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Highlights: PA PUC Public Session of April 20, 2017

Note: The Public Meeting [calendar](#) and the Public Meeting [agendas and summaries](#) are available on the Pennsylvania Public Utility Commission's website. [Video](#) from each Public Meeting can also be accessed through the website. Live broadcasts of the Public Meetings may be viewed via [streaming video](#).

At the April 20, 2017 Public Meeting of the Pennsylvania Public Utility Commission ("Commission"), the Commissioners adopted Staff's recommendations for action by a vote of 5-0 on all items listed on the Main Agenda and Carry-In Agenda, except as reflected herein below under the respective Commission agenda headings. Review of particular items considered by the Commissioners at this Public Meeting which may be of interest are addressed under the respective Commission agenda headings below. Relevant motions and statements are attached hereto. The next regular Public Meeting is tentatively scheduled for **May 4, 2017 at 10:00 a.m.** The minutes of the Public Meeting of the March 16, 2017, were, by a vote of 5-0, approved as submitted.

MAIN AGENDA

BUREAU OF AUDITS

- All matters approved as submitted.

OFFICE OF COMPETITIVE MARKET OVERSIGHT

- RULEMAKING - STANDARDS FOR CHANGING CUSTOMER NATURAL GAS SUPPLIER, L-2016-2577413. On 12/22/16, the Commission adopted an Advanced Notice of Proposed Rulemaking to solicit comments about amending and adding to the provisions of 52 Pa. Code §§ 59.91 - 59.99 regarding standards for changing a customer's natural gas supplier (NGS). These regulations address the process for transferring a customer's account from a service of last resort (SOLR) provider to a competitive NGS, from one NGS to another NGS and from an NGS to SOLR service. The proposed regulatory changes are intended to accelerate this process while preserving safeguards to prevent the unauthorized switching of a customer's account, also known as "slamming." Comments were due and were filed on 2/21/17. With this Order, the Commission seeks additional comments on issues raised in comments filed on 2/21/17. RECOMMENDATION: That the Commission adopt the proposed Order. Vote 5-0.

OFFICE OF SPECIAL ASSISTANTS

- CORE COMMUNICATIONS INC. VS VERIZON PENNSYLVANIA LLC AND VERIZON NORTH LLC, C-2011-2253750, C-2011-2253787. On 7/22/11, Core filed two Formal Complaints against Verizon alleging sudden cessation of payment for intercarrier compensation invoices that were issued by Core pursuant to the parties' interconnection agreements. On 7/11/13, ALJ

Colwell's Initial Decision was issued. Exceptions were filed by both parties on 8/16/13. Replies to Exceptions were filed by both parties on 9/16/13. On 1/8/16, ALJ Colwell's Supplemental Initial Decision on Remand was issued. Exceptions on Remand were filed by both Parties on 1/28/16. Replies to Exceptions on Remand were filed by both parties on 2/8/16. By Opinion and Order entered 12/23/16, the Commission granted the each party's Exceptions, in part, and denied them, in part. On 1/9/17, Core filed a Petition for Reconsideration and Clarification. On 1/17/17, the Commission entered an Opinion and Order granting reconsideration pending further review of the merits. Also on 1/17/17, Verizon filed an Answer to the petition. RECOMMENDATION: That the Commission adopt the proposed Opinion and Order that grants Core's Petition, in part, and denies it, in part. Statement by Chairman Brown. Vote 5-0 with Vice Chairman Place concurring in result only.

- SUSAN KREIDER VS PECO ENERGY COMPANY, C-2015-2469655. Formal Complaint filed on 2/5/15, objecting to the installation of a smart meter at her residence. A hearing was held on 3/7/16. In an Initial Decision, issued 9/22/16, ALJs Heep and Pell dismissed the Complaint. Ms. Kreider filed Exceptions on 10/10/16. PECO filed Replies to Exceptions on 10/24/16. RECOMMENDATION: That the Commission adopt the proposed Opinion and Order which denies the Exceptions and adopts the Initial Decision. Postponed until the Public Meeting of May 4, 2017.
- PUC - INVESTIGATION AND ENFORCEMENT VS LEWIS E ADLER, C-2015-2494044. Complaint filed on 7/21/15, alleging that Respondent failed to pay its assessment amount for Fiscal Year 2014-2015. I&E requested that the Respondent be ordered to pay \$76 (consisting of the outstanding assessment balance of \$26 and a civil penalty of \$50) and that the Respondent's Certificate of Public Convenience be revoked if it failed to pay the assessment and civil penalty. The Respondent did not file an Answer to the Complaint. On 1/11/16, I&E filed a Motion for Default Judgment, requesting that the Commission direct the Respondent to pay the outstanding assessment and civil penalty. No Answer to the Motion was filed. On 3/25/16, the Respondent's certificate was cancelled for failure to file evidence of insurance with the Commission. RECOMMENDATION: That the Commission adopt the proposed Opinion and Order, which grants the Motion, consistent with the discussion therein. Vote 4-1 with Commissioner Sweet dissenting.
- GEORGE MANDEVILLE VS PPL ELECTRIC UTILITIES CORPORATION, C-2015-2512838. Formal Complaint filed on 11/9/15, alleging incorrect charges on his bill and that PPL was threatening to shut off his service or had already shut off his service. On 12/2/16, PPL filed an Answer to the Complaint. The Complaint was assigned to the OALJ for hearings. On 7/17/16, the Initial Decision of ALJ Johnson was issued which sustained the Complaint, in part. Exceptions were filed by PPL on 7/21/16. RECOMMENDATION: That the Commission adopt the proposed Opinion and Order, which grants the Exceptions, in part, denies them, in part, and adopts the ALJ's Initial Decision, as modified. Postponed until the Public Meeting of May 4, 2017.
- GREAT AMERICAN POWER LLC, M-2016-2536806. On 10/29/13, the Bureau of Investigation and Enforcement (I&E) instituted an informal investigation of Great American Power pertaining to allegations of electric generation supplier (EGS) marketing violations. Based on its investigation, I&E determined there was sufficient data to substantiate allegations of violations of the Commission's regulations pertaining to standards for changing EGSs, and was prepared to file a formal complaint against Great American. On 3/28/16, the parties submitted a Settlement Agreement and Statements in Support of the Settlement Agreement to resolve this matter. By Order entered 9/15/16, the Commission directed the filing of Supplemental Statements in Support of the Settlement Agreement. The parties filed a Joint

Supplemental Statement in Support of the Settlement on 10/17/16. By Order entered 12/8/16, the Commission issued the Settlement Agreement for comments. No comments were filed. RECOMMENDATION: That the Commission adopt the proposed Opinion and Order. Statement by Commissioner Sweet. Vote 5-0.

- UGI PENN NATURAL GAS INC., P-2016-2537594. Petition filed on 3/31/16, requesting a waiver of Section 1358(a) of the Public Utility Code, 66 Pa. C.S. § 1358(a), for the purpose of increasing the Distribution System Improvement Charge (DSIC) cap from 5% to 10% of billed distribution revenues. An evidentiary hearing was held on 9/8/16. Main and Reply Briefs were filed by the parties. On 12/1/16, the Commission issued the Recommended Decision of ALJ Jones, who recommended that the petition be granted, in part. Exceptions and Reply Exceptions were filed on 1/4/17 and 1/11/17, respectively, by UGI-CPG, the OCA, the OSBA and the Commission's Bureau of Investigation and Enforcement. RECOMMENDATION: The Office of Special Assistants recommends that the Commission adopt the proposed Opinion and Order. Motion by Commissioner Powelson. Dissenting Statement by Chairman Brown. Vote 4-1 with Chairman Brown dissenting.
- UGI CENTRAL PENN GAS INC., P-2016-2537609. Petition filed on 3/31/16, requesting a waiver of Section 1358(a) of the Public Utility Code, 66 Pa. C.S. § 1358(a), for the purpose of increasing the Distribution System Improvement Charge (DSIC) cap from 5% to 10% of billed distribution revenues. An evidentiary hearing was held on 9/8/16. Main and Reply Briefs were filed by the parties. On 12/5/16, the Commission issued the Recommended Decision of ALJ Jones, who recommended that the petition be granted, in part. Exceptions were filed on 1/4/17, by UGI-CPG, the OCA, the OSBA, the Commission's Bureau of Investigation and Enforcement and the Central Penn Large Users Group (CPGLUG). Replies to Exceptions were filed by all the parties that filed Exceptions, except CPGLUG. RECOMMENDATION: That the Commission adopt a proposed Opinion and Order. Motion by Commissioner Powelson. Dissenting Statement by Chairman Brown. Vote 4-1 with Chairman Brown dissenting.

BUREAU OF TECHNICAL UTILITY SERVICES

- WARWICK COMMUNITY AMBULANCE ASSOCIATION EMS, P-2016-2580585, A-00117316. Petition filed 12/14/16, requesting a waiver from 52 Pa. Code § 29.503 relating to age requirements. RECOMMENDATION: that the Commission grant the Petition. Verbal Statements by Commissioner Sweet and Vice Chairman Place. Vote 5-0.

LAW BUREAU

- RULEMAKING RE ELECTRIC SAFETY REGULATIONS, L-2015-2500632. On 11/19/16, the Commission adopted and entered a Proposed Rulemaking Order titled "Rulemaking Re Electric Safety Regulations, 52 Pa. Code Chapter 57. The rulemaking proposed to add a definition for "EDC" (electric distribution company) and to modify the definition of "service terminal" and replace that term with the new term "service point/point of delivery" in 52 Pa. Code § 57.1, and also add electric safety standards at 52 Pa. Code § 57.28. The Proposed Rulemaking Order sought comments from all interested parties on the proposed regulations. The Commission has reviewed the comments filed to the Proposed Rulemaking Order and issues this Final Rulemaking Order. RECOMMENDATION: That the Commission adopts the proposed Order. Vote 5-0.

- CERTIFICATION OF DISTRIBUTED ANTENNAE SYSTEM PROVIDERS, M-2016-2517831. By Order entered 2/23/16, the Commission initiated a formal investigatory proceeding to examine issues surrounding the certification of providers and operators of distributed antennae systems (DAS) networks as public utilities in PA. Comments and replies were filed. Commission reviewed the comments and reply comments, and all information provided therein. By Order entered 3/17/17, the Commission concluded that operators of DAS networks are not public utilities under the Public Utility Code and, therefore, are not subject to Commission jurisdiction and are not entitled to a certificate of public convenience issued by the Commission. On 4/3/17, ExteNet Systems, Inc. and Crown Castle both filed separate Petitions for Reconsideration of the 3/17/17 Order. Due to the fact that the 30-day period to act on the Petitions for Reconsideration is 4/16/17, via a Final Order we granted petitions pending review of, and consideration on, the merits, which was adopted by notational vote on 4/10/17 and was served same day. RECOMMENDATION: That the action be recorded and entered in the minutes of this Public Meeting. Vote 5-0.

OFFICE OF ADMINISTRATIVE LAW JUDGE

- All matters approved as submitted.

CARRY-IN AGENDA

OFFICE OF SPECIAL ASSISTANTS

- CITY OF DUBOIS - BUREAU OF WATER, R-2016-2554150, C-2016-2556342, C-2016-2556376, C-2016-2557459. Supplement No. 22 to Tariff Water Pa. P.U.C. No. 4 filed on 6/30/16, proposing an annual increase in base rate revenues of \$257,604 (subsequently revised to \$229, 551), to become effective 8/29/16. On 1/13/17, the Commission issued ALJ Hoyer's Recommended Decision which recommended that DuBois be authorized to file tariffs to produce an annual revenue increase of \$97,534. On 2/2/17, DuBois, I&E, the OCA, the OSBA and Sandy Township filed Exceptions. On 2/13/17, DuBois, I&E and the OCA filed Replies to Exceptions. On 2/15/17, I&E and the OCA filed Motions to Strike Portions of the Exceptions filed by DuBois. On 3/28/17, the Commission issued an Opinion and Order addressing the Exceptions and Motions to Strike filed by the parties. On 4/12/17, DuBois filed a Petition for Reconsideration and Clarification and the OSBA filed a Petition for Reconsideration of the 3/28/17 Opinion and Order. RECOMMENDATION: That the Commission adopt the proposed Opinion and Order granting the petitions, pending further review of, and consideration on, the merits. Vote 5-0.

ANNOUNCEMENTS

- Commissioner Coleman highlighted the recent proclamation of April as "Pennsylvania One Call System Safe Digging Month" and commented on the importance of the One Call system.

PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17105-3265

Core Communications, Inc.
v.
Verizon Pennsylvania LLC
and Verizon North LLC

Public Meeting held April 20, 2017
2253750-OSA
Docket Nos. C-2011-2253750
C-2011-2253787

STATEMENT OF CHAIRMAN GLADYS M. BROWN

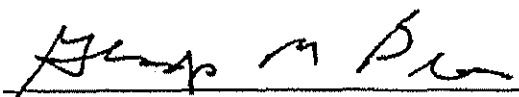
While I supported our earlier disposition of this case, reconsideration should be granted under *Duick*¹ because the record and the Petition set forth subsequent developments that appear to have been overlooked or not addressed by the Commission.²

This reconsideration challenges the Commission decision, which I supported, to impose specific compensation obligations and detailed compliance mandates upon the Parties. Specifically, the Commission required Core Communications, Inc. (Core) to pay Verizon Pennsylvania LLC (Verizon PA) and Verizon North LLC (Verizon North and collectively, Verizon) special access rates for Access Toll Connecting Groups (ATC) trunking obtained from Verizon PA.

Since then, however, the record indicates that Verizon PA's approach will be to seek compensation from Core for ATCs at Total Element Long Run Incremental Costs (TELRIC) rates. This departure from the access rates established for these entrance facilities in the earlier Order is a welcome development.

While today's order denying reconsideration notes this commendable solution, I would have preferred to grant reconsideration for the purpose of expressly stating that Verizon's agreement to accept TELRIC rates moots Core's objection to access rates for Verizon PA's ATC trunks. An express statement is more likely to preclude more litigation in this complex and long-standing dispute.

April 20, 2017
Date


Gladys M. Brown, Chairman

¹ *Duick v. Pennsylvania Gas and Water Company*, 56 Pa. P.U.C. 553 (1982).

² *Id.* at 559.

PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17120

Great American Power LLC

Public Meeting April 20, 2017


2536806-OSA

Docket No. M-2016-2536806

STATEMENT OF
COMMISSIONER DAVID W. SWEET

Before joining my staff as Legal Counsel, Regina Matz was working in the Office of Special Assistants and worked on this case. Please note that she has not advised me in this matter.

DATE: April 20, 2017



David W. Sweet
Commissioner

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17105-3265

**Petition of UGI Penn Natural Gas, Inc.
for a Waiver of the Distribution System
Improvement Charge Cap**

**Public Meeting held April 20, 2017
2537594-OSA
Docket No. P-2016-2537594**

STATEMENT OF CHAIRMAN GLADYS M. BROWN

Before the Commission are the Exceptions to the Recommended Decision (RD) of Administrative Law Judge (ALJ) Angela T. Jones in the proceeding involving UGI Penn Natural Gas, Inc.'s (UGI-PNG) Petition for a Waiver of the Distribution System Improvement Charge (DSIC) Cap from 5% to 10%.

In the RD the ALJ concluded that the standard for modification of a utility Long-Term Infrastructure Improvement Plan (LTIP) is the same standard for the waiver of the DSIC cap.¹ The Commission's Regulations at 52 Pa. Code §121.5 detail the requirements for modification of an LTIP. The regulations, in pertinent part, state:

...the utility shall clearly identify the change and explain the operational, financial or other justification for the change in its petition.

66 Pa. C.S. §1358(a)(1) of the statute contains the standard for approval to waive the 5% DSIC cap:

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.

UGI-PNG's initial LTIP, which spans the five-year period from 2014 to 2018, and its DSIC tariff were both approved by the Commission in September of 2014.² UGI-PNG's LTIP was recently modified by the Commission.³ Specifically, the Commission approved UGI-CPG's proposal to increase by 24.5% the expenditures for the 2016 – 2018 period of the LTIP, concluding that the modified LTIP demonstrated expenditures which were reasonable, cost effective, and designed to ensure and maintain efficient, safe, adequate, reliable, and reasonable service to the Company's customers. The additional expenditures were to be used to for improved reliability; including increasing system pressures to higher volume demand areas, regulator station improvements and installations, corrosion control and weatherization of facilities, and PennDOT mandated facility relocations.

Given this approval, the ALJ submitted that the Company met its burden of proof to waive the 5% DSIC cap. The ALJ also determined that 6.89% is an appropriate cap, as opposed

¹ Page 23 of the Recommended Decision

² Opinion and Ordered entered September 11, 2014 at Docket P-2013-2398835

³ Order entered June 30, 2016 at Docket No. P-2013-2398835

to the Company's request of 10%. The ALJ's figure is based on UGI-CPG's claim that 14.02% is the cap necessary to recover all expenditures detailed under its modified LTIP, and, the 21.0% increase in total expenditures approved in the modified LTIP.⁴

Numerous parties filed exceptions to the RD. These parties include UGI-CPG, the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA), and the Commission's Bureau of Investigation and Enforcement (I&E).

As evidenced from 66 Pa. C.S. §1358(a)(1), the Commission is empowered with discretion and latitude in its determinations on petitions to waive the 5% DSIC customer protection cap. The Commission presently reviews each waiver filing on the merits of that specific case, without reference to one uniform standard set of components. Items which the Commission can evaluate to guide its decisions on such cases include, but are not limited to:

- when the company's existing tariffed distribution rates were established,
- how often the company files base rate cases,
- the company's utilization a fully-projected future test year,
- the company's utilization of the DSIC,
- the company's DSIC percentage,
- the company's LTIP,
- the existing state of the company's infrastructure as it relates to safety and reliability, and
- the realized benefits to reliability and/or safety resultant from any waiver approval.

This Commission has exerted its discretion under §1358(a)(1) in previous DSIC waiver proceedings. The Commission approved a petition filed by Philadelphia Gas Works (PGW) to increase its cap to 7.5% (PGW Proceeding).⁵ In the PGW Proceeding, the Commission first determined PGW's aging gas distribution infrastructure poses significant safety and reliability issues, and that the pace of PGW's infrastructure replacement effort in place at the time of the proceeding was unacceptable and potentially harmful to the public. Next the Commission concluded that PGW's proposal to increase the DSIC cap to 7.5%, and consequently spend an additional \$11 million per year on its main replacement program, was reasonable as it would permit PGW to achieve an approximate 44% reduction in the projected timeline to replace its at-risk mains. As detailed in the PGW Proceeding, PGW's timeline to replace at-risk mains was reduced from 86 to 48 years.

Conversely, the Commission denied a petition filed by Columbia Gas seeking to increase the 5% customer protection DSIC cap to 10% (Columbia Proceeding).⁶ In the Columbia Proceeding, I&E contended that Columbia was providing and maintaining adequate, efficient, safe, reliable and reasonable service under the existing 5% DSIC cap.⁷ Therefore, the Commission concluded there was no showing that Columbia's infrastructure posed significant safety or reliability issues. As well, the record in the Columbia case exhibited neither a further

⁴ See page 28 of the Recommended Decision

⁵ Opinion and Order entered January 28, 2016 at Docket P-2015-2501500

⁶ Opinion and Order entered December 22, 2016 at docket P-2016-2521993

⁷ See I&E Main Brief at page 5

acceleration of its pipeline replacement program nor any increased reliability resultant from its proposed waiver. The record also indicated that Columbia could not make any commitments to reducing its frequency of rate case filings. Lastly, Columbia had never fully utilized the DSIC, having only recovered funds during one quarter, at a rate of 1.5%. Based on these unique facts, the Commission determined that a waiver was not warranted in the Columbia Proceeding.

The instant proceeding presents important distinctions from both the PGW Proceeding and the Columbia Proceeding. UGI-PNG's most recent distribution rates went into effect in August of 2009. The Company's existing DSIC tariff reached the 5% customer protection cap as of April 1, 2016. Relating to UGI-PNG's existing system, I&E claims that the Company's infrastructure implicates safety concerns. Specifically, I&E submits that the company has a high number of leaks per mile when compared to others, detailing the UGI-PNG has 1.65 leaks per mile when compared to the statewide average of 0.95. Therefore, I&E avers that increasing the DSIC to 7.5% is in the public interest because it would facilitate the replacement of the Company's dangerous mains in a more timely manner.⁸ However, I believe it is important to note that the record does not indicate that UGI-CPG's existing pipeline replacement program, as established within its LTIP, will be accelerated in any fashion by approving the requested waiver.⁹

Understanding this background, I now detail first why I do not agree with the Recommended Decision. The standard for approval to waive the 5% DSIC customer protection cap is not the exact same as that for the modification of an LTIP. I do not make a claim as to any exact standard for waiver of the DSIC cap. Instead, I simply submit that it is not the same as that used by the Commission in reviewing proposed modifications to an LTIP. Such a notion inherently ties the costs of the LTIP to recovery within the DSIC with no acknowledgment of the 5% DSIC cap customer protection. In fact, the requirements of an LTIP, and associated Commission review process, do not include the financing of the utility's expenditures, whether that be from traditional distribution rates, shareholder equity, retained earnings, the DSIC, or debt. Rather, the LTIP provides a tool for the Commission to monitor infrastructure improvement and associated expenditures to ensure that any potential DSIC funds recovered are utilized for their proper purpose.

I submit that the 5% DSIC cap was established by the General Assembly in effort to provide some capital cost recovery between rate cases, thereby assisting in the accelerated replacement of at-risk infrastructure, but not marginalizing the importance of base rate case filings. Any waiver of this customer protection cap is ultimately up to the determination of the Commission as guided by 66 Pa. C.S. §1358(a)(1) of the statute based on the unique merits of each petition. In exceptions, OSBA posits that Section 1358(a) does not permit a waiver of the 5% cap if the cap is not sufficient to support the utility's planned levels of plant replacement and DISC-eligible spending corresponding to the utility's LTIP. I concur with this position.

I am deeply sensitive to the safety concerns claimed by I&E, most notably I&E's reference to leaks. I take I&E's assessment in this regard as fact. Nonetheless, I must disagree with I&E when it states that approval of a waiver will facilitate the replacement of at-risk


⁸ See I&E Main Brief at pages 9-11

⁹ The present LTIP plans to remove all cast iron main in 14 years and all bare steel in 28 years.

infrastructure in a more timely manner. Similar to the record presented in the Columbia proceeding, the record in this proceeding is devoid of any facts detailing how approval of a waiver will facilitate any material benefit as it relates to UGI-PNG's at-risk pipeline, or any other program documented under the Company's LTIIP. Review of the case appears to simply indicate that approval of a waiver will only provide for more timely recovery of expenditures and may possibly decrease the frequency of rate case filings.

Therefore, this case is similar to the Columbia Proceeding in that the waiver provides no discernable benefit to safety or reliability, but differs from the Columbia Proceeding in that the existing status of UGI-PNG's infrastructure poses safety concerns. Consequently, I believe it would be prudent to afford UGI-PNG the opportunity to file, if it so chooses, an amended petition detailing how the waiver of the 5% DSIC customer protection cap will be used to further remedy the safety concerns presented by I&E in a manner that goes above and beyond the existing requirements under the Company's present LTIP.

April 20, 2017
Date



Gladys M. Brown, Chairman

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17105-3265

**Petition of UGI Central Penn Gas, Inc.
for a Waiver of the Distribution System
Improvement Charge Cap**

**Public Meeting held April 20, 2017
2537609-OSA
Docket No. P-2016-2537609**

STATEMENT OF CHAIRMAN GLADYS M. BROWN

Before the Commission are the Exceptions to the Recommended Decision (RD) of Administrative Law Judge (ALJ) Angela T. Jones in the proceeding involving UGI Central Penn Gas, Inc.'s (UGI-CPG) Petition for a Waiver of the Distribution System Improvement Charge (DSIC) Cap from 5% to 10%.

In the RD the ALJ concluded that the standard for modification of a utility Long-Term Infrastructure Improvement Plan (LTIIIP) is the same standard for the waiver of the DSIC cap.¹ The Commission's Regulations at 52 Pa. Code §121.5 detail the requirements for modification of an LTIIIP. The regulations, in pertinent part, state:

...the utility shall clearly identify the change and explain the operational, financial or other justification for the change in its petition.

66 Pa. C.S. §1358(a)(1) of the statute contains the standard for approval to waive the 5% DSIC cap:

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.

UGI-CPG's initial LTIIIP, which spans the five-year period from 2014 to 2018, and its DSIC tariff were both approved by the Commission in September of 2014.² UGI-CPG's LTIIIP was recently modified by the Commission.³ Specifically, the Commission approved UGI-CPG's proposal to increase by 54.3% the expenditures for the 2016 – 2018 period of the LTIIIP, concluding that the modified LTIIIP demonstrated expenditures which were reasonable, cost effective, and designed to ensure and maintain efficient, safe, adequate, reliable, and reasonable service to the Company's customers. The additional expenditures were to be used to for improved reliability; including increasing system pressures to higher volume demand areas, regulator station improvements and installations, corrosion control and weatherization of facilities, and PennDOT mandated facility relocations.

Given this approval, the ALJ submitted that the Company met its burden of proof to waive the 5% DSIC cap. The ALJ also determined that 8.65% is an appropriate cap, as opposed

¹ Page 26 of the Recommended Decision

² Opinion and Ordered entered September 11, 2014 at Docket P-2013-2398835

³ Order entered June 30, 2016 at Docket No. P-2013-2398835

to the Company's request of 10%. The ALJ's figure is based on UGI-CPG's claim that 14.49% is the cap necessary to recover all expenditures detailed under its modified LTIP, and, the 38.5%⁴ increase in total expenditures approved in the modified LTIP.⁵

Numerous parties filed exceptions to the RD. These parties include UGI-CPG, the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA), the Central Penn Gas Large Users Group (CPGLUG), and the Commission's Bureau of Investigation and Enforcement (I&E).

As evidenced from 66 Pa. C.S. §1358(a)(1), the Commission is empowered with discretion and latitude in its determinations on petitions to waive the 5% DSIC customer protection cap. The Commission presently reviews each waiver filing on the merits of that specific case, without reference to one uniform standard set of components. Items which the Commission can evaluate to guide its decisions on such cases include, but are not limited to:

- when the company's existing tariffed distribution rates were established,
- how often the company files base rate cases,
- the company's utilization a fully-projected future test year,
- the company's utilization of the DSIC,
- the company's DSIC percentage,
- the company's LTIP,
- the existing state of the company's infrastructure as it relates to safety and reliability, and
- the realized benefits to reliability and/or safety resultant from any waiver approval.

This Commission has exerted its discretion under §1358(a)(1) in previous DSIC waiver proceedings. The Commission approved a petition filed by Philadelphia Gas Works (PGW) to increase its cap to 7.5% (PGW Proceeding).⁶ In the PGW Proceeding, the Commission first determined PGW's aging gas distribution infrastructure poses significant safety and reliability issues, and that the pace of PGW's infrastructure replacement effort in place at the time of the proceeding was unacceptable and potentially harmful to the public. Next the Commission concluded that PGW's proposal to increase the DSIC cap to 7.5%, and consequently spend an additional \$11 million per year on its main replacement program, was reasonable as it would permit PGW to achieve an approximate 44% reduction in the projected timeline to replace its at-risk mains. As detailed in the PGW Proceeding, PGW's timeline to replace at-risk mains was reduced from 86 to 48 years.

Conversely, the Commission denied a petition filed by Columbia Gas seeking to increase the 5% customer protection DSIC cap to 10% (Columbia Proceeding).⁷ In the Columbia Proceeding, I&E contended that Columbia was providing and maintaining adequate, efficient,

⁴ UGI-CPG's modified LTIP increased expenditures by 54.3% for the period of 2016-2018; however, the total increase in expenditures between the initial and modified LTIPs (for the full time period of 2014-2018) was only 38.5%.

⁵ See page 31 of the Recommended Decision

⁶ Opinion and Order entered January 28, 2016 at Docket P-2015-2501500

⁷ Opinion and Order entered December 22, 2016 at docket P-2016-2521993

safe, reliable and reasonable service under the existing 5% DSIC cap.⁸ Therefore, the Commission concluded there was no showing that Columbia's infrastructure posed significant safety or reliability issues. As well, the record in the Columbia case exhibited neither a further acceleration of its pipeline replacement program nor any increased reliability resultant from its proposed waiver. The record also indicated that Columbia could not make any commitments to reducing its frequency of rate case filings. Lastly, Columbia had never fully utilized the DSIC, having only recovered funds during one quarter, at a rate of 1.5%. Based on these unique facts, the Commission determined that a waiver was not warranted in the Columbia Proceeding.

The instant proceeding presents important distinctions from both the PGW Proceeding and the Columbia Proceeding. UGI-CPG's most recent distribution rates went into effect in August of 2011. The Company's existing DSIC tariff reached the 5% customer protection cap as of July 1, 2016, as claimed by the Company in the proceeding. Relating to UGI-CPG's existing system, I&E claims that the Company's infrastructure implicates safety concerns. Specifically, I&E submits that the risk for steel mains has increased from 63,475 points in 2012 to 65,441 points in 2015. Therefore, I&E avers that increasing the DSIC to 7.5% is in the public interest because it would facilitate the replacement of the Company's dangerous mains in a more timely manner.⁹ However, I believe it is important to note that the record does not indicate that UGI-CPG's existing pipeline replacement program, as established within its LTIP, will be accelerated in any fashion by approving the requested waiver.¹⁰

Understanding this background, I now detail first why I do not agree with the Recommended Decision. The standard for approval to waive the 5% DSIC customer protection cap is not the exact same as that for the modification of an LTIP. I do not make a claim as to any exact standard for waiver of the DSIC cap. Instead, I simply submit that it is not the same as that used by the Commission in reviewing proposed modifications to an LTIP. Such a notion inherently ties the costs of the LTIP to recovery within the DSIC with no acknowledgment of the 5% DSIC cap customer protection. In fact, the requirements of an LTIP, and associated Commission review process, do not include the financing of the utility's expenditures, whether that be from traditional distribution rates, shareholder equity, retained earnings, the DSIC, or debt. Rather, the LTIP provides a tool for the Commission to monitor infrastructure improvement and associated expenditures to ensure that any potential DSIC funds recovered are utilized for their proper purpose.

I submit that the 5% DSIC cap was established by the General Assembly in effort to provide some capital cost recovery between rate cases, thereby assisting in the accelerated replacement of at-risk infrastructure, but not marginalizing the importance of base rate case filings. Any waiver of this customer protection cap is ultimately up to the determination of the Commission as guided by 66 Pa. C.S. §1358(a)(1) of the statute based on the unique merits of each petition. In exceptions, OSBA posits that Section 1358(a) does not permit a waiver of the 5% cap if the cap is not sufficient to support the utility's planned levels of plant replacement and DISC-eligible spending corresponding to the utility's LTIP. I concur with this position.

⁸ See I&E Main Brief at page 5


⁹ See I&E Main Brief at pages 9-11

¹⁰ The present LTIP plans to remove all cast iron main in 14 years and all bare steel in 28 years.

I am deeply sensitive to the safety concerns claimed by I&E, most notably I&E's reference to steel mains and the increase in risks they present. I take I&E's assessment in this regard as fact. Nonetheless, I must disagree with I&E when it states that approval of a waiver will facilitate the replacement of at-risk infrastructure in a more timely manner. Similar to the record presented in the Columbia proceeding, the record in this proceeding is devoid of any facts detailing how approval of a waiver will facilitate any material benefit as it relates to UGI-CPG's at-risk pipeline, or any other program documented under the Company's LTIP. Review of the case appears to simply indicate that approval of a waiver will only provide for more timely recovery of expenditures and may possibly decrease the frequency of rate case filings.¹¹

Therefore, this case is similar to the Columbia Proceeding in that the waiver provides no discernable benefit to safety or reliability, but differs from the Columbia Proceeding in that the existing status of UGI-CPG's infrastructure poses safety concerns. Consequently, I believe it would be prudent to afford UGI-CPG the opportunity to file, if it so chooses, an amended petition detailing how the waiver of the 5% DSIC customer protection cap will be used to further remedy the safety concerns presented by I&E in a manner that goes above and beyond the existing requirements under the Company's present LTIP.

April 20, 2017
Date


Gladys M. Brown, Chairman

¹¹ It should be noted the UGI-CPG averred that the increase in the DSIC cap *may* decrease the need for a future base rate case; however, UGI-CPG provides no time period or stay-out provision outlining what delay in the need for a base rate case may result from approval of the requested waiver.