

COMMONWEALTH OF PENNSYLVANIA



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March 19, 2025

Via Electronic Mail

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

Re: Petition Of Philadelphia Gas Works for Waiver
of Provisions of Act 11 to Modify the Definition
of the Charges Subject to the Distribution System
Improvement Charge Cap or, Alternatively, to
Increase the Current DSIC Cap

Docket No.: P-2025-3053659

Dear Secretary Chiavetta:

In accordance with 52 Pa. Code § 1.24(b)(2), enclosed for electronic filing in this proceeding, please find the Answer to PGW's Waiver Related to the Cap on the Distribution System Improvement Charge on behalf of the Office of Consumer Advocate.

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

Respectfully submitted,

/s/ Harrison W. Breitman
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Assistant Consumer Advocate
PA Attorney I.D. # 320580
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Enclosures

cc: The Honorable Charles E. Rainey, Jr. (email only: crainey@pa.gov)
Parties of Record (per Certificate of Service)

CERTIFICATE OF SERVICE

Petition Of Philadelphia Gas Works for :
Waiver of Provisions of Act 11 to Modify :
the Definition of the Charges Subject to the : Docket No. P-2025-3053659
Distribution System Improvement Charge :
Cap or, Alternatively, to Increase the :
Current DSIC Cap :
:

I hereby certify that I have this day filed electronically on the Commission’s electronic filing system and served a true copy of the following document, the Office of Consumer Advocate’s Answer to PGW’s Petition for Waiver Related to the Cap on the Distribution System Improvement Charge, 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.

Dated this 19th day of March 2025.

SERVICE BY E-MAIL ONLY

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Dated: March 19, 2025

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition Of Philadelphia Gas Works for	:	
Waiver of Provisions of Act 11 to Modify	:	
the Definition of the Charges Subject to the	:	Docket No. P-2025-3053659
Distribution System Improvement Charge	:	
Cap or, Alternatively, to Increase the	:	
Current DSIC	:	

ANSWER OF THE OFFICE OF CONSUMER ADVOCATE
TO PHILADELPHIA GAS WORKS'
PETITION FOR WAIVER RELATED TO THE CAP ON
THE DISTRIBUTION SYSTEM IMPROVEMENT CHARGE

Pursuant to Section 5.103(c), 52 Pa. Code Section 5.103(c), the Office of Consumer Advocate (OCA) submits this answer to the captioned Petition filed by Philadelphia Gas Works (PGW or Company) on February 27, 2025, in the captioned docket (PGW DSIC Waiver Petition or Petition). As explained below, the OCA opposes the PGW DSIC Waiver Petition and avers the following:

A. The Distribution System Improvement Charge (DSIC) is statutorily capped to be an amount no more than 5% of the customer's bill. 66 Pa. C.S. § 1358(a)(1). This cap is an important consumer protection. In 2016, PGW received Commission approval to increase the cap so that the DSIC charge would be set at an amount equal to 7.5% of the customer's bill.¹ In the instant Petition, PGW requests permission to increase the cap by one of two ways: (1) by modifying the DSIC rules to separate over/undercollection amounts from its current modified

¹ *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 Nos. P-2015-2501500, C-2015-2504092 (Order entered January 28, 2016), as modified by Opinion and Order on Reconsideration entered July 6, 2016 (collectively, the *January 2016 Order*).

cap of 7.5%; or (2) by further increasing the cap so that the DSIC is set at an amount equal to 10% of the customer's bill. Additionally, PGW requests permission to increase the cap by seeking permission to bill the DSIC undercollection without reducing the amount of construction expenditures funded through the DISC. Petition at 1.

B. Under PGW's first proposal to increase the cap – by modifying the DSIC rules to separate over/undercollection amounts from its current modified cap of 7.5% - technically this proposal would remove the percentage cap on amounts billed to customers and the only limit would be the amount of DSIC undercollection. Currently, PGW anticipates if it were permitted to recover its anticipated DSIC undercollection of around \$9 million in its existing DSIC, the DSIC charge would represent approximately 9.4% of applicable revenues. Petition at ¶ 45. However, PGW is not requesting to cap the DSIC at 9.4% under its first proposal; rather, it is requesting to charge the 7.5% DSIC *plus* charge separately for the amount of DSIC undercollection subject to no cap. Thus, it is possible that if PGW's first request is approved, PGW could charge customers a DSIC rate that is higher than 10%.

C. It is the OCA's position that because PGW is proposing to modify the current 7.5% cap approved in the *January 2016 Order*, the issue of whether the current waiver of the statutory cap should continue requires evaluation in this proceeding.

D. The OCA acknowledges and denies the unnumbered averment provided by way of introduction in the Company's instant Petition stating that:

PGW has successfully employed its current DSIC to fund the reduction of its inventory of cast iron distribution mains. Since it was first approved by the Commission in 2013, PGW has used the funds provided by the DSIC to replace over 374 miles of 'at risk' distribution mains, which PGW defines as cast iron and unprotected steel mains. A significant development came in January 2016 when the Commission granted PGW's request to increase the cap on the revenues to be billed from the DSIC from 5% to 7.5%. This increase in the cap further accelerated PGW's cast iron main removal, speeding up the time when all cast

iron mains will be removed from its prior over 88 years to (currently) 38 years (not including any additional allowed expenditures resulting from the rate increase it is requesting simultaneous with this Petition)”

Petition at 2 (footnotes and citations omitted). The OCA denies this entire averment as it is a conclusion of law. After reasonable investigation, the OCA is without knowledge or information sufficient to form a belief as to the truth of this averment, and to the extent that this paragraph is deemed to contain any factual allegations, they are specifically denied.

E. The OCA acknowledges, admits in part and denies in part, the unnumbered averment provided by way of introduction in the Company’s instant Petition, stating that:

At the same time that the cap was increased to 7.5%, the Commission approved another improvement to PGW’s DSIC, following the recommendation of the PUC Staff in its Report on PGW’s at risk mains. PGW’s DSIC was levelized and annualized, so that PGW each year establishes its level of DSIC billing at the beginning of the year at an amount that equates to 7.5% of its annual applicable revenues. Previously, PGW was restricted in the amount of DSIC charges it could bill in any quarter to the cost of facilities it had actually placed into service in the prior quarter. This created wide swings in PGW’s DSIC charge because natural gas plant installation is cyclical in nature, with a large amount being placed into service in warmer months and very little being placed into service in the winter months. Because of the “placed in service in the prior quarter rule,” PGW had been able to bill the full 5% only twice in the nine quarters prior to the PUC’s modification to the “levelized/annualized” procedure.

Petition at 2-3 (footnotes and citations omitted). The OCA responds as follows:

1. The OCA admits that in 2016 the DSIC cap was increased to 7.5 percent; however, the facts in 2016 are different from the facts in PGW’s instant Petition and, therefore, the OCA denies that the relief requested is necessary. Waiver was deemed necessary in 2016 because 66% of PGW’s distribution system was comprised of at-risk main and PGW’s hazardous leak rates were more than double of any other regulated natural gas distribution company. *January 2016 Order*, p. 13. Even with clear evidence of PGW’s substantial infrastructure issues in 2016, the Commission only permitted PGW to increase its DSIC to 7.5%, not 10% (or higher), as requested by PGW in the instant Petition. *Id.* The OCA denies

and opposes the Company's request that the Commission approve the Company's waiver requests, as the OCA submits that PGW has not demonstrated in its Petition that a waiver and an increase to the DSIC cap is necessary for purposes of Section 1358(a)(1).

2. The OCA admits that PGW's DSIC was levelized and annualized, so that PGW each year establishes its level of DSIC billing at the beginning of the year at an amount that equates to 7.5% of its annual applicable revenues. However, the OCA denies that this was the full extent of the approval. Rather, the Commission added two important conditions to this approval. First, PGW was required to file quarterly reports with the Commission (and serve on parties) containing information regarding its training efforts, the qualifications and performance of the contractors it uses, updates on the condition of the three categories of mains being replaced, how leaks and broken mains are trending, and how those trends are explained. *January 2016 Order* at 46-47. Second, the Commission placed restrictions on the commingling funds to cover non-DSIC costs separate from DSIC expenditures until an amended LTIP was approved, as follows:

[I]n order to ensure that PGW does not undertake any main replacement work made possible by the approved additional DSIC funding, or spend any of this additional DSIC money, unless and until the Commission has approved the amended LTIP, we will require PGW to take measures to guarantee that this additional DSIC money is not comingled with any of the Company's other funds during the pendency of its amended LTIP. These measures shall include establishing a separate accounting mechanism to closely track and account for all incremental DSIC revenues collected above the current 5% level, and placing that money in a suitable escrow account until such time as the Commission approves an amended LTIP that supports a level of expenditures on eligible property that justifies the increase of the DSIC cap to 7.5% as granted herein.

Id.

3. The OCA is without knowledge and information that would allow it to either admit or deny the remaining statements in this paragraph of the Petition. If the

Commission does not deny the Petition outright, the Company should be required to prove these statements through sworn testimony at hearings.

F. The OCA acknowledges, admits in part and denies in part, the unnumbered averment provided by way of introduction in the Company's instant petition, stating that:

The levelized/annualized DSIC now permits PGW to charge a flat 7.5% of distribution revenues each month, regardless of the amount of main it successfully replaced in the prior quarter. After the year is over, its billings are reconciled with its actual installation experienced for that year, and customers are credited for any over-collection or, theoretically at least, billed for any under-collection. Permitting such levelization has allowed PGW to bill at the maximum amount permitted by the cap, ensuring that it can actually fund construction at the full 7.5% of revenue level annually.

Petition at 3 (footnotes and citations omitted). The OCA denies that permitting DSIC levelization has allowed PGW to bill at the maximum amount permitted by the cap, as, after reasonable investigation, the OCA is without knowledge or information sufficient to form a belief as to the truth of this averment. To the extent that this paragraph is deemed to contain any factual allegations, they are specifically denied. The OCA admits the remaining averments within this paragraph.

G. The OCA acknowledges and denies the unnumbered averment provided by way of introduction in the Company's instant petition, stating that:

However, PGW's policy of spending the full 7.5% of projected pro forma distribution revenues creates an ongoing problem for PGW. Since those projections are based on 'normal' weather, the actual amount billed invariably turns out to be higher or lower than the projected 'normal' levels. When the amounts billed exceed 'normal' levels, PGW refunds the excess to customers in a reconciliation charge in the subsequent year. When the actual amount billed is less than the amount originally projected, PGW is left with an under-recovery. However, currently PGW cannot bill customers for the under-recovery in the subsequent year because its subsequent year's billings are set to bill 7.5% of its projected annual revenue and billing the under-recovery would result in PGW exceeding the existing DSIC cap of 7.5%.

Petition at 3 (footnotes and citations omitted). The OCA denies this entire averment as, after reasonable investigation, the OCA is without knowledge or information sufficient to form a belief as to the truth of this averment. To the extent that this paragraph is deemed to contain any factual allegations, they are specifically denied.

H. The OCA acknowledges and denies the unnumbered averment provided by way of introduction in the Company's instant petition, stating that:

PGW is fully committed to undertaking DSIC-funded replacement of cast iron and bare steel mains at the full 7.5% of projected distribution revenues. But this policy means that PGW will never be able to also bill for any under-recovery from the prior year caused by actual revenue being lower than "normal" projected revenue, as has regularly been the case. Currently, PGW has an under-recovery as of December 2023 of \$9.2 million; the 2024 under-recovery is still being finalized. Attempting to bill customers in 2025 for the full 7.5% of projected (weather normalized) revenue and for the under-recovery would result in the DSIC exceeding PGW's currently authorized cap. Accordingly, unless recovery of the under-recovery is permitted, it will not be possible for PGW to continue to maintain its existing commitment to replace at risk mains at the full 7.5% of projected revenue level as it does today.

Petition at 4 (footnotes and citations omitted).

1. The OCA denies this entire averment as, after reasonable investigation, the OCA is without knowledge or information sufficient to form a belief as to the truth of this averment. To the extent that this paragraph is deemed to contain any factual allegations, they are specifically denied.

2. The OCA also denies this entire averment as it contains conclusions of law. While permitting the DSIC, Act 11 also included certain consumer protections, including a requirement that the DSIC may not exceed 5% of amounts billed to customers. 66 Pa. C.S. § 1358(a)(1). Section 1358 allows the Commission to grant a waiver of the 5% limit "in order to ensure and maintain adequate, efficient, safe, reliable and reasonable service." *Id.*

3. By way of further answer, while the OCA acknowledges that PGW is currently collecting a 7.5% DSIC above the statutory rate cap of 5%, the OCA submits that a continued waiver of the 5% cap is inappropriate and should not be approved in this case. The 5% cap was included in Act 11 in order to provide a very important protection to consumers. If utilities are simply permitted to increase the cap upon request, this would allow utilities to circumvent the traditional ratemaking process and dilute the protection provided by the 5% cap. Although the Commission does have statutory authority to waive the 5% cap, a waiver is only to be granted “to ensure and maintain adequate, efficient, safe, reliable and reasonable service.” 66 Pa. C.S. § 1358(a)(1).

4. By way of further answer, the OCA respectfully requests that the Honorable Law Judges and Commission follow an analysis of the Company’s request for DSIC waiver which adheres to 66 Pa. C.S. Sections 315(a), 332(a), 1358 and follows the two-step framework required of a DSIC waiver analysis: Once a utility has been approved to implement a DSIC, the statutory 5% cap is a ceiling that cannot be crossed absent a very specific showing that doing so is necessary to ensure and maintain adequate, efficient, safe, reliable and reasonable service. Thus, the OCA denies that PGW has already demonstrated it has met the burden to waive the DSIC cap of 5%.

I. The OCA acknowledges and denies the unnumbered averment provided by way of introduction in the Company’s instant petition, stating that:

Accordingly, PGW respectfully urges the Commission to approve these waiver requests and to permit PGW to adjust its existing DSIC tariff to either: 1) remove the over/undercollection mechanism from the DSIC cap; or 2) increase the DSIC cap to higher level so that the prior year under-collection would be billable while still billing to fund at risk main replacement at 7.5% of projected revenues. If this Petition is approved, PGW will: (i) file the attached tariff as part of its compliance filing in its base rate case (Docket No. R-2025-3053112); and (ii) apply the revised DSIC Cap definition to its 2025 DSIC.”

Petition at 4. (footnotes and citations omitted).

1. The OCA denies and opposes the Company's request that the Commission approve the Company's waiver requests, as the OCA submits that PGW has not demonstrated in its Petition that a waiver and an increase in the cap is necessary for purposes of Section 1358(a)(1). Rather, PGW has only averred that an increased cap would be reasonable and is asking that this Honorable Commission sandwich all of its ratemaking issues together to approve this enormous request.

2. The OCA respectfully requests that the Commission deny PGW's requests for relief. By way of further answer, even if the instant Petition is consolidated with PGW's base rate case, the OCA respectfully submits that the Commission must reset the DSIC values to zero in the base rate case, and review the DSIC as an independent issue, which adheres to 66 Pa. C.S. Sections 315(a), 332(a), 1358 and follows the two-step framework required of a DSIC waiver analysis, as outlined in the OCA's Answer contained within ¶ H iv., above.

1. Admitted.

2. No response is required.

3-5. Admitted. By way of further answer, please see OCA's Answer contained within ¶¶ D, G, above.

6. Admitted.

7. Admitted.

8. Denied as it is a conclusion of law. To the extent that this paragraph is deemed to contain any factual allegations, they are specifically denied.

9. The OCA admits that in the January 2016 Order, the Commission granted PGW's request to increase the cap on the DSIC bill to customers from 5% to 7.5%. By way of further

answer, the OCA respectfully avers that the docket related thereto speaks for itself and can be found at docket number P-2015-2501500 for further review. By way of further answer, then-Vice Chairman Andrew G. Place also encouraged “that PGW work closely with Commission staff to look for additional, internally generated funds to supplement these DSIC revenues for the purposes of further acceleration of their pipeline replacement investments,” signaling that the Commission’s approval was not a license to indefinitely increase its DSIC charge. The DSIC is one means of recovering infrastructure improvement costs. The DSIC itself cannot ensure that customers receive safe and reliable service. Additional ratepayer dollars are not the only source of initially funding aging infrastructure. It is the role of Company management to ensure that a level of safe, adequate and reliable service is maintained within the just and reasonable level of revenues allowed by the Commission. The OCA is without knowledge or information sufficient to form a belief as to the bald assertion that “PGW has been able to hasten its point of full replacement by more than five decades.”

10-20. Denied as stated. The OCA is without knowledge and information that would allow it to either admit or deny the statements in these paragraphs. If the Commission does not deny the Petition outright, the Company should be required to prove these statements through sworn testimony at hearings.

21. Admitted.

22-23. Admitted in part, denied in part. The OCA denies that should the Commission grant the Company’s petition, which states that “[t]his will permit PGW to continue to use expend 7.5% of PGW’s projected distribution revenues on main replacement,” as this is a conclusion of law. To the extent that this paragraph is deemed to contain any factual allegations, they are specifically denied, and strict proof thereof is demanded.

24-27. No response is required. By way of further answer, the case history docketed for this matter and related to the Company's DSIC speaks for itself. If the Commission does not deny the Petition outright, the Company should be required to prove these statements through sworn testimony at hearings.

28-36. Neither admitted nor denied. The OCA is without knowledge and information that would allow it to either admit or deny the statements in these paragraphs. If the Commission does not deny the Petition outright, the Company should be required to prove these statements through sworn testimony at hearings.

37. Denied as stated. By way of further answer, and as noted above, additional ratepayer dollars are not the only source of initially funding aging infrastructure. It is the role of Company management to ensure that a level of safe, adequate and reliable service is maintained within the just and reasonable level of revenues allowed by the Commission. If the Commission does not deny the Petition outright, the Company should be required to prove through sworn testimony at hearings that an increase in the DSIC is needed to ensure and maintain adequate, efficient, safe, reliable and reasonable service and that the increase is just and reasonable.

38. Denied as stated. By way of further answer, please see OCA's Answers contained within ¶¶ G and H, above.

39. Denied. By way of further answer, please see OCA's Answers contained within ¶¶ 22-23, above.

40. No response is required. By way of further answer, the case history docketed for this matter and related to the Company's DSIC speaks for itself. If the Commission does not deny the Petition outright, the Company should be required to prove these statements through sworn testimony at hearings.

41. Neither admitted nor denied. The OCA is without knowledge and information that would allow it to either admit or deny the statements in these paragraphs. If the Commission does not deny the Petition outright, the Company should be required to prove these statements through sworn testimony at hearings.

42. No response is required. By way of further answer, the case history docketed for this matter and related to the Company's DSIC speaks for itself. The OCA also denies this entire averment as it contains conclusions of law. If the Commission does not deny the Petition outright, the Company should be required to prove these statements through sworn testimony at hearings.

43-44. Neither admitted nor denied. The OCA is without knowledge and information that would allow it to either admit or deny the statements in these paragraphs. If the Commission does not deny the Petition outright, the Company should be required to prove these statements through sworn testimony at hearings.

45. Denied as stated. Respondent's allegations include conclusions of law which require no response. As discussed above, PGW has made no showing that a higher DSIC rate is necessary "to ensure and maintain adequate, efficient, safe, reliable and reasonable service" for purposes of Section 1358(a)(1). If the Commission does not deny the Petition outright, the Company should be required to prove through sworn testimony at hearings that an increase in the DSIC is needed to further accelerate infrastructure improvements and that the increase is just and reasonable under the Public Utility Code. By way of further answer, the OCA respectfully believes and therefore avers that it would be unreasonable and cause consumer harm to increase the DSIC cap in any way, especially at the time of a consolidated base rate hearing. The

Company should be required to prove this averment, and petition at large, through sworn testimony at hearings.

46. Denied. It is strictly denied that the Company is entitled to recover a 10% DSIC rate (or a higher one) and evidence as to why PGW believes it is entitled to the same is necessary. The OCA is without knowledge and information that would allow it to either admit or deny the statements proffered as the Company's rationale in this paragraph. If the Commission does not deny the Petition outright, the Company should be required to prove these statements through sworn testimony at hearings.

47. Denied as stated. By way of further answer, please see OCA's Answers contained within ¶¶ 9, 37, above.

48-49. No response is required. By way of further answer, please see the OCA's Answer to PGW's Motion to Consolidate in response thereto.

WHEREFORE, for all of the foregoing reasons, the instant Petition should be denied.

Respectfully submitted,

/s/ Katie Kennedy

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Dated: March 19, 2025