

COMMONWEALTH OF PENNSYLVANIA



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October 22, 2024

For Electronic Filing

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

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

Dear Secretary Chiavetta:

Attached for electronic filing please find the Reply Comments of the Office of Consumer Advocate in the referenced proceeding.

Copies have been served on the parties as indicated on the enclosed Certificate of Service.

Respectfully submitted,

/s/ Emily A. Farren

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Enclosures

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Certificate of Service

CERTIFICATE OF SERVICE

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

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Reply Comments, upon parties of record 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. This document was filed electronically on the Commission's electronic filing system.

Dated this 22nd day of October 2024.

SERVICE BY E-MAIL ONLY

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

REPLY COMMENTS OF THE OFFICE OF CONSUMER ADVOCATE

I. INTRODUCTION AND BACKGROUND

On October 7, 2024, Representative Chrissy Houlahan, the Office of Consumer Advocate (OCA), the Office of Small Business Advocate, Valley Energy, Inc., Energy Association of Pennsylvania, Columbia Gas of Pennsylvania, Inc., Peoples Natural Gas Company, LLC, PECO Energy Company, and UGI Utilities Inc. – Gas Division (UGI) filed comments on the Tentative Order of the Public Utility Commission (the Commission) regarding the accelerated replacement of older plastic pipe by public utilities distributing natural gas. *Replacement of Older Plastic Pipe in Natural Gas Distribution Systems*, Docket No. M-2024-3050313 (Order entered Aug. 26, 2024), 54 Pa.B. 5706. (*Plastic Pipe Order*).

Through its Tentative Order, the Commission, citing Section 1501 of the Public Utility Code, seeks to ensure that public utilities maintain safe and reliable facilities by using the tools already available to natural gas public utilities under Pennsylvania law, and proposed that: (1) natural gas distribution companies (NGDCs) amend their Long-Term Infrastructure Improvement Plans (LTIIPs) to target the accelerated replacement of older plastic pipes; and (2) non-DSIC eligible public utilities distributing natural gas file Pipeline Replacement Plans. *Plastic Pipe Order* at 2, 4.

In these Reply Comments, the OCA specifically addresses the comments filed by UGI (UGI Comments). While the OCA does not specifically address the comments of other parties,

its silence in response should not be viewed as agreement or endorsement of the other parties' comments.

II. REPLY COMMENTS

A. Capitalization Treatment of Costs Incurred for Material Verification is Not Appropriate.

UGI stated that its efforts to locate all of the plastic pipe that may be eligible “will require investigative excavations, which can confirm specific pipeline asset information like the manufacturer of the pipe material, plastic resins used, etc. In supporting and facilitating these activities, the Commission should consider permitting NGDCs to elect to capitalize costs related to this investigative work to gather better pipeline asset data to support risk prioritization.” UGI Comments at 4. UGI then specifically requests that the Commission “should consider permitting NGDCs to elect to capitalize costs related to this investigative work to gather better pipeline asset data to support risk prioritization.” UGI Comments at 4. More specifically, they state “UGI Gas requests approval to treat the cost of investigative excavations and data gathering efforts to support risk prioritization through the Company’s DIMP, as a capital expense that is recoverable through the DSIC.” *Id.* at 4-5. The OCA submits that this request is not appropriate in response to comments in the Tentative Order and should be denied.

First, it is worth noting that on October 11, 2023, Commission-issued data request (2023 Data Request¹) called for all jurisdictional natural gas public utilities – including UGI – to determine the approximate current mileage and number of service tees of older plastic pipe material installed and in operation in the Commonwealth. *Plastic Pipe Order* at 5. Surely such a data request is encapsulated by section 1702 of the Public Utility Code, which established that the Commission “may require any public utility to establish, provide, and maintain as a part of its

¹ The OCA recommends the responses to the 2023 Data Request be made public.

system of accounts, continuing property records, including a list or inventory of all the units of tangible property used or useful in the public service.” 66 Pa. C.S. § 1702. And, as a facility owner, as defined in the PA One Call Law, UGI is required to mark its underground lines and participate in the One Call System’s Member Mapping Solutions. *See* 73 P.S. § 177 (duties of facility owners). While UGI asserts that it only knows approximately 247 miles of “known priority plastic” leaving more than 850 miles of plastic mains that may be priority plastic, the Company is nevertheless responsible for a knowledge of its inventory and the OCA’s position is that it is inappropriate for an expense to be capitalized simply as an incentive as requested by UGI.

Even setting aside the extent to which UGI knows or should know what type of materials comprise its distribution system, support for capitalized treatment of money spent further “investigating” the types of materials lacks any statutory basis, as the valuation of and return on the *property* of any public utility is governed by section 1311 of the Public Utility Code. 66 Pa. C.S. § 1311. Eligible property, in relation to the DSIC for NGDCs is defined as, “piping, couplings, gas services lines and insulated and noninsulated fittings, valves, excess flow valves, risers, meter bars, meters, unreimbursed costs related to highway relocation projects where a NGDC must relocate its facilities, and other related capitalized costs.” 66 Pa. C.S. § 1351. Capitalized costs are defined as “costs permitted to be capitalized pursuant to the Uniform System of Accounts and Generally Accepted Accounting Principles.” *Id.* A review of the Uniform System of Accounts and Generally Accepted Accounting Principles do not appear to contemplate the investigative work UGI discussed in its comments. *E.g.*, 47 C.F.R. § 32.2000(f) (standard practices for establishing and maintaining continuing property records).² Thus, the OCA urges the

² Available at <https://www.ecfr.gov/current/title-47/chapter-I/subchapter-B/part-32>, (last visited October 17, 2024).

Commission to reject the notion that utilities should be permitted to earn a return on and of an “investigative” endeavor.

B. Granting Distribution System Improvement Charge Waiver Petitions Should be Reviewed Only on a Case-by-Case Basis.

UGI also states in its comments that the Commission should signal its “support for DISC-waiver petitions.” UGI Comments at 5. It states, in relevant part, “increasing the DSIC threshold above 5% will work in concert with otherwise applicable base rate recovery mechanisms” and that “UGI Gas requests assurance that [distribution system improvement charge] DSIC waivers are a useful mechanism to expand or advance incorporation of priority plastic pipe replacement into LTIPs.” UGI Comments at 5. It would be inappropriate for the Commission to pre-judge or encourage utilities to file DSIC-wavier petitions as the 5% statutory rate cap is one of the few consumer protections in the DSIC statute and it should not easily or frequently be waived.

Moreover, a waiver of the DSIC rate cap is not simply at the Commission’s discretion to grant. Instead, a utility must demonstrate by a preponderance of the evidence that: (1) DSIC revenue in excess of the statutory 5% cap is *necessary* for the utility to ensure and maintain adequate, efficient, safe, reliable and reasonable service; and (2) the amount requested in excess of the statutory 5% cap is appropriate and just and reasonable. *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% (Penn Power Waiver Petition)*, Docket No. P-2019-3012628 (Order entered March 12, 2020) (adopting Recommended Decision³ (R.D.)) (R.D. at 25); 66 Pa. C.S. § 1301. Thus, while for a specific utility with specific facts and a specific need, it may be

³ R.D. available at <https://www.puc.pa.gov/pcdocs/1654264.pdf> (last visited October 17, 2024).

appropriate for them to file a petition for a temporary waiver of the DSIC cap, it would be inappropriate, in the OCA's view, for the Commission to issue a blanket encouragement of such requests.

In reiteration of the OCA's Comments, the OCA urges the Commission to caution utilities against using a final order at this docket as sole justification for a petition to waive the statutory DSIC 5% cap.⁴ The OCA submits that use of an existing DSIC, alone or in conjunction with filing a base rate case is consistent with the Commission's guidance on using tools already available, while also guarding against rate increases without the benefit of reviewing all of a utility's profits and costs.

⁴ "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 . . . natural gas distribution company or city natural gas 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. 66 Pa. C.S. § 1358(a)(1).

III. CONCLUSION

The OCA appreciates the opportunity to provide these Reply Comments and urges the Commission to consider its comments and these replies in its implementation of the issues in this docket. The OCA specifically urges that Commission to reject UGI's request to: (1) apply capitalized treatment to costs incurred by utilities for "investigative work"; and/or (2) signaling that it would look favorably on a DSIC waiver petitions based solely on any Final Order issued at this docket. Both requests are inconsistent with the Public Utility Code, the Commission's Orders and applicable regulations.

Finally, the OCA recommends that the Commission make the 2023 Data Request responses from all jurisdictional natural gas public utilities public.

Respectfully submitted,

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