



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
COMMONWEALTH KEYSTONE BUILDING  
400 NORTH STREET, HARRISBURG, PA 17120

BUREAU OF  
INVESTIGATION  
&  
ENFORCEMENT

October 22, 2024

**Via Electronic Filing**

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

Re: Tentative Order Regarding Replacement of Older Plastic Pipe in Natural Gas  
Distribution Systems,  
Docket No. M-2024-3050313  
**I&E Reply Comments**

Dear Secretary Chiavetta,

Enclosed for electronic filing are the Reply Comments of the Bureau of Investigation and Enforcement regarding the Tentative Order entered on August 26, 2024, in the above-referenced proceeding and the comments issued on or before October 7, 2024.

If you have any questions or concerns regarding this filing, please feel free to contact us directly. Thank you.

Respectfully submitted,

Lindsay Dearing Szymanski  
Prosecutor  
Bureau of Investigation and Enforcement  
PA Attorney ID No. 317073  
(717) 787-3663  
[liszymansk@pa.gov](mailto:liszymansk@pa.gov)

Michael L. Swindler  
Deputy Chief Prosecutor  
Bureau of Investigation and Enforcement  
PA Attorney ID No. 43319  
(717) 783-6369  
[mwindler@pa.gov](mailto:mwindler@pa.gov)

Enclosures

cc: Adam Young, Law Bureau (via email – [adyoung@pa.gov](mailto:adyoung@pa.gov))  
Steven Bainbridge, Law Bureau (via email – [sbainbridge@pa.gov](mailto:sbainbridge@pa.gov))  
Matthew Stewart, Bureau of Technical Utility Services (via email – [mattstewar@pa.gov](mailto:mattstewar@pa.gov))  
Per Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Replacement of Older Plastic Pipe in : Docket No. M-2024-3050313  
Natural Gas Distribution Systems :

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**REPLY COMMENTS OF THE BUREAU OF  
INVESTIGATION AND ENFORCEMENT**

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**I. INTRODUCTION AND BACKGROUND**

On August 26, 2024, the Pennsylvania Public Utility Commission (“PUC”) entered a Tentative Order to consider the accelerated replacement of older plastic pipe by natural gas public utilities at Docket No. M-2024-3050313 (“Tentative Order”). The Tentative Order sought comments from interested parties within thirty (30) days of its publication in the *Pennsylvania Bulletin* and reply comments fifteen (15) days thereafter. The Bureau of Investigation and Enforcement (“I&E”) submits these reply comments to address the concerns raised in the October 7, 2024, comments by interested parties.

**II. REPLY COMMENTS**

**A. OPERATORS DIMP HAS HISTORICALLY EVALUATED ALL PLASTIC AS THE SAME WITHOUT DIFFERENTIATING BETWEEN OLDER, AT-RISK PLASTIC AND NEW, SAFER PLASTIC.**

Various utilities submitted comments emphasizing that that Distribution Integrity Management Plans (“DIMP”) are the best tools that are already in place to identify risks associated with distribution systems. These utility companies believe that they should have an individualized risk assessment based on factors that are specific to them and that are regularly reviewed with Gas Safety during DIMP audits.

What this argument fails to take into account is that the DIMP process evaluates risk for plastic based on available information from the gas pipeline operators and, to date, many

operators view plastic as a broad category and have failed to separate older, at-risk plastic from recently installed plastic. This is a concern because plastic is generally considered safe and has long been used as an alternative to pipe made of steel or other materials; however, a subset of older plastic pipe installed between the 1960s to early 1980s has been found to be vulnerable to brittle-like cracking. This older plastic pipe is lumped in with the “safe” plastic, so the risk posed by this vintage plastic has not been prioritized for replacement in the DIMP.

The broad categorization of plastic extends to PHMSA’s US DOT Annual Distribution Reports requirements. PHMSA’s Annual Report combines reporting requirements for all polyethylene pipe, including the 1970s vintage Aldyl-A and the current high density and medium density polyethylene pipe into one dataset despite the vast difference in risks associated with these different materials. Operators in Pennsylvania are installing miles of new plastic mains and services every year and this new pipe is captured in the same category as decades old Aldyl-A pipelines. While older plastic pipeline data is captured, collected, and analyzed by each operator in the coming years and decades, the at-risk older plastic continues to degrade and pose a greater risk to the public. Replacement prioritization of the older plastic is important, and this Tentative Order requires replacement schedules, in LTIIPs, in parallel with the continual required DIMP evaluation to ensure the riskiest older plastic is removed from service and prioritized.

I&E appreciates and supports the individual companies who have provided comments regarding their solid working relationship with Gas Safety and the DIMP audits. However, I&E would like to stress that risk management is the utility’s obligation and a federal requirement through the DIMP regulations, but many operator’s DIMP plans currently lack the granularity necessary to accurately rank the risks of different in-service plastic materials. As explained in the Tentative Order, this risk has long been identified as a concern in a NTSB 1998 report and

various advisory bulletins. Accordingly, I&E supports the Commission taking an affirmative step to target and accelerate the replacement of risky plastic in the Tentative Order.

**B. THE TENTATIVE ORDER DOES NOT IMPOSE “BINDING NORMS” THAT REQUIRE RULEMAKUNG UNDER THE COMMONWEALTH DOCUMENTS LAW AND REGULATORY REVIEW ACT.**

The Energy Association of Pennsylvania (“EAP”) provided comments that the Tentative Order Process is not the appropriate vehicle to implement the Pipeline Replacement Plan for non- Distribution System Improvement Charge (“DSIC”) eligible natural gas distribution companies (“NGDCs”). The EAP argues that the Pipeline Replacement Plan imposes “binding norms” of conduct on non-DSIC eligible NGDCs that would ultimately require regulation rulemaking through the Commonwealth Documents Law and the Regulatory Review Act or an adjudication. The EAP also argues that the Pipeline Replacement Plan establishes a new policy for an entire segment of the industry, which is in the nature of regulations.

The EAP cites *Pennsylvania Human Relations Commission v. Norristown Area School District*, 374 A.2d 671 (Pa. 1977) for establishing that administrative regulations are subject to the publication requirements of the Administrative Agency Law, while statements of policy are not. *Pennsylvania Human Relations Commission v. Norristown Area School District* went further to determine that a general statement of policy is “the outcome of neither a rulemaking nor an adjudication; it is neither a rule nor a precedent but is merely an announcement to the public of the policy which the agency hopes to implement in future rulemakings or adjudications.” *Id.* at 679.

Additionally, the EAP cites *Department of Environmental Resources v. Rushton Mining Co.*, 591 A.2d 1168 (Pa. Cmwlth. 1991), *appeal denied*, 600 A.2d 541 as determining what a “binding norm” is that will essentially establish that a regulation is then needed. In this case, “binding norm” was established to mean that “the agency is bound by the statement until the

agency repeals it, and if the statement is binding on the agency, it is a regulation.” *Id.* at 1173. If the statement in question is challenged, if the agency is free to exercise discretion, then that statement is a statement of policy. *Id.*

The Commission’s Tentative Order for its Pipeline Replacement Plan includes timeframes and a proposal for how the cost of the pipeline replacement will be addressed in rates, as well as a metric of replacement of riskiest distribution systems based on their DIMP plan with a rate of replacement equal-to or greater-than their individual metric. There is a provision to request a waiver of compliance with the pipeline replacement performance metric if the individual DIMP plan prohibits it from complying with the metric or if compliance would result in unreasonable rates. The Pipeline Replacement Plans are reviewed by TUS to determine whether or not they are reasonable, and that determination is appealable, leading to adjudication. Nothing prevents the Commission from proceeding through adjudication rather than regulation. The Tentative Order does not enter a blanket standard for this sector of the industry without discretion. There is nothing in the Tentative Order that implies that plans that do not replace older plastic pipe immediately will result in an automatic rejection. There are elements of flexibility, such as levels of review and appealability, that lead this to being a statement of policy that does not have to go through the regulation process.

Additionally, Section 1501 of the Public Utility Code provides that every public utility shall maintain safe services and facilities and shall make such changes, substitutions, and improvements to their services and facilities as shall be necessary for the safety of the public. These services and facilities shall be in conformity with the orders of the Commission. 66 Pa.C.S.A. § 1501. The Commission is given broad authority through Section 1501 to ensure that public safety is at the forefront of public utility service. When reading Section 1501, it is clear that the Commission is not bound solely through rulemaking in order to fulfill their mission of

public protection. The Commission must ensure public safety through multiple means, including alterations and substitutions to current plans. The Tentative Order is altering current plans already in place to embrace the changing safety needs of the Commonwealth. Section 1501 gives the Commission this authority and these changes do not have to be made through rulemaking and adjudication alone.

**C. TENTATIVE ORDER SHOULD NOT BE USED AS SOLE REASON FOR WAIVER OF 5% DSIC CAP.**

In its comments, UGI encourages the Commission to consider supporting requests to waive the 5% DSIC cap to encourage the acceleration of plastic pipe replacements into LTIPs. I&E supports the Office of Consumer Advocate's (OCA) position that the Tentative Order should not be used as a sole reason for the waiver of the 5% DSIC cap. If a utility seeks a waiver of the 5% DSIC cap, the Tentative Order's push for addressing the accelerated replacement of older plastic pipe should be only one of many factors that should be considered. I&E does not believe that there should be a blanket waiver of the DSIC cap for compliance with the Commission's Tentative Order

Section 1353 of the Code provides that the Commission "may approve the establishment of a distribution system improvement charge to provide for the timely recovery of the reasonable and prudent costs incurred to repair, improve or replace eligible property in order to ensure and maintain adequate, efficient, safe, reliable and reasonable service."<sup>1</sup> Act 11 contained several consumer protections regarding the DSIC, including a 5% cap on the total amount of billed distribution revenues that can be collected.<sup>2</sup> The Commission may grant a waiver of the 5% cap

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<sup>1</sup> 66 Pa. C.S. § 1353(a).

<sup>2</sup> 66 Pa. C.S. § 1358(a)(1).

upon petition “in order to ensure and maintain adequate, efficient, safe, reliable and reasonable service.”<sup>3</sup>

The Commission has recognized that this determination must be made on a case-by-case basis and permitted waiver only when doing so is necessary to address safety and reliability issues.<sup>4</sup> If the utility fails to make such a showing, the Commission has not approved the requested waiver.<sup>5</sup> This importance of the utility-specific analysis was highlighted in Columbia’s requested DSIC waiver as the Commission considered the following criteria to determine whether standard for waiver was met: (1) the state of Columbia’s infrastructure; (2) current and projected pace of replacement; (3) the Company’s experience in using the DSIC; (4) evidence regarding future filings; and (5) ability to fund its replacement program without a waiver.<sup>6</sup>

NGDCs must be analyzed individually to determine whether the waiver criteria is satisfied; therefore, it is premature to conclude that waiver of the 5% DSIC cap will be necessary to comply with the Commission’s mandate to replace older plastic pipe. I&E has and will continue to support waiver of a utility’s DSIC cap when it is appropriate and necessary to address safety and reliability concerns, but this analysis must be based on the circumstances

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<sup>3</sup> 66 Pa. C.S. § 1358(a)(1).

<sup>4</sup> *Petition of Philadelphia Gas Works for Waiver of Provisions of Act 11 to Increase the Distribution System Improvement Charge CAP and to Permit Levelization of DSIC Charges*, Docket No. P-2015-2501500 (Order entered January 28, 2016); *Petition of Pennsylvania Power Company for a Waiver of the Distribution System Improvement Charge Cap of 5% of Billed Distribution Rate Revenue and Approval to Increase the Maximum Allowable Distribution System Improvement Charge Cap to 11.81%*, Docket No. P-2019-3012628, p. 2 (Order entered March 12, 2020); *Petition of UGI Central Penn Gas, Inc. for a Waiver of the Distribution System Improvement Charge (DSIC) Cap of 5% of Billed Distribution Revenues and Approval to Increase the Maximum Allowable DSIC to 10% of Billed Distribution Revenues*, Docket No. P-2016-2537609 (Order entered May 10, 2017).

<sup>5</sup> *Petition of Columbia Gas of Pa., Inc. for a Waiver of the DSIC Cap*, P-2016-2521993 (Order entered December 22, 2016); *Pa. PUC v. Newtown Artesian Water Co.*, Docket No. R-2017-2624240, p. 21 (Order entered July 12, 2018).

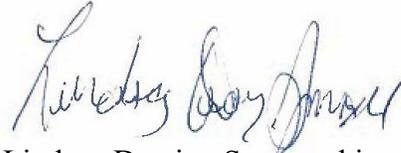
<sup>6</sup> *Petition of Columbia Gas of Pa., Inc. for a Waiver of the DSIC Cap*, P-2016-2521993, p. 52 (Order entered December 22, 2016).

presented by the individual utilities and should not be granted simply because the Commission is focused on the removal of older, risky plastic pipe.

### III. CONCLUSION

Amending LTIPs to target the accelerated replacement of older plastic pipes will promote the PUC's mission to ensure safe and reliable utility service. I&E identifies an increased risk posed by these older plastic pipes, and amending LTIPs to address these concerns is key in addressing these safety concerns. Additionally, the requirement for non-DSIC eligible public utilities distributing natural gas to file Pipeline Replacement Plans provides smaller utility services the opportunity to make their services safer while working within financial and time constraints. As the PUC's enforcement division, we fully support the Commission's Tentative Order, as its purpose is to promote the PUC's mission of public interest and safety.

Respectfully submitted,



Lindsay Dearing Szymanski  
Prosecutor  
Bureau of Investigation and Enforcement  
PA Attorney ID No. 317073  
(717) 787-3663  
[liszymansk@pa.gov](mailto:liszymansk@pa.gov)

Michael L. Swindler  
Depuy Chief Prosecutor  
Bureau of Investigation and Enforcement  
PA Attorney ID No. 43319  
(717) 783-6369  
[mwindler@pa.gov](mailto:mwindler@pa.gov)

Date: October 22, 2024

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Replacement of Older Plastic Pipe in : Docket No. M-2024-3050313  
Natural Gas Distribution Systems :

**CERTIFICATE OF SERVICE**

I hereby certify that I am serving the foregoing **Reply Comments** dated October 22, 2024, in the manner and upon the persons listed below:

**Served via Electronic Mail Only**

Meagan Moore, Esq.  
Peoples Natural Gas Company  
375 Shore Drive  
Pittsburgh, PA 15212  
[meagan.moore@peoples-gas.com](mailto:meagan.moore@peoples-gas.com)  
*Counsel for Peoples Natural Gas Company*

Candis A. Tunilo, Esq.  
NiSource  
800 North Third Street, Suite 204  
Harrisburg, PA 17102  
[ctunilo@nisource.com](mailto:ctunilo@nisource.com)  
*Counsel for Columbia Gas of PA*

Pamela C. Polacek, Esq.  
C & T Enterprises, Inc.  
P.O. Box 129  
Venetia, PA 15367  
[ppolacek@ctenterprises.org](mailto:ppolacek@ctenterprises.org)  
*Counsel to Valley Energy, Inc.*

Jack R. Garfinkle, Esq.  
Adesola K. Adegbesan, Esq.  
PECO Energy Company  
2301 Market Street, S23-1  
Philadelphia, PA 19103  
[jack.garfinkle@exeloncorp.com](mailto:jack.garfinkle@exeloncorp.com)  
[adesola.adegbesan@exeloncorp.com](mailto:adesola.adegbesan@exeloncorp.com)  
*Counsel for PECO Energy Company*

Donna M.J. Clark, Esq.  
Energy Association of Pennsylvania  
800 North Third Street, Suite 205  
Harrisburg, PA 17102  
[dclark@energypa.org](mailto:dclark@energypa.org)  
*Counsel for EAP*

Emily A. Farren, Esq.  
Darryl Lawrence, Esq.  
Office of Consumer Advocate  
555 Walnut Street  
5<sup>th</sup> Floor, Forum Place  
Harrisburg, PA 17101-1923  
[efarren@paoca.org](mailto:efarren@paoca.org)  
[dlawrence@paoca.org](mailto:dlawrence@paoca.org)

Michael S. Swerling, Esq.  
UGI Corporation  
500 North Gulph Road  
King of Prussia, PA 19406  
[swerlingm@ugicorp.com](mailto:swerlingm@ugicorp.com)  
*Counsel for UGI*

Rebecca Lyttle, Esq.  
Office of Small Business Advocate  
555 Walnut Street  
1<sup>st</sup> Floor, Forum Place  
Harrisburg, PA 17101  
[relyttle@pa.gov](mailto:relyttle@pa.gov)



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Lindsay Dearing Szymanski  
Prosecutor  
Bureau of Investigation and Enforcement  
PA Attorney ID No. 317073  
(717) 787-3663  
[liszymansk@pa.gov](mailto:liszymansk@pa.gov)