to “improve service quality, improve rate stability, reduce the number of main breaks, lower the amount of service interruptions, increase safety, and …lower the levels of lost and unaccounted for gas. I&E M.B. at 8-9.

I&E contends that UGI-CPG’s level of investment which corresponds to the Commission-approved modified LTIIP may not be easily sustained if the waiver of the DSIC capped rate is not granted. I&E M.B. at 9. I&E finds support for the petitioned DSIC rate increase through the Commission-approved LTIIP that addresses safety concerns identified by its witness. I&E M.B. at 9-10. I&E suggests that denial of the waiver would result in unnecessary delay of cast iron main and unprotected steel main replacement. According to I&E such action is both contrary to the purpose of the DSIC and contrary to the public interest because untimely replacement of these mains exposes the public to unnecessary danger. I&E M.B. at 10.

I&E concedes that UGI-CPG’s risk for cast iron mains has gone down, but notes that the Company’s risk for steel mains has increased from 63,475 points in 2012 to 65,441 points in 2015. I&E M.B. at 11. I&E concludes the fact that some risks are trending down does not mitigate the fact that other risks are increasing. I&E M.B. at 11. It is undisputed that cathodically unprotected bare steel pipelines are a safety risk for NGDCs. I&E M.B. at 11. If UGI-CPG’s efforts to reduce the amount of unprotected bare steel piping is restricted because the required investment is not obtained, the consequence could be catastrophic such as a gas explosion. I&E M.B. at 11-12.

I&E suggests that the more preferred policy is to allow the utilities to take proactive measures to guard against catastrophic incidents rather than reactive measures. I&E M.B. at 12. Proactive actions were supported by the Commission in its waiver of the 5% capped DSIC rate in the *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,* at Docket No. P-2015-2501500 (Opinion and Order entered January 28, 2016) (*PGW DSIC Waiver)*, and such precedent dictates the same measures should be approved in the instant proceeding. A proactive approach achieves “the mission of a mechanism such as the DSIC; that is, to provide safe and reliable service to the utility customer of the Commonwealth.” UGI-CPG M.B. at 13.

I&E states that UGI-CPG has met its burden to show a waiver of its capped DSIC rate at 5% should be granted. I&E M.B. at 14-15. I&E does not find, however, that the record justifies a waiver up to 10%; rather, I&E recommends a DSIC capped at 7.5%. I&E M.B. at 15.

* 1. OCA

OCA contends that the standard for waiver of the capped DSIC rate is whether the DSIC revenue is necessary for the utility at issue to ensure and maintain adequate, efficient, safe, reliable and reasonable service. Even if it is determined that the additional revenue is necessary, OCA argues that the Commission has the discretion whether to grant the waiver or not. OCA M.B. at 5. The OCA suggests that even if the Commission should find that the Company has met the standard to waive the 5% capped DSIC rate, the Commission should refrain from exercising its discretion to waive the capped DSIC rate up to 10%. OCA M.B. at 5.

OCA states that UGI-CPG failed to claim that its current infrastructure poses significant safety or reliability issues or that the current pace of replacement efforts by the Company is unacceptable or harmful to the public. OCA M.B. at 6. The Commission-approved modified LTIIP has the same schedule for replacement as the original LTIIP approved in 2014. OCA M.B. at 6 citing *Petition of UGI-CPG for approval of its LTIIP,* Docket No. P-2013-2398835, Order at 17 (September 11, 2014) compared with *Petition of UGI-CPG for approval of its modified LTIIP,* Docket No. P-2013-2398835 (Order entered June 30, 2016) at 4, 6. The record shows UGI-CPG has made progress reducing risk under the DSIC with the cap at 5% in that its risk for cast iron mains declined 3% from 2014 to 2015, it has the lowest leaks per mile of any Pennsylvania NGDC, and its leaks per mile were more than four times lower than the average Pennsylvania NGDC. OCA Stmt. 1R at 2. UGI-CPG did not show that it is unable to fund the expenditures necessary to ensure and maintain adequate, efficient, safe, reliable and reasonable service without a waiver of the capped 5% DSIC rate. OCA M.B. at 8.

UGI-CPG states that failure to grant a waiver to the capped DSIC will not allow the Company to delay filing a base rate case. OCA states that UGI-CPG has not filed a base rate case since 2010. OCA M.B. at 9, citing *Pa. Pub. Util. Comm’n v. UGI Central Penn Gas, Inc.,* Docket No. R-2010-2214415 (Order entered August 19, 2011). OCA argues that nothing in the statute for waiver of the DSIC addresses the time between base rate cases or the reduction of the expenses of a base rate case. OCA contends the arguments that the waiver may reduce the Company’s base rate case expenses or prolong the length of time the Company will not need to file a base rate case fail to meet the standard for a Commission waiver of the capped DSIC rate. OCA M.B. at 9.

Furthermore, the statutory 5% cap “reflects the General Assembly’s determination of the appropriate balance between [the] utility’s opportunity to automatically recover DSIC-eligible costs between base rate cases and the customer protections of base rate review.” *Id,* citing OCA Stmt. 1 at 6; OSBA Stmt. 1 at 9-10; 66 Pa.C.S. § 1358(a). OCA argues that UGI-CPG has not used a fully forecasted rate year to reflect projected plant in service, including DSIC-eligible plant additions in base rates. The record showed UGI-CPG has experienced growth in loads and customer counts as well as cost reduction efforts that would be a comprehensive investigation to change base rates. OCA suggests that a base rate proceeding covers categories of expenses that are not covered by the DSIC and therefore, even if the DSIC waiver were granted there is no guarantee that the granting will stave off a rate base proceeding. Thus, to delay a base rate proceeding as rationale to grant a waiver to the capped DSIC rate is not logical or prudent and fails to meet the standard to waive the 5% cap.

OCA states there is “no specific or concrete benefit to customers from authorizing a 100[%] increase to the DSIC charge on their distribution bills.” OCA M.B. at 11. The request for the cap waiver is on a tenuous claim at best by UGI-CPG that it would extend the time between base rate case filing and reduce rate case expenses. The Company concedes that a higher DSIC cap may have no impact on the timing of a rate case filing and the Company has not committed to refrain from filing a base rate case for a specific time period. OCA M.B. at 12, citing UGI Stmt. 1-R at 12; see OCA Stmt. 1 at 8.

 OCA also addresses UGI-CPG’s claim that it would forego approximately $3 million of DSIC revenue without the requested 5% increase in the DSIC cap. UGI-CPG Stmt. 1 at 9, UGI-CPG Exhibit WJM-3. OCA argues that the Company will only forego the depreciation and return on its $3 million that it would obtain above the 5% DSIC cap if the waiver as requested is granted – not the full $3 million. OCA M.B. at 12. OCA contends this is not a persuasive reason to grant the requested waiver because the purpose of the DSIC is not to eliminate regulatory lag, but rather to provide an additional tool to reduce regulatory lag. OCA M.B. at 12-13, citations and note omitted. OCA states that regulatory lag affords incentives to utilities to control costs between rate cases. OCA M.B. at 13, citing OCA Stmt. 1S at 4-5.

OCA affirms that the UGI-CPG has failed to show that it is just and reasonable to increase the capped DSIC rate up to 10%. OCA M.B. at 13. OCA contends that any increase above the capped 5% DSIC rate should be denied.

* 1. OSBA

Like OCA, OSBA stated that the Company must show that the waiver is necessary for the utility to provide reasonable service. The OSBA goes further to argue that there must be no other options other than the DSIC for providing the necessary service. OSBA M.B. at 5.

The OSBA disagrees that the same analysis that applies to granting a DSIC is the analysis that applies to granting a waiver of the capped 5% DSIC rate because such reasoning is inconsistent with the legislative history. OSBA M.B. at 5-6. OSBA argues that the phrase, “to repair, improve or replace eligible property in order to ensure and maintain adequate, efficient, safe, reliable and reasonable service,” in Section 1353(a) of the Code (the standard for granting the initial DSIC) goes to the types of costs that may be recovered in the DSIC rather than the criteria to be used to determine whether the DSIC should be approved. 66 Pa.C.S. § 1353(a). In contrast, the Section 1358(a) of the Code language, “to ensure and maintain adequate, efficient, safe, reliable and reasonable service” applies to the requirements to grant the waiver of the 5% DSIC capped rate. 66 Pa.C.S. § 1358(a). Under this interpretation of the statute, OSBA states that the cap on the DSIC can only be waived under extraordinary circumstances. OSBA M.B. at 6.

In the alternative, the OSBA argues that there are three options to interpret the language of the DSIC waiver found in Section 1358(a) of the Code—“to ensure and maintain adequate, efficient, safe, reliable and, reasonable service,” which are:

1. identical to implementing DSIC originally, which OSBA suggests eliminates the consumer protection or requires a reevaluation of the DSIC programs and whether they are to be approved to grant the waiver;
2. criteria applies to the waiver but not the initial granting of the DSIC, which OSBA suggests requires the utility to be unable financially or otherwise to meet its service obligations but for implementing the waiver of the capped rate; and
3. Commission discretion for standard to approve the DSIC and different reasonable standard to grant a waiver to the capped rate; which OSBA suggests lets the Commission develop its own standards with little legislative guidance.

OSBA M.B. at 7. OSBA suggests that the most sensible option of the three above is option 2, because the other options are illogical considering statutory construction and legislative history.

 OSBA contends that UGI-CPG failed to sustain its burden of proof, and therefore, the request to increase the capped DSIC rate should be denied.

1. CPGLUG

Like OCA and OSBA, CPGLUG asserts that UGI-CPG has not satisfied its burden to show it has met the standard for a DSIC waiver, and therefore, the Company’s request should be denied. CPGLUG M.B. at 4. CPGLUG compares the statutory language for the initial DSIC with the statutory language to grant the DSIC waiver, that is 66 Pa.C.S. § 1353(a) in comparison with 66 Pa.C.S. § 1358(a)(1). CPGLUG M.B. at 5. CPGLUG concedes that the language is the same but states the standards for implementing the DSIC versus granting a waiver cannot be presumed the same. *Id.* The waiver should be interpreted such that without it, the utility cannot ensure and maintain adequate, efficient, safe, reliable and reasonable service. CPGLUG M.B. at 5-6. Thus, “the Company must demonstrate that a waiver of the DSIC is necessary to provide it with the funding to meet its public utility obligations.” CPGLUG M.B. at 6. The CPGLUG argues that the 5% cap of the DSIC was specifically intended to protect consumers and therefore it “should be strictly enforced and not exceeded unless there is a clear showing that service reliability is in danger.” *Id.*

 CPGLUG states that the circumstances in prompting the requested waiver by UGI-CPG do not rise to safety or reliability issues with the Company’s infrastructure or that the current pace of remediation to the infrastructure is harmful to the public. CPGLUG M.B. at 7, citing OCA Stmt. 1 at 6. Otherwise, the Company would not be able to state that it will continue to meet its obligation to provide safe and reliable service to its customers. *Id.*

CPGLUG attempts to distinguish UGI-CPG’s state of affairs to remediate its infrastructure through its modified LTIIP from what was presented to the Commission for Philadelphia Gas Works in *PGW DSIC Waiver*. CPGLUG states that 66% of PGW’s 3,000 miles of gas main infrastructure are at-risk which is among the highest of any NGDC in the Commonwealth and PGW did not receive a 10% increase in the DSIC as requested. CPGLUG M.B. at 7-8.

 CPGLUG states that “the record is devoid of evidence demonstrating that the Company’s safeguards will provide meaningful protection to all customer classes” if the DSIC cap increase is granted. CPGLUG M.B. at 9. The Company witness was unable to recall whether any customers ever received a DSIC elimination or reduction or what criteria a customer would need to show to receive a DSIC elimination or reduction. CPGLUG M.B. at 10. CPGLUG argues that the record does not support the Company’s claim that existing safeguards provide sufficient protection against the impact of an increased DSIC.

 CPGLUG contends that in the event that the Commission finds the Company has satisfied the statutory standard for a DSIC waiver, because the record fails to show that adequate customer safeguards are in place for customer protection, the Commission should refrain from exercising its discretion to grant the Company’s request.

1. Disposition

A waiver to increase the 5% DSIC rate cap imposed by statute may be granted when a utility shows that the initial 5% DSIC rate cap is not sufficient to support its planned levels of plant replacement and DSIC-eligible spending corresponding to the utility’s LTIIP. 66 Pa.C.S. § 1358(a); see also, *Pa. Pub. Util. Comm’n v. Aqua Pennsylvania, Inc.,* Docket No. R-2008-2079310 (Order entered July 23, 2009)(A DSIC cap is not in 1307(g) but the Commission increased the DSIC when the utility showed its planned investment levels for DSIC-eligible spending as warranted by LTIIP were not met by capped DSIC.).

The Commission through regulation planned for the instance where an initial LTIIP may need to be revised through Section 121.5 of Title 52 of the Pennsylvania Code (PUC regulations). 52 Pa.Code § 121.5. 52 Pa.Code § 121.5(a) states, in part, “If a utility elects to modify a Commission-approved LTIIP during its term to incorporate a major modification to any of the elements in Section 121.3(a)(relating to LTIIP), the utility shall file a separate petition for modification.” A “major modification” is defined as,

A change to a utility’s previously approved LTIIP which meets at least one of the following criteria:

1. Eliminated a category of eligible property from the LTIIP.
2. Extends the schedule for repair, improvement or replacement of a category of eligible property by more than 2 years.
3. **Increases the total estimated cost of the LTIIP by more than 20%.**
4. Otherwise reflects a substantial change to the current Commission-approved LTIIP.

52 Pa.Code § 121.2 (emphasis added).

 It is quite possible that a major modified LTIIP could result in expenditures under the 5% capped distribution revenues for the DSIC rate that was in place for DSIC-eligible plant, or that the projection for overtaking the capped 5% of distribution revenues would not be realized until late in the term (perhaps the fifth year) of the LTIIP (the lateness of eclipsing the capped rate may cause the Commission to determine that a rate base case filing may be needed). In such cases the Commission would likely state that any petition for waiver of the 5% cap on distribution revenues for the DSIC would be denied. That is not the case in this proceeding.

Of note, the Commission used its discretion to state that an increase in total estimated costs of the LTIIP should be more than 20% of the original LTIIP. If the 20% threshold is not met, there is no need to file a modified LTIIP and modifications are addressed in Commission staff reviews of the utility’s Annual Asset Optimization Plan (AAO) where applicable. See 52 Pa.Code § 121.5(b). Thus, it appears that the Commission used its discretion to provide a gauge as to whether it needed to marshal its approval through a process that may involve a contested proceeding of measuring the standard for approval of a modification or not.

It is also noted, that the standards advocated by the OCA, OSBA and CPGLUG that make it necessary for service and invoke the waiver only under extraordinary circumstances fail to consider the Commission regulations for the LTIIP and its modification in concert with the statutory language for the DSIC and the waiver of the capped DSIC-rate. The regulations for modification of the LTIIP do not require that there be extraordinary circumstances or no other alternative means to ensure and maintain adequate, efficient, safe, reliable and reasonable service.

In this proceeding, the Company’s modified LTIIP increased the total estimated cost of the original LTIIP by 54.3% over the remaining three years of the plan; and thus, qualified as a major modification by regulation. 52 Pa.Code § 121.2(iii), see also, UGI-CPG M.B. at 20. No party disputed that the modified LTIIP yielded an increase in planned spending for DSIC-eligible plant by 54.3%. Imbedded in the approved modified LTIIP is that the expenditures ensure and maintain adequate, efficient, safe, reliable, and reasonable service. Otherwise, the modifications would not have been approved and the Commission would have ordered a new or revised plan to be filed. 66 Pa.C.S. § 1352(a)(6) & (7).

No party disputed the calculation that the spending by the Company on DSIC-eligible plant has gone beyond 5% of distribution revenues. No party challenged the spending as being inaccurate or unreasonable expenses. The modified LTIIP accelerates infrastructure improvements in UGI-CPG to enhance system resiliency and reliability leading to safe, reliable and reasonable service. The Commission acknowledged the Company’s actions for improvements were warranted by approving the modified LTIIP. By approving the modified LTIIP the Commission acknowledged that an increased amount of DSIC-eligible plant needed to be addressed. Thus, the Company has provided substantial evidence for the 5% cap on distribution revenues for the DSIC rate to be waived, because the modified LTIIP is approved for “the manner in which the replacement of aging infrastructure will be accelerated and how the repair, improvement or replacement will ensure and maintain adequate, efficient, safe, reliable and reasonable service.” 66 Pa.C.S. § 1352(a)(6).

The rebuttal to the increase in spending for DSIC-eligible plant was that the Company changed its criteria to what is DSIC-eligible plant and so the increase is merely statistical and not realistic or relevant to assess safety. OSBA M.B. at 18-19.

The Company does not deny that it changed its criteria to what is DSIC-eligible plant. Tr. 80-81. If the change in criteria used to identify DSIC-eligible plant is not genuine, then the rebuttal should state it is not genuine and provide substantial evidence showing that it is not. No substantial evidence was provided by the opposition to show how the change in characterizing DSIC-eligible plant was disingenuous. Furthermore, such information would have been pivotal in disputing the modified LTIIP which went through muster to be approved by the Commission. I simply do not find this rebuttal compelling, because there is no substantial evidence to sustain it.

It is noted that the Commission approved the modified LTIIP with the changed criteria to identify DSIC-eligible plant. Any challenge to the change in the criteria to identify DSIC-eligible plant as proposed by UGI-CPG should have been raised and addressed in the *UGI-CPG Modified LTIIP* proceeding. OSBA was a party to that proceeding. Any challenge to the criteria used to identify DSIC-eligible plant as proposed in the modified LTIIP by OSBA is untimely.

OSBA also stated that the data presented by I&E is defective to show risk because there is no comparison to other Pennsylvania NGDCs. The question is risk in comparison to what? OSBA M.B. at 18. OSBA also contended that there is no actual risk reduction associated with the granting of the waiver, and therefore, the risk criterion should not warrant a decision on the waiver of the capped DSIC rate. OSBA M.B. at 17. The OSBA questioned whether granting a waiver based on increased risk rewards a utility for lapses in safety performance. *Id.*

A leak of gas is a serious safety issue and should be addressed as aggressively as possible. If leaks exist, whether or not the percentage of leaks in UGI-CPG’s infrastructure are compared to other NGDCs, the leaks should be repaired in the interest of public safety. I&E M.B. at 11. The best way to curtail leaks in the distribution system of an NGDC is to accelerate the replacement of at risk piping. *Id.*

It is noted that some risks are trending down for UGI-CPG, but it is agreed that that fact does not mitigate that the Company’s infrastructure is in need of accelerated repair and replacement of infrastructure. UGI-CPG M.B. at 24. No party has disputed that accelerated repair and replacement of infrastructure correlates to the Company’s effort to address public safety. The dispute lies in the need to address it at the pace and expense the Company has proposed. Safety is a source for which the modifications in the Company’s modified LTIIP is aggressively addressed.

While it is true that the issue here is to ensure safe service, an element to ensure safe service is whether pipeline are safe. Pipeline safety is especially important with gas service where an occurrence can be catastrophic if safety of pipelines is not maintained. Only the I&E witness has the expertise to make an assessment on the safety of pipelines.

I&E is the only party with the authority to enforce safety regulations found at 49 CFR § 192. What is compelling for an increase in the capped DSIC rate is that the only witness that went through training in the Pipeline and Hazardous Materials Safety Administration (PHMSA) and is employed by the Commission as a gas safety engineer recommended that UGI-CPG receive a waiver to increase its capped DSIC rate above 5%. I&E Stmt. 1 at 12; Tr. 73. The training in PHMSA includes mandatory courses to conduct inspections on gas distribution systems. Tr. 74. Neither Mr. Mierzwa, the witness for OCA, nor Mr. Knecht, the witness for OSBA, has gas safety expertise. OCA Stmt. 1 at 1; OSBA Exhibit IEc-1.

Furthermore, UGI-CPG filed a modified LTIIP **before** it petitioned for the waiver of the 5% DSIC capped rate. In the *PGW DSIC Waiver*, the utility did not file a modified LTIIP before it petitioned for the waiver of the 5% DSIC capped rate. Consequently, the Commission relied upon other substantial evidence on the record because a modified LTIIP was not available. See, *PGW DSIC Waiver*, Docket No. P-2015-2501500 at 45, note 10 where the Commission reasoned that a revised LTIIP prior to waiver of a DSIC capped rate is statutorily correct procedure. Nevertheless, the Commission needed substantial evidence to waive the cap that would justify accelerating replacement of aging infrastructure and how the repair, improvement or replacement would ensure and maintain adequate, efficient, safe, reliable and reasonable service.

More elements of substantial evidence in this proceeding are the modified LTIIP and the projections presented by UGI-PNG that it has reached the capped 5% DSIC rate and will go beyond it through the remaining 3 year term of its modified LTIIP. The Commission’s regulations state, “The LTIIP must show the acceleration of the replacement of aging infrastructure by the utility and be sufficient to ensure and maintain adequate, efficient, safe, reliable and reasonable service to customers.” 52 Pa.Code § 121.1. The modified LTIIP is approved by the Commission. That is substantial evidence that the modified LTIIP’s contents meet the statutory standard.

The record does not provide substantial evidence that the modified LTIIP is flawed, or that the expenditures to implement the modified LTIIP as presented in this proceeding are flawed, incorrect, inaccurate or otherwise in error. The record does not provide substantial evidence to show that the projections of expenditure beyond the capped 5% DSIC are duplicative, inaccurate or flawed. The opposition has failed to rebut it.

I agree with the premise that the standard for the modification of the LTIIP is the same standard for the waiver of the capped DSIC rate. Any other interpretation of the Code does not comport with the plain language written, fails to be consistent with the requirement that rates be “just and reasonable” and makes the Commission regulations illogical. 1 Pa.C.S. § 1932.

The Commission stated that an increase is proper when the current state of a utility’s distribution infrastructure improvements, repairs or replacements to maintain safe, adequate and reasonable service requires spending for DSIC-eligible plant that exceeds the current 5% cap. See *PGW DSIC Waiver,* Docket No. P-2015-2501500 at 41. The DSIC was projected to be greater than 5% as of July 1, 2016. See UGI-CPG Exhibit WJM-3. No party challenged this event or found the data erroneous. Significant in *PGW DSIC Waiver,* was whether PGW’s plans for remediation of DSIC-eligible plant were shown to provide adequate, efficient, safe, reliable and reasonable service and the corresponding expenditures exceed the levels of its current 5% capped DSIC rate. In this proceeding the Commission has approved the Company’s modified LTIIP, which was vetted as to whether the changes proposed in the modifications ensure and maintain efficient, safe, adequate, reliable and reasonable service to ratepayers.

The standard of whether the DSIC capped rate should be waived includes safe service. If the only rationale to waive the DSIC capped rate is because of safety issues, the I&E witness can make such assessments but the OCA and OSBA witnesses are not qualified to make safety assessments because gas safety is outside of their area of expertise. The testimony of the I&E witness included safety assessments in the gas piping and locations of meters to support an increase in the capped DSIC rate above 5%. I&E Stmt. 1 at 9-12. This evidence sustained the burden to prove that the DSIC capped rate should be increased above 5%.

The record contains substantial evidence to increase the capped DSIC rate of UGI-CPG above 5%. Based on the record the Company has satisfied its burden of proof to waive the existing DSIC capped rate because the record has failed to show the expenditures approved by the DSIC are flawed, duplicative, or otherwise unwarranted and do not cause the Company to eclipse the existing capped DSIC rate. The next issue is to what new percentage of distribution revenues should the DSIC rate be capped in compliance with 66 Pa.C.S. § 1358(d)(3).

UGI-CPG has shown that up to 14.49% of the distribution revenues is needed for the implementation of the Commission-approved modified LTIIP. See UGI-CPG Exhibit WJM-3. The Company has stated that without a waiver to the capped DSIC-rate it will be forced to undertake a base rate proceeding and spend a significant amount to ensure its financial health. UGI-CPG Stmt. 1-SR at 1-2. UGI-CPG stated in its most recent base rate case that went into effect in August 2011, “[r]esidential heating customers’ bills increased on average by $8.42 per month as a result of the base rate proceeding.” UGI-CPG Stmt. 1-R at 5. The increase through the waiver of the DSIC is substantially less. The opposition did not challenge the accuracy of these statements. Rather the opposition chose to challenge whether the implementation of the Commission-approved modified LTIIP is needed to ensure and maintain adequate, efficient, safe, reliable and reasonable service.

The opposition also stated that UGI-CPG is committed to the modified LTIIP whether or not the waiver of the capped DSIC-rate at 5% is approved. Consequently, the opposition contends the waiver is not needed to justify accelerating the replacement of infrastructure and how the repair, improvement or replacement would ensure and maintain adequate, efficient, safe, reliable and reasonable service. OSBA M.B. 14; OCA M.B. 5-6.

Of course the Company is committed to the modified LTIIP. There is a Commission Order approving the plan. If the Company does not abide by the plan, then they would not be abiding by a Commission order. A Commission-approved LTIIP may be subject to complaints. 52 Pa.Code § 121.8. Thus, it is expected that the Company would state it plans to abide by the plan whether or not the waiver is granted. To state otherwise, would open UGI-CPG up to prosecution by the Commission.

The issue is not whether UGI-CPG is committed to the modified LTIIP. The issue is whether implementation of the modified LTIIP and the status of the current DSIC and any other substantial evidence require an adjustment to the capped DSIC-rate at 5%. Whether or not the Company plans to implement the modified LTIIP to ensure and maintain adequate, efficient, safe, reliable and reasonable service was addressed in the proceeding approving the modified LTIIP and is not an issue for this proceeding.

The opposition also contends that the waiver is only to be used when it is necessary or in extraordinary circumstances when there are no alternatives, to ensure and maintain adequate, efficient, safe, reliable and reasonable service. The opposition points to the intent of the legislation through the legislative history to justify this interpretation. Yet, the instance where the Commission has adjusted the DSIC after the legislation was enacted, the Commission has not been so limiting. See *PGW DSIC Waiver,* Docket No. P-2015-2501500 at 43 (alternative funding sources consideration in analysis of waiver of DSIC cap but not limited to no other recourse where waiver is most efficient and effective resource). Based on precedent set by the Commission, I do not find this argument convincing.

Based on the arguments above I find the contentions of UGI-CPG and I&E persuasive. I find that UGI-CPG has satisfied its burden of proof. It is found that the record holds substantial evidence to grant UGI-CPG’s request to waive the capped DSIC rate at 5% and increase the DSIC rate above the 5% cap.

1. New Percentage of the distribution revenues of UGI-CPG for DSIC rate

Two parties to this proceeding, UGI-CPG and I&E, advocate that the capped DSIC rate should be waived and increased. While I&E argued for the DSIC cap to be increased to 7.5% over the remaining term of the Company’s LTIIP, it provided very little substance as to why the rate should be increased to 7.5%.

I&E’s witness testified that UGI-CPG has 581 miles of cathodically unprotected bare/coated steel and 7 miles of wrought/cast iron mains in its inventory as of December 2015. I&E Stmt. 1 at 9. Despite capital spending by UGI-CPG, the Company’s main risks are still above what was reported in 2012. I&E Stmt. 1 at 11. The risk is still above 2012 reported levels because the risk associated with steel mains increased and the total risk for all types of mains has increased. UGI-CPG Stmt. 2-R at 3-4. Additionally, the length of time these mains are not addressed is the potential of further deterioration of the infrastructure.

These facts of risk support an increase in the capped DSIC rate that has already reached 5% would be used to address the issues that as a whole ensure public safety. Thus, these figures are part of the substantial evidence that a waiver of the capped DSIC is warranted. However, I&E does not advocate that the record shows a 7.5% capped DSIC is reasonable and balanced versus a 6.5% or 8.5% capped DSIC rate. In fact, the 7.5% seems to be reached simply because that was the figure approved in the *PGW DSIC Waiver* for remediation of aging gas infrastructure. But, I&E does not show that the substantial evidence in the *PGW DSIC Waiver* proceeding is comparable to the percentage increase in the instant case.

I&E also stated, “the risks [in this proceeding] are not sufficient enough to justify a maximum DSIC cap of 10% and, therefore, recommends the DSIC be set at 7.5%.” I&E M.B. at 15. However, I&E doesn’t state why it should be 7.5% rather than some other percentage below 10%. Furthermore, I&E does not provide any basis for its rationale that the maximum percentage for a DSIC capped rate is at 10%.

I simply do not find substantial evidence to support that the DSIC capped rate should be increased to 7.5% as advocated by I&E.

UGI-CPG stated that its original LTIIP projected DSIC-eligible plant expenditures from 2014 through 2018 for a total of $68.5 million over the five year term of the plan. The Commission-approved modified LTIIP projected a total of $94.9 million spent on DSIC-eligible plant over the same term. *Petition of UGI Central Penn Gas, Inc. for Approval of their Modified Long-Term Infrastructure Improvement Plan,* Docket No. P-2013-2398835, at Appendix B, 25 of 42. In *UGI-CPG Modified LTIIP* the increase in expenditures from the original LTIIP to the modified LTIIP for the remaining three years is 54.3%. The Company states, “A 10% DSIC rate cap would support the Company’s DSIC-eligible replacement [of infrastructure], and would allow the Company to strike a balance between the use of the DSIC and base rate proceedings for cost recovery purposes.” UGI-CPG M.B. at 22. UGI-CPG states that the increase in the DSIC capped rate will decrease the need for frequent rate cases, enhance reasonable service, and save both the ratepayer and the Company the cost of a rate base case. UGI-CPG M.B. at 22-23.

UGI-CPG stated that every 1% DSIC increase is equivalent to an additional $0.56 per month for the typical residential heating customer. UGI-CPG Exhibit WJM-3. Consequently an increase in the capped DSIC rate up to 10% would amount to (5 x $0.56 = $2.80) $2.80 per month once the proposed 10% capped DSIC rate is reached. See UGI-CPG Exhibit WJM-3. According to the Company’s projections, that would be reached after July 2017. *Id.* An undercollection recovery charge would need to be implemented for monies that were not collected because of the capped DSIC at 5%. The capped 10% DSIC rate would provide UGI-CPG another approximately 15 months of full recovery of the expenditures used for DSIC-eligible plant and result in approximately $6.3 million of projected expenditures for DSIC-eligible plant not recovered through this mechanism. UGI-CPG Exhibit WJM-3. With the capped DSIC rate at 5% the Company would fail to recover $9.1 million. However, what is not recovered through any capped DSIC rate can be recovered through the means of a rate base proceeding.

The Commission has stated, “approval of an increased DSIC recovery level must be balanced by the need to consider the impact on the Company’s ratepayers.” *PGW DSIC Waiver,* at 55. In *PGW DSIC Waiver* the Commission did not find it necessary to eliminate one-hundred percent of the risk to the utility.

In the *UGI-CPG Modified LTIIP* it is noted that UGI Central Penn Gas, Inc. was granted a Commission-approved modified LTIIP for a percentage increase for spending on DSIC-eligible plant for the remaining three years at 54.3% whereas for UGI-PNG the percentage increase for spending on DSIC-eligible plant for the remaining three years was at 24.5%. *UGI-CPG Modified LTIIP,* at 5. Yet, both utilities are requesting an increase in the DSIC capped rate up to 10%. I do not find it reasonable to increase the DSIC capped rate to the same level when the rationale for the increase, the increase in spending on DSIC-eligible plant, is not the same magnitude.

It is noted that the last base rate case for UGI-CPG was in 2010. OCA M.B. at 10. The Company concedes that its proposed higher DSIC capped rate at 10% may not affect the timing of filing a base rate case and the Company does not commit to refrain from filing prior to the end of the term of its modified LTIIP. OCA M.B. at 12 citing UGI-CPG Stmt. 1R at 12; see OCA Stmt. 1 at 8. A reasonable balance must be achieved to protect the consumer and deter the utility from using an increase in the DSIC mechanism as an end-run around a base rate proceeding.

I find that the DSIC capped rate should be increased to 8.65% for the following reasons. UGI-CPG proposed an increase in DSIC cap to 10% although it projected an increase in DSIC cap to 14.49% necessary to fully recover through the DSIC what was approved by the Commission in *UGI-CPG Modified LTIIP* through the remaining three years of the term of the modified LTIIP. While UGI-CPG stated that the increase is 54.3%; that is a figure comparing the last three years of the modified LTIIP to the last three years of the original LTIIP. The percentage increase to spending levels of the whole period of the modified LTIIP as compared with the whole period of the original LTIIP is 38.5%.[[5]](#footnote-5) An increase from 5% to 14.49% is about 9.49 percentage points of an increase. 38.5% of a 9.49 percentage point increase is a 3.6575 percentage point increase yielding an increase from 5% up 3.65 percentage points to 8.65%. In viewing the data provided in the record 8.65% falls just beyond April 2017 for full recovery. UGI-CPG Exhibit WJM-3.

This 8.65% figure is about 60% of the 14.49% that the Company has projected for full recovery of projected DSIC eligible spending to accelerate its repair, replacement and improvement of its infrastructure to ensure and maintain adequate, efficient, safe, reliable and reasonable service over the full term of the modified LTIIP. In contrast, the Company’s proposed 10% capped DSIC rate is about 70% of the projected DSIC rate of 14.49% needed for full recovery of projected DSIC eligible spending over the full term of the modified LTIIP. I find this 8.65% figure for the DSIC-capped rate reasonable and supported by the evidence. I find this figure balances the interests of UGI-CPG and its ratepayers.

The result of an 8.65% capped DSIC rate for UGI-CPG is that the rates will be capped from about April 2017. See UGI-CPG Exhibit WJM-3. Residential heating gas customer’s bills will have an added (3.65 x $0.56 = $2.04) $2.04 per month above what has been collected at the rate capped at 5% from April 2017 to the end of the term of the LTIIP (end of year 2018). UGI-CPG Exhibit WJM-3. UGI-CPG will obtain approximately $1,897,418[[6]](#footnote-6) that was not collected because the DSIC was capped at 5% and the Company would fail to recover approximately $7,280,719[[7]](#footnote-7) *Id.*

The record evidence supports granting in part and denying in part the Petition of UGI-CPG. The Petition is granted regarding the request to waive the DSIC cap of 5% of billed distribution revenues. The Petition is denied regarding the request to increase the DSIC-capped rate up to 10% of billed distribution revenues. The record evidence supports a DSIC-capped rate up to 8.65% as in the public interest.

# VI. CONCLUSIONS OF LAW

* 1. The Commission has jurisdiction over the parties and subject matter of this proceeding, pursuant to 66 Pa.C.S. §§ 1350-1360.
	2. In any proceeding upon the motion of the Commission, involving any proposed or existing rate of any public utility, or in any proceedings upon complaint involving any proposed increase in rates, the burden of proof to show that the rate involved is just and reasonable is upon the public utility. 66 Pa.C.S. § 315(a).
	3. Any proponent of a rule or order has the burden of proof. 66 Pa.C.S. § 332(a).
	4. The proponent in the proceeding must persuade the Commission by a preponderance of the substantial evidence that the relief sought is proper and justified under the circumstances. *Se-Ling Hosiery, Inc. v. Margulies,* 70 A.2d 854, 855-56 (Pa. 1950).
	5. A preponderance of the evidence is that which is more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery,* 70 A.2d 854 (1950); *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm’n,* 578 A.2d 600 (Pa.Cmwlth. 1990) *alloc. den.*, 602 A.2d 863 (Pa. 1992).
	6. The Commission’s decision must be supported by “substantial evidence,” which consists of evidence that a reasonable mind might accept as adequate to support a conclusion. *Dutchland Tours, Inc. v. Pa. Pub. Util. Comm’n*, 337 A.2d 922 (Pa.Cmwlth. 1975).
	7. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. Pub. Util. Comm’n*, 768 A.2d 1217 (Pa.Cmwlth. 2001).
	8. UGI-CPG has the burden of proving the justness and reasonableness of its DSIC, its application to the various customer classes, and all inputs to its calculation. 66 Pa.C.S. §§ 315(a), 332(a), 1301.
	9. It is well-established that the evidence adduced by a utility to meet its burden of proof must be substantial. *Lower Frederick Twp. v. Pa. Pub. Util. Comm’n*, 409 A.2d 505, 507 (Pa.Cmwlth. 1980).
	10. Sections 1350 and 1351 of the Code, 66 Pa.C.S. §§ 1350, 1351, permit NGDCs and various other utilities to recover, through a DSIC, the reasonable and prudent costs incurred to repair, improve and replace certain eligible property that is part of a utility’s distribution system.
	11. The DSIC is intended to ensure and maintain adequate, efficient, safe, reliable and reasonable service. 66 Pa.C.S. § 1353(a).
	12. A waiver to increase the 5% DSIC rate cap imposed by statute may be granted when a utility shows that the initial 5% DSIC rate cap is not sufficient to support planned levels of plant replacement and DSIC-eligible spending corresponding to the utility’s LTIIP. 66 Pa.C.S. § 1358(a); see also *Pa. Pub. Util. Comm’n v. Aqua Pennsylvania, Inc.,* Docket No. R‑2008-2079310 (Order entered July 23, 2009)(a DSIC cap is not in 1307(g) but the Commission increased the DSIC when the utility showed its planned investment levels for DSIC-eligible spending as warranted by LTIIP were not met by capped DSIC).
	13. The Commission has the statutory authority to grant a waiver of the 5% limit of a NGDCs DSIC in order to ensure and maintain adequate, efficient, safe, reliable and reasonable service. 66 Pa.C.S. § 1358(a).
	14. Section 1358(a) of the Code, 66 Pa.C.S. § 1358(a), must be interpreted consistent with the requirement that rates be “just and reasonable.” 1 Pa.C.S. § 1932.
	15. The burden of proving that a waiver of the 5% capped DSIC rate in order to ensure and maintain adequate, efficient, safe, reliable and reasonable service is warranted in on UGI-CPG. 66 Pa.C.S. § 1358(a)(1).
	16. The Commission has provided regulations to instruct the utilities regarding LTIIPs, modifications of LTIIPs, enforcement of LTIIPs and interrelation with LTIIP with DSIC. 52 Pa.Code § 121.1 *et seq.*
	17. The LTIIP must show the acceleration of the replacement of aging infrastructure by the utility and be sufficient to ensure and maintain adequate, efficient, safe, reliable and reasonable service. 52 Pa.Code § 121.1.
	18. UGI-CPG has met its burden of proof as to the justness and reasonableness of its DSIC rate to be increased above the capped 5% because the current capped DSIC rate is insufficient to support the Company’s Commission-approved modified LTIIP and its expenditures for infrastructure replacement have been shown to be above 5% of its distribution revenues. 66 Pa.C.S. §§ 315(a), 1301, 1358(a).
	19. UGI-CPG has not met its burden to prove that the capped DSIC rate should be increased up to 10%.
	20. Substantial evidence shows it is just, reasonable and in the public interest to increase the UGI-CPG capped DSIC rate from 5% to 8.65%.

VII. ORDER

 THEREFORE,

 IT IS RECOMMENDED:

1. That the Petition of UGI Central Penn Gas, Inc. at Docket No. P-2016-2537609 be granted in part and denied in part.
2. That the request of UGI Central Penn Gas, Inc. in the Petition for a waiver of the distribution system improvement charge cap of 5% of billed distribution revenues is granted.
3. That the request of UGI Central Penn Gas, Inc. in the Petition for approval to increase the maximum allowable distribution system improvement charge up to 10% of billed distribution revenues is denied.
4. That UGI Central Penn Gas, Inc. is approved to increase the maximum allowable distribution system improvement charge up to 8.65% of billed distribution revenues.
5. That the following transcript corrections proposed by UGI Central Penn Gas, Inc. by written request dated September 21, 2016, are accepted:

Page Line Correction

* 1. 30 12 Change “to” into “and”.
	2. 31 11 Strike “the”.
	3. 38 2 Strike “our”.
	4. 42 6 Change “Columbia” to “Columbia’s”.
	5. 53 5 Change “1RS” to “1SR”.
	6. 53 15 Strike “we”.
	7. 55 23 Change “Exhibit WJM-1SR” to “Exhibit WJM-1S”.
	8. 65 8 Change “after” to “of”.
	9. 76 13 Change “Not that many” to “I don’t have any”.
	10. 86 17 Strike “as”.
	11. 86 18 Strike “filed with the Public Utility Commission and

 approved”.

* 1. 88 7 Strike “to increase our proceeding”.
	2. 104 22 Change “has order” to “has an order”.
	3. 121 11 Change “investor of a” to “investor-owned”.
	4. 134 10 Change “there no” to “there are no”.
1. That the proceeding at Docket No. P-2016-2537609 is to be marked closed.

Date: November 7, 2016 /s/

 Angela T. Jones

 Administrative Law Judge

1. It is noted that the UGI-CPG Main Brief has a figure of 24.5% while the *UGI-CPG Modified LTIIP* has the figure cited, 54.3%. The undersigned believes that the main brief has a typographical error that is the percentage of the companion UGI-Penn Natural Gas company’s percentage. [↑](#footnote-ref-1)
2. Counsel for the Central Penn Gas Large Users Group (CPGLUG) asked and received permission to observe the Prehearing Conference as the group was determining whether to intervene in this proceeding. [↑](#footnote-ref-2)
3. A Motion by I&E addressed at the evidentiary hearing was granted causing some of the testimony of Mr. Knecht to be deleted. [↑](#footnote-ref-3)
4. CPGLUG did not file any testimony. [↑](#footnote-ref-4)
5. Total capital investment in original LTIIP is $68.5 million. Total capital investment in modified LTIIP is $94.9 million. Percentage change is (($94.9 million – 68.5 million)/$68.5 million = 38.5%) 38.5%. See *Petition of UGI Central Penn Gas, Inc. for Approval of a Modification to its Long Term Infrastructure Improvement Plan,* Docket No. P-2013-2398835 at Appendix B, 25 of 42. [↑](#footnote-ref-5)
6. UGI-CPG Exhibit WJM-3 has cumulative through April 2017 not recovered at $1,897,418. The corresponding DISC% is 8.58%. [↑](#footnote-ref-6)
7. UGI-CPG Exhibit WJM-3 has $9,178,137 was not collected because of the capped DSIC rate at 5%. Take $9,178,137 and subtract $1,897,418 that would be collected under the 8.65% DSIC capped rate, which yields ($9,178,137 - $1,897,418 = $7,280,719) $7,280,719. [↑](#footnote-ref-7)