

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

555 Walnut Street, 5th Floor, Forum Place
Harrisburg, Pennsylvania 17101-1923
(717) 783-5048
800-684-6560 (in PA only)

IRWINA. POPOWSKY
Consumer Advocate

FAX (717) 783-7152
consumer@paoca.org

May 31, 2012

Rosemary Chiavetta, Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg.
400 North Street
Harrisburg, PA 17101

RE: Implementation of Act 11 of 2012
Docket No. M-2012-2293611

Dear Secretary Chiavetta:

Enclosed for filing please find the Comments of the Office of Consumer Advocate in the above-referenced proceeding.

Copies have been served on the parties as indicated on the enclosed Certificate of Service. If you have any questions, please feel free to contact us.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Erin L. Gannon".

Erin L. Gannon
Assistant Consumer Advocate
PA Attorney I.D. # 83487

Shaun A. Sparks
Assistant Consumer Advocate
PA Attorney I.D. # 87372

Enclosure
cc: Certificate of Service
157061.doc

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Implementation of Act 11 of 2012

:

Docket No. M-2012-2293611

COMMENTS OF THE
OFFICE OF CONSUMER ADVOCATE

Erin L. Gannon
Assistant Consumer Advocate
PA Attorney I.D. # 83487
E-Mail: egannon@paoca.org

Shaun A. Sparks
Assistant Consumer Advocate
PA Attorney I.D. # 87372
E-Mail: ssparks@paoca.org

Counsel for:
Irwin A. Popowsky
Consumer Advocate

Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152

Dated: May 31, 2012
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I. INTRODUCTION

On May 11, 2012, the Pennsylvania Public Utility Commission (Commission or PUC) issued a Tentative Order in the above-captioned proceeding. The Order includes a draft model tariff as Appendix A. The Order invites interested parties to provide the Commission with comments on the Tentative Order and on the model tariff. The Office of Consumer Advocate (OCA) thanks the Commission for the opportunity to comment and now provides these comments in response. The OCA respectfully requests that the Commission carefully consider the issues herein.

On February 14, 2012 the Commonwealth enacted Act 11 of 2012 (Act 11) amending portions of Chapters 3, 13 and 33 of Title 66 of the Public Utility Code. The amendments of Act 11 advance four legislative goals:

1. Utilities may opt to employ a fully-projected future test year in general base rate increase filings;
2. Pennsylvania water and wastewater utilities controlled by the same parent company may petition to allocate a portion of the revenue requirement of the wastewater utilities to the combined water and wastewater customer base;
3. Utilities providing water service, wastewater service, electric distribution service, and natural gas distribution (including a city natural gas distribution) service, may petition for a distribution system improvement charge (DSIC);
4. Civil penalties for gas pipeline safety violations are increased.

To advance these goals, particularly with respect to future DSIC filings, on April 5, 2012, the Commission conducted a working group meeting in anticipation of developing a Tentative Order. The OCA participated in that working group and subsequently provided informal written comments to Commission staff regarding the draft model DSIC tariff that had been circulated by Commission staff in advance of that Meeting. The OCA's proposed changes to the draft model

tariff were joined by the AFL-CIO Utility Caucus and subsequently supported by the Industrial Energy Consumers of Pennsylvania.

The OCA notes that the Commission adopted several, but not all, of its tariff change recommendations. The OCA appreciates Commission consideration of the issues it raised on April 5 and in its prior written comments, and now provides additional matter to assist the Commission in developing a Final Order and model tariff.

II. COMMENTS

The Tentative Order requests that commentators provide input on proposed interpretations of the General Assembly's Code amendments and on the revised model tariff in Appendix A of the Tentative Order. The OCA Comments will first address appropriate interpretation of amended Code sections and then provide model tariff recommendations based on that interpretation. For those Code sections not listed below, the OCA does not object or takes no position on the proposed interpretation in the Tentative Order.

66 Pa. C.S. Section 315

The amended Section 315 of the Code extends the future test year (FTY) to one year from the date that rates would go into effect, including the full suspension period. Thus, the Commission may now permit "facilities which are projected to be in service during the fully projected future test year to be included in the rate base." 66 Pa. C.S. § 315(e). The OCA supports the Commission interpretation that it retains discretion in determining whether or not projected additions during the fully projected FTY are to be included in rate base. Tentative Order at 5.

The OCA notes that a utility opting to use a fully projected future test year *and* a DSIC recovery surcharge may have significant overlap between future DSIC-eligible property and facilities in its fully-projected future test year. Thus, opting for a fully-projected future test year may effectively reduce or eliminate the need for a DSIC charge during all or a portion of the future test year period, that is, the first year in which the new base rates will be in effect. That is because capital additions that would be included in a DSIC may already be reflected in the fully projected future test year rate base. In addition, if labor forces and associated costs projected to be an expense in the future test year are instead redirected to a capitalized project recovered under the DSIC, it is important to ensure that customers do not end up paying twice for the same labor costs, once in base rates and also through the DSIC.

To avoid potential overcharges, and in support of transparency and accuracy, the OCA supports the Commission's requirement of "detailed testimony and sufficient documentation" for all revenues, expenses and rate base elements included in a fully-projected FTY. Tentative Order at 4. The OCA similarly supports the Commission's determination to require utilities to address the accuracy of previous future test year projections in subsequent base rate cases. Tentative Order at 4. Although, as the Commission notes, there will be no reconciliation of revenues and expenses between base rate cases, it will be important for the Commission to examine actual results in future rate proceedings in order to ensure that the future test year projections are producing just and reasonable rates.

66 Pa. C.S. Section 1311(c)

The amendments to Section 1311(c) allow the Commission to approve, upon petition, the allocation of a portion of the revenue requirement of a Pennsylvania wastewater utility to

customers of an affiliated Pennsylvania water company so long as both are controlled by the same parent company. The Tentative Order provides that “the wastewater utility must provide notice and opportunity to be heard to all affected customers as part of its initial rate case notices.” Tentative Order at 6. The OCA submits that “all affected customers” in this context must include the water customers whose bills would increase as a result of any revenue requirement reallocation. Thus, notice and opportunity to be heard would apply to the entire customer base – water and wastewater customers – and not just the customers of the wastewater utility.

In addition, the OCA submits that the Commission may wish to provide further guidance on what factors it will consider in determining the degree to which it will allow subsidization of customer rates across different types of services. For example, the Commission may consider principles similar to those contained in the acquisition context of Section 529 of the Public Utility Code, under which the Commission must determine that the rates charged to the customers of the acquiring utility “will not increase unreasonably” as a result of the acquisition. 66 Pa. C.S. §529(a)(6).

66 Pa. C.S. Section 1352

The Tentative Order discusses the requirements of Long-term Infrastructure Improvement Plans (LIIPs) in detail. The OCA supports the Commission’s over-arching theme that LIIPs should dovetail with all other planning requirements. Given the level of detail required, LIIPs will be the cornerstone on which utilities base effective DSIC mechanisms. The OCA also agrees with the Tentative Order that the DSIC mechanism is to be used “in order to maintain safe, adequate, and reliable service as required by law” and not for other purposes.

Tentative Order at 7-8. The OCA also agrees with the Tentative Order where it notes that a plan must have measures to ensure that it is “cost effective”. *Id.* at 8 (citing 66 Pa. C.S. § 1352(a)(5)).

Although the Code establishes that the LIIPs are long-term by definition, the Code does not define the number of years a LIIP should cover. The Tentative Order provides that LIIPs should reflect reasonable and prudent planning “over the course of many years.” Tentative Order at 7. The OCA acknowledges that utilities will employ varying time horizons in their planning processes and that individual plans should vary according to need. Nevertheless, 66 Pa. C.S. § 1352(b)(1) requires a periodic LIIP review on a five-year interval. This statutory requirement should serve as a baseline LIIP requirement such that plans of shorter duration may not be acceptable absent extenuating circumstances.

The Tentative Order also addresses the requirement that an LIIP demonstrate that a utility is accelerating its infrastructure improvement over its historic level of capital investment in eligible property. Tentative Order at 9. The OCA strongly supports that requirement. Regarding acceleration, the Tentative Order notes a critical requirement of the statute – that the LIIP must show how acceleration will serve goals of system integrity, reduced reliability risks, and the maintenance of safe, adequate, and reasonable service. Tentative Order at 9; 66 Pa. C.S. §§ 1352(6), (7). The OCA agrees and also acknowledges that “acceleration” will be defined on a case-by-case basis. Acceleration should not be measured exclusively in terms of dollars spent, but rather also should consider the amount of infrastructure actually placed into service. Otherwise, there could be an incentive to accelerate spending, but not necessarily deployment, which will raise rates disproportionately to needed system improvements. The OCA also urges the Commission to be clear that while acceleration of eligible property improvement is required,

that must not come at the expense of reduced expenditures or activity on non-eligible property. That is, Act 11 requires capital improvement acceleration, not merely cost reallocation.

The OCA agrees that utilities are permitted to file and request approval of an LIIP prior to January 1, 2013 in anticipation of DSIC implementation. Tentative Order at 10; see also 66 Pa. C.S. § 1360. Nevertheless, LIIPs will require very granular data of significant scope. The OCA supports the Tentative Order's specific requirements regarding the information that is to be included in the LIIP. Tentative Order at 8-9.

The OCA also supports the Tentative Order requirement that electric distribution utilities must show how their LIIPs address various performance indices such as system average interruption duration, system average interruption frequency, and customer average interruption duration. The OCA also agrees with the Commission regarding the relationship between the LIIPs of natural gas distribution utilities and those utilities' distribution integrity management programs. Tentative Order at 8-9.

The Tentative Order also points out that Act 11 requires the Commission to promulgate regulations under which review of approved LIIP will occur. Tentative Order at 10. The OCA looks forward to participating in that rulemaking and respectfully urges the Commission to initiate that rulemaking as soon as possible. The OCA points out that 66 Pa. C.S. § 1352(b)(2) does not limit the Commission's consideration of whether a utility's DSIC is in compliance with its approved LIIP to once every five years. Rather, the regulations should provide a framework under which the Commission may evaluate a utility's compliance with its LIIP at any point in time.

Finally, in footnote 2 on page 8 of the Tentative Order, the Commission invites parties to address how the utility will comply with 52 Pa. Code § 59.38 while implementing the LIIP

required by 66 Pa. C.S. § 1352. Section 59.38 requires natural gas utilities to “notify the Commission of proposed major construction, reconstruction or maintenance of plant at least 30 days prior to the commencement of work.” The OCA submits that the gas utilities should continue to provide the notice required by Section 59.38 to the Commission. If and when the utility seeks DSIC recovery for a major construction project, it should be consistent with the LIIP.

66 Pa. C.S. Section 1353

The Commission invites parties to comment on the draft model DSIC tariff appended to the Tentative Order. Tentative Order at 11. The OCA recommends one change to the draft tariff to deduct accumulated deferred income taxes related to the DSIC-eligible property from the original cost of the property. This recommendation is discussed on pages 9-16 below and the OCA’s proposed modification to the draft tariff is attached to the Comments in redline format. Please see Appendix A hereto.

The OCA notes that it supports the Commission’s decision to retain account numbers for eligible property in the revised draft model tariff. On page 12 of the Tentative Order, the Commission states that some informal comments suggested that the account numbers be eliminated. As stated by the Commission, however, the account numbers provide needed specificity. In addition, the OCA submits that using uniform account numbers in all of the DSIC filings will provide additional clarity and will simplify review by the Commission and other parties.

66 Pa. C.S. Section 1354

In this section, the Tentative Order notes that, once effective, the DSIC will be “applicable to rates for *service rendered* on and after the effective date”. Tentative Order at 13. While the Tentative Order directs that the “service rendered” method should be used, the model tariff Attachment A is silent on this point. The OCA understands that the distinction between billing the DSIC on a *service rendered* versus *bills rendered* basis is currently the subject of litigation. See Pettko, C. v. Pennsylvania-American Water Co., PA 24 WM 2012; Intermediate Ct., Docket No. 1061 CD 2011; Trial Ct.: Wash. County Ct. C.P., Docket No. 2010-2126.

It is also the OCA’s understanding that water companies currently using a DSIC mechanism employ the bills rendered approach. The Tentative Order therefore appears to propose a different method. The OCA does not oppose the use of either the service rendered or bills rendered approach. The OCA submits, however, that the Commission should clearly establish one method as appropriate, include that method in the model tariff, and require all utilities to use that method.

66 Pa. C.S. Section 1356

The OCA submits that annual asset optimization (AAO) plans, when used in conjunction with LIIP, are a key feature of a well-managed DSIC program. The OCA agrees that the two elements of each AAO plan, historic 12 month performance and future 12 month performance, will keep the public and the Commission apprised of how well a utility adheres to its LIIP. The AAO plan will also provide opportunity for corrective action under Section 1352(b) should it be required. The latter point adds to the importance of developing the Act’s required regulations

under Section 1352(b) under which utility performance under each individual LIIP shall be evaluated.

The OCA also submits that much of the value of the AAO plans depends on these plans being readily accessible to the public, *i.e.* not designated as Confidential Security Information under 35 P.S. § 2141.2, unless truly necessary. See 52 Pa. Code § 102.1 et seq.

66 Pa. C.S. Section 1357

A. Recognition of Accumulated Deferred Income Taxes (ADIT) On DSIC Property

At page 15 of its Tentative Order, the Commission notes that its proposed model tariff does not include a provision for accumulated deferred income taxes (ADIT) related to DSIC property, but states that it will accept further comments on this issue. The OCA appreciates this opportunity to explain the importance of this issue and why the failure to include ADIT in the DSIC calculation is not only unjust and unreasonable to Pennsylvania consumers, but is wholly inconsistent with the way rates are set in other states that utilize a DSIC-type mechanism.

The Commission states at page 16 of the Tentative Order that “While credits for accumulated deferred income taxes are accounted for in the normal base rate case process, a number of additional items, including working capital and taxes associated with DSIC-eligible property, are also accounted for in the normal base rate case process.” The Commission goes on to state that it “views these items as unnecessary complexities to the DSIC.” Id.

What the Tentative Order fails to recognize, however, is that, by allowing the utilities to recover DSIC costs on a **pre-tax** basis, the Commission already allows utilities to charge ratepayers for “the taxes associated with DSIC-eligible property.” Specifically, every dollar of equity return in the DSIC is “grossed up” to include federal and state income taxes of 35% and

9.99% respectively. This produces a revenue requirement gross-up factor of approximately 1.7 times, meaning that customers are paying \$1.70 in rates to permit recovery of each \$1.00 in DSIC equity return. See, e.g., Aqua Pennsylvania First Quarter 2012 DSIC, Docket No. M-2012-2295800, Supporting Work Papers (filed Mar. 20, 2012); Pennsylvania American Supp. No. 259 to PaPUC No. 4, Effective 10/1/11 (Quarterly DSIC), Docket No. M-2011-2263308, Filing at 1 (filed Sept. 19, 2011).

The fact is, however, that the utilities are not actually paying that level of taxes to the government, largely because the current taxes associated with new plant investments are substantially reduced due to various forms of accelerated depreciation for tax purposes. Under the “normalization” provisions of the Internal Revenue Code, utilities are not permitted to “flow through” those tax reduction benefits to customers on a current basis. I.R.C. §§ 167, 168; 26 U.S.C. §§ 167, 168. Under standard ratemaking procedure, however, as practiced in Pennsylvania and every other state and federal regulatory jurisdiction in the country, the “deferred” taxes resulting from this difference between the utilities’ tax depreciation and book depreciation are treated as a reduction in the utilities’ rate base (or treated as zero cost capital in the utilities’ capital structure) so that customers do not pay a return on non-investor supplied capital.

In the general ratemaking context, this issue has been addressed repeatedly and consistently. As stated in a leading utility treatise:

Most regulatory commissions have treated accumulated income tax deferrals as a cost-free source of funds. It must be kept in mind that, for cost-of-service purposes, current and deferred federal income taxes are treated as part of the revenue-requirements calculation. However, the accumulated deferred income taxes are then used to reduce rate base, to produce a cost-free source of funds to the utility ratepayer.

Robert L. Hahne, Gregory E. Aliff, Accounting for Public Utilities § 3.02(2) (1983). This principle is stated even more succinctly in Bonbright's Principles of Utility Rates, which states:

We never have seen a plausible defense for a claim to the enjoyment of a profit on funds not contributed by the corporate investors.... there is no need to concede to stockholders a return on capital contributed, in effect, either by the taxpayers or by the ratepayers.

James C. Bonbright, Albert L. Danielsen, David R. Kamerschen, Principles of Public Utility Rates 288 (1988). See also Martin T. Farris and Roy J. Sampson, Public Utilities: Regulation, Management, and Ownership 114 (1973) ("This tax deferral is, in effect, an interest-free loan to the utility, since depreciation allowances are normally reinvested in the firm").

The Pennsylvania PUC and other state and federal regulatory commissions have recognized this principle as well. For example, in a 1979 West Penn Power rate case involving the Pleasants Unit 1 Generating Station, the Commission addressed the issue of deducting ADIT from rate base as follows:

If this amount is not deducted from rate base, the stockholders will be earning a return on money they never provided. . . .

Under West Penn's proposal, the stockholders would be permitted to retain the tax benefits on which they would earn a return; and the ratepayers would be obligated to provide a return to the stockholders on funds made available by the federal government.

We agree with the consumer advocate, that simple equity to the ratepayers, commission policy regarding treatment of accelerated depreciation benefits, and consistent treatment of such depreciation for both book and rate-making accounts, require that additional deduction in this regard be made to rate base.

Pa. P.U.C. v. West Penn Power Co., 32 PUR4th 245, 264-65, 53 PaPUC 410, 430-31 (1979). The Commission reached the identical conclusion in a case involving the PECO Salem Nuclear Plant. Pa. P.U.C. v. Philadelphia Elec. Co., 31 PUR4th 15, 44-45, 52 PaPUC 772, 802-03 (1978) (the utility's treatment "runs afoul of the well-settled

commission principle that tax depreciation benefits must either be flowed through to the benefit of the ratepayer, or if not, then deducted from rate base”).

Most importantly for these Comments, however, the OCA submits that this principle does not just apply in full-blown base rate cases, but applies in the DSIC context as well. The DSIC is intended to be an exception to the prohibition against single-issue ratemaking; however, that single issue must be calculated fairly and correctly. To make the DSIC calculation correct (to allow recovery only for costs actually incurred by the utility), the rate base on which the pretax return is calculated must reflect an offset for accumulated deferred income taxes.

Attached to these Comments is an Appendix B, which includes excerpts from statutes, regulations, tariffs, and stipulations from states other than Pennsylvania that have established some type of DSIC mechanism for new natural gas and electric plant additions. What each of these documents has in common is that they reflect accumulated deferred income taxes on DSIC property as a matter of course.

For example, the New Jersey Commission has approved a natural gas infrastructure replacement surcharge for South Jersey Gas Company that excludes accumulated deferred income taxes. The Capital Investment Recovery Tracker (CIRT) is calculated as follows:

- (a.) Rate of return on all Qualifying Project Investments as adjusted for accumulated depreciation and accumulated deferred income taxes at the Pre-Tax Adjusted weighted-average cost of capital rate of 11.63%.

In The Matter of the Annual Filing of South Jersey Gas Co. to Adjust Its Capital Investment Recovery Tracker (“CIRT”) and For Approval of an Extension of the CIRT Pursuant to N.J.S.A. 48:2-21 and N.J.S.A. 48:2-21.1, Docket No. GR10100765, Stipulation at 8-9 (Mar. 31, 2011).

Similarly, the Kentucky Public Service Commission approved a capital surcharge tariff for Columbia Gas of Pennsylvania Inc.’s affiliate, which deducts accumulated deferred income

taxes from its calculation of revenue requirement for the Accelerated Main Replacement Program Rider (AMPR):

- a. AMRP-related Plant In-Service not included in base gas rates minus the associated AMRP-related accumulated depreciation and accumulated deferred income taxes. . .

Tariff P.S.C. Ky. No. 5, Fifth Revised Sheet No. 58 (effective May 10, 2011) (emphasis added).

Likewise, Massachusetts approved an annual adjustment to the rates of Columbia's affiliate, Bay State Gas Company, to provide recovery of costs associated with replacement of certain distribution mains and related facilities, net of accumulated deferred income taxes. M.D.P.U.

No. 73, Third Revised Pg. 15 of 29 (issued Nov. 30, 2010). The Targeted Infrastructure Reinvestment Factor (TIRF) is calculated using this formula:

$$RB_{TIRF} = GP_{TIRF} - ARD_{TIRF} - ADIT_{TIRF}$$

Id. at 16. $ADIT_{TIRF}$ is "The Accumulated Deferred Income Taxes associated with the TIRF investments as of the end of the Calendar Year preceding the annual recovery period beginning November 1" and "Accumulated Deferred Income Taxes is the net reduction in Federal income and State franchise taxes associated with the use of accelerated depreciation allowed for income tax purposes." Id. at 15.

Similarly, in approving what OCA believes to be the first natural gas infrastructure surcharge of its kind in the year 2000, the Georgia Public Service Commission adopted a calculation that explicitly reduces capital costs by the amount of accumulated deferred income taxes:

The Company shall be allowed to include capital cost of all property additions and improvements minus such amounts already included in the Commission's last determination of the Company's revenue requirements. Capital cost shall be defined as:

1. The return on capital which shall be the most recent overall rate of return set by the Commission for the Company multiplied by;

2. (Net plant additions and improvements) less (the accumulated depreciation on the net property additions, accumulated deferred income taxes, and any other items normally associated with the rate base calculation as determined by the Commission in the Company's last revenue requirement determination).
3. The result of this calculation shall be the income required for the return on capital.

In Re: Atlanta Gas Light Co. Pipe Replacement Program, Docket No. 8516-U, Order Approving Surcharge For FY 01, Stipulation at 25-26 (Sept. 29, 2000) (emphasis added).

In Utah, the Public Service Commission approved an Infrastructure Rate Adjustment Tracker for Questar Gas Company that reflects accumulated deferred income taxes using the following calculation:

CALCULATION OF TOTAL SURCHARGE

The following components are included in the calculation of the Surcharge:

Replacement Infrastructure	\$X,XXX,XXX
Less: Accumulated Depreciation	XXX,XXX
Accumulated Deferred Income Tax	XXX,XXX
Net Replacement Infrastructure	\$X,XXX,XXX
Current Commission-Allowed Pre-Tax Rate of Return	11.79%
Allowed Pre-Tax Return	\$X,XXX,XXX
Plus: Net Depreciation Expense	XXX,XXX
Net Taxes Other Than Income	XXX,XXX
Total Surcharge	\$X,XXX,XXX

Utah Natural Gas Tariff PSCU 400, 2-14.

The Rhode Island Commission adopted a tariff for Narragansett Electric Company that also deducts accumulated deferred taxes from the revenue requirement used to calculate its Distribution Adjustment Charge:

Cumulative Revenue Requirements will reflect Adjusted Cumulative Non-Growth Capital Spending, associated retirements, cost of removal, accumulated depreciation, accumulated deferred taxes, property taxes, depreciation expense and include the return on the current [fiscal] year's average rate base associated with the cumulative Capital Spending at a rate equal to the pre-tax weighted average cost of capital, as approved by the Commission in the most recent distribution rate proceeding.

RIPUC NG-GAS No. 101, Sec. 3, Sched. A, Sheet 1, 4th Rev. (emphasis added).

Other states have incorporated recognition of accumulated deferred income taxes in statutes implementing DSIC-type mechanisms. Missouri Revised Statutes Section 393.1009 provides for the deduction of accumulated deferred income taxes from the calculation of its infrastructure surcharge:

(a) The gas corporation's weighted cost of capital multiplied by the net original cost of eligible infrastructure system replacements, including recognition of accumulated deferred income taxes and accumulated depreciation associated with eligible infrastructure system replacements which are included in a currently effective ISRS. . . .

Mo. Rev. Stat. § 393.1009. Kansas adopted similar statutory language to deduct accumulated deferred income taxes:

The natural gas public utility's weighted cost of capital multiplied by the net original cost of eligible infrastructure system replacements, including recognition of accumulated deferred income taxes and accumulated depreciation associated with eligible infrastructure system replacements which are included in a currently effective GSRs. . . .

Kan. Stat. Ann. § 66-2202. Nebraska's statute requires recognition of accumulated deferred income taxes to determine pretax revenue:

(5) In determining the appropriate pretax revenue, the commission shall consider the following factors:

(a) The net original cost of eligible infrastructure system replacements. For purposes of this section, the net original cost means the original cost of eligible infrastructure system replacements minus associated retirements of existing infrastructure;

(b) The accumulated deferred income taxes associated with the eligible infrastructure system replacements. . .

R.R.S. Neb. §§ 66-1866 (emphasis added).

The proposed tariff language in Appendix A to the Tentative Order properly reflects accumulated depreciation associated with DSIC property while it is in the DSIC, but does not

reflect accumulated deferred income taxes. It should be noted in this regard that the issue being raised here is different from the one that was raised by the Office of Consumer Advocate during the legislative debates leading up to the passage of House Bill 1294, which became Act 11 of 2011. The OCA argued during the legislative debate that rate increases should not be permitted under a DSIC unless there was an overall increase in the “net” plant in the applicable plant categories. Here, the OCA is referring only to the appropriate calculation of taxes related to the DSIC plant that is being placed in rates. As in the many other states that have addressed this issue, there is simply no question that it is appropriate and necessary to offset those plant additions with both the accumulated depreciation and deferred taxes associated with that plant.

In its rejection of an ADIT offset to DSIC-eligible plant in the DSIC calculation, the Tentative Order concludes that rate setting components such as working capital and taxes associated with DSIC-eligible property are similarly not included in the DSIC charge. Tentative Order at 16. This conclusion is not correct. As noted above, the major element of taxes associated with DSIC property – state and federal income taxes – are included in the DSIC; they are just included at a greatly inflated value because they charge current ratepayers for deferred taxes without giving ratepayers the benefit of the deferred tax rate base reduction that is reflected in normal ratemaking and in other state DSICs. It is correct that working capital is a normal component of the rate setting process, but it is not clear what, if any, additional cash working capital requirements will be imposed on a utility as a result of having the cost of capital additions reflected in rates sooner rather than later. In any case, the inclusion of ADIT is not a mere “complexity” that would be added to the DSIC process; it is a necessary correction that is universally accepted as an essential element of just and reasonable rates.

B. Return on Equity

The Tentative Order addresses whether utilities shall calculate the return on equity input into the DSIC formula from the Commission's quarterly report on earnings or a fully litigated revenue requirement adjudicated by the Commission. While tentatively concluding that a full or partial settlement of a base rate case would not qualify under the General Assembly's requirement of a "fully litigated base rate proceeding," the Commission invites comments on whether a stipulated cost of equity from a settled rate case can be used consistent with Section 1357(b)(2). *Id.* at 15, n5. The OCA submits that a stipulated cost of equity from a settled base rate case is a reasonable method of determining the ROE for DSIC purposes.

While the term "fully litigated" is not defined in Act 11, this issue has been addressed by the federal courts. Those courts have considered the issue of what constitutes a "fully litigated" proceeding by looking to three factors: "1) whether the parties were fully heard, 2) whether the court supported its decision with a reasoned opinion, and 3) whether the decision was subject to appeal or was in fact reviewed on appeal." State Farm Fire & Cas. Co. v. Fullerton, 118 F.3d 374, 382 (5th Cir. 1997); see also State v. Lindsey, 2011 Bankr. LEXIS 5368, 5-6 (S.D. Tex. Oct. 11, 2011). The OCA submits that Commission orders approving base rate case settlements satisfy these requirements.

First, settlements reflect the parties' full use of the opportunity to litigate – including hearings. By definition, settlements are products of reasonable compromise on issues being contested before the Commission. Second, overall settled base rate case revenue requirements are, by necessity, addressed and adjudicated by the Commission. This is true because the settled base rate case requires a recommended decision from an Administrative Law Judge, and the

Commission must provide an Opinion and Order before it may be reduced to tariff rates. 66 Pa. C.S. § 335.

Third, Commission approval of a settlement fully determines the rights of the parties. A Commission order approving a settlement, whether or not the settlement is contested, is, in all respects, a final order subject to appeal. In this regard, a settlement is indistinguishable from a proceeding in which all issues are contested through the briefing and exception stage.

In any event, a party aggrieved by approval of a stipulated ROE for DSIC purposes retains the right to challenge that approval via appeal.

To the extent that parties in a base rate proceeding are able to reach a stipulation on a prospective DSIC return on equity, and to the extent the stipulation is approved in a final Commission order, the OCA submits that such a return can be used by the Commission to satisfy the requirements of Section 1357(b)(2).

C. Annualization of Revenues

The Tentative Order also requests comment on whether utilities with seasonal revenue fluctuations should be permitted to annualize revenues for the dual purposes of calculating projected quarterly revenues (PQR in the DSIC formula) and to determine whether a DSIC should be reset to zero because of over-earning. The OCA submits that annualization is a reasonable approach to addressing seasonal revenue fluctuations. The OCA submits that, at the time of its first DSIC request, utilities must elect for tariff approval either an actual quarterly revenue calculation or an annualized revenue calculation to be applied on a quarterly basis, including the proposed formula for annualizing. Once the election is made, utilities cannot have the option of switching between the two methods over the course of a DSIC period. In fact, the Commission may want to address this issue on a generic basis for each industry type. That is, for

example, the Commission may wish to require all natural gas utilities to calculate revenues on an annualized basis in order to avoid the inevitable problems of dealing with major quarterly fluctuations that are applicable to all natural gas utilities.

66 Pa. C.S. Section 1358

Beginning on page 17 of the Tentative Order, the Commission addresses customer protections contained in Act 11. Regarding the general 5% rate cap, the OCA would clarify that the 5% limitation in Section 1358(a)(1) and (and the 7.5% for certain water utilities in Section 1358(a)(2)) are *bill* limitations as applied to the distribution rates of each customer; not to aggregated billing revenue. Section 1357 provides that the DSIC “shall be expressed as a percentage carried to two decimal places and shall be applied in a manner consistent with Section 1358 (relating to customer protections) to each customer.” 66 Pa. C.S. § 1357. The OCA submits that these sections are a clear prohibition against any customer being billed a DSIC charge that is greater than 5% or 7.5% of distribution charges, as appropriate, on that customer’s bill.

Regarding the reset to zero for city natural gas distribution operations (PGW) of Section 1358(b)(3), the Tentative Order provides that the Commission will monitor interest levels and cash flows on a quarterly basis to determine whether a reset to zero is required. Tentative Order at 18. The OCA submits that the Commission may wish to consider specific interest coverage ratios that would trigger a DSIC reset for city natural gas distribution companies. This will lend stability to rates and define expectations for all concerned. The appropriate interest coverage trigger can be determined if and when PGW files for its initial DSIC.

Regarding Section 1358(d)(1), the Commission provides that the statutory language does not permit a utility to have variances in its DSIC percentage rates based on customer class. Tentative Order at 18. The OCA agrees. The legislative intent is clear and does not provide for any exceptions, except in the case of water rates for public fire protection service. Section 1358(d)(1) does not allow the Commission to approve a DSIC unless the charge:

shall be applied equally to all customer classes as a percentage of each customer's billed revenue, consistently with subsection (a) [regarding the 5% limit on charges]

66 Pa. C.S. § 1358(d)(1).

The two examples cited in the Tentative Order, which were raised in participants' informal comments, do not support a non-uniform DSIC rate. Tentative Order at 18. To the extent that some customers incur lower distribution costs, those lower costs should be reflected in the establishment of the distribution base rates, not by reducing or eliminating the percentage DSIC. Thus, for example, where an electric customer takes service at the transmission level of service, their circumstances should already have been taken into account in their base distribution rates and the DSIC will be applied to this lower distribution rate. In cases where a natural gas customer is charged a lower rate designed to retain load, the utility may reduce that customer's distribution rate, but that simply means that the customer would pay the applicable percentage DSIC rate on the lower distribution rate. There is no basis to eliminate or reduce the DSIC percentage rate for those customers and, as discussed, the plain meaning of the statute prohibits it.

III. CONCLUSION

The OCA thanks the Commission for the opportunity to provide Comments on the Tentative Order and the draft model tariff. The OCA respectfully requests that the Commission carefully consider the points and issues it raises in these Comments and to adopt those points in its Final Order and model tariff. The OCA looks forward to continuing to work with the Commission, Staff, and stakeholders on these important issues.

Respectfully Submitted,



Erin L. Gannon
Assistant Consumer Advocate
PA Attorney I.D. # 83487
E-Mail: egannon@paoca.org
Shaun A. Sparks
Assistant Consumer Advocate
PA Attorney I.D. # 87372
E-Mail: ssparks@paoca.org

Counsel for:
Irwin A. Popowsky
Consumer Advocate

Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152
Dated: May 31, 2012

156942

CERTIFICATE OF SERVICE

RE: Implementation of Act 11 of 2012
Docket No. M-2012-2293611

I hereby certify that I have this day served a true copy of the foregoing document, Comments of the Office of Consumer Advocate, 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:

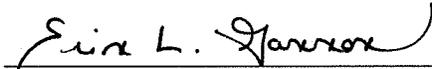
Dated this 31st day of May 2012.

SERVICE BY EMAIL & HAND DELIVERY

RA-Act11@pa.gov (via EMAIL ONLY)

David Screven
Louise Fink Smith
PUC Law Bureau
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17101
dscreven@pa.gov
finksmith@pa.gov

Erin Laudenslager
PUC Bureau of Technical Utility Services
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17101
elaudensla@pa.gov



Erin L. Gannon
Assistant Consumer Advocate
PA Attorney I.D. #83487
Email: EGannon@paoca.org

Shaun A. Sparks
Assistant Consumer Advocate
PA Attorney I.D. #87372
Email: SSparks@paoca.org

Counsel for
Office of Consumer Advocate
555 Walnut Street, 5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152

157063

Appendix A
OCA Proposed Change to Model DSIC Tariff

[UTILITY NAME]

DISTRIBUTION SYSTEM IMPROVEMENT CHARGE
(DSIC)

the DSIC, then the equity return rate used in the calculation will be the equity return rate calculated by the Commission in the most recent Quarterly Report on the Earnings of Jurisdictional Utilities released by the Commission.

C. Application of DSIC: The DSIC will be expressed as a percentage carried to two decimal places and will be applied to the total amount billed to each customer for distribution service [WATER and WASTEWATER UTILITIES ONLY: for service under the Utility's otherwise applicable rates and charges, excluding amounts billed for [WATER UTILITIES ONLY: public fire protection service] and the State Tax Adjustment Surcharge (STAS). To calculate the DSIC, one-fourth of the annual fixed costs associated with all property eligible for cost recovery under the DSIC will be divided by the Utility's projected revenue for distribution service (including all applicable clauses and riders) for the quarterly period during which the charge will be collected, exclusive of [WATER UTILITIES ONLY: revenues from public fire protection service and] the STAS.

D. Formula: The formula for calculation of the DSIC is as follows:

$$DSIC = \frac{(DSI * PTRR) + Dep + e}{PQR}$$

Where:

- DSI = Original cost of DSIC-eligible distribution system improvement projects property net of accrued depreciation and accumulated deferred income taxes related to eligible property.
- PTRR = Pre-tax return rate applicable to DSIC-eligible property.
- Dep = Depreciation expense related to DSIC-eligible property.
- e = Amount calculated under the annual reconciliation feature or Commission audit, as described below.
- PQR = Projected quarterly revenues for distribution service (including all applicable clauses and riders) from existing customers plus revenue from any customers which will be acquired by the beginning of the applicable service period. [NOTE: UTILITY TO MAKE ELECTION AND STATE WHETHER SUCH QUARTERLY REVENUES WILL BE DETERMINED ON THE BASIS OF EITHER THE SUMMATION OF PROJECTED REVENUES FOR THE APPLICABLE THREE-MONTH PERIOD OR ONE-FOURTH OF PROJECTED ANNUAL REVENUES.]

Comment [EG1]: Accumulated deferred income taxes related to DSIC-eligible property must be deducted from the original cost of the property. Please see the OCA's Comments for further discussion.

Appendix B
Excerpts from Tariffs, Orders and Statutes from Other States

Tariffs

Kentucky – Columbia Gas of Kentucky, Inc.: Accelerated Main Replacement Rider

Utah – Questar Gas Co.: Infrastructure Rate Adjustment Tracker

Massachusetts – Bay State Gas Co. (Columbia Gas of Massachusetts): Targeted Infrastructure
Reinvestment Factor

Rhode Island – Narragansett Electric Company: Infrastructure, Safety and Reliability Factor

Orders

Georgia – Atlanta Gas Light Company: Pipe Replacement Program Surcharge

New Jersey – South Jersey Gas Company: Capital Investment Recovery Tracker

Statutes

Kansas: K.S.A. §§ 66-2202, 2204: Gas System Reliability Charge

Missouri – 25 R.S.Mo. § 393.1009: Infrastructure System Replacement Surcharge

Nebraska – R.R.S. Neb. § 66-1866: Infrastructure System Replacement Cost Recovery Charge

Kentucky
Columbia Gas of Kentucky Tariff

COLUMBIA GAS OF KENTUCKY, INC.

**RIDER AMRP
 ACCELERATED MAIN REPLACEMENT PROGRAM RIDER**

APPLICABILITY

Applicable to all customers receiving service under the Company's Rate Schedules GS, IS, IUS, SVGTS, DS and SAS.

CALCULATION OF ACCELERATED MAIN REPLACEMENT RIDER REVENUE REQUIREMENT

The AMRP Rider Revenue Requirement includes the following:

- a. AMRP-related Plant In-Service not included in base gas rates minus the associated AMRP-related accumulated depreciation and accumulated deferred income taxes;
- b. Retirement and removal of plant related to AMRP construction;
- c. The rate of return on the net rate base is the overall rate of return on capital authorized in the Company's latest base gas rate case, grossed up for federal and state income taxes;
- d. Depreciation expense on the AMRP = related Plant In-Service less retirement and removals; and;
- e. Reduction for savings in Account No. 887 – Maintenance of Mains.

ACCELERATED MAIN REPLACEMENT PROGRAM FACTORS

All customers receiving service under Rate Schedules GSR, GSO, IS, IUS, SVGTS, DS, GDS and SAS shall be assessed a monthly charge in addition to the Customer Charge component of their applicable rate schedule that will enable the Company to complete the accelerated main replacement program.

Rider AMRP will be updated annually, in order to reflect the impact on the Company's revenue requirements of net plant additions as offset by operations and maintenance expense reductions during the most recent twelve months ended December. Such adjustment to the Rider will become effective with meter readings on and after the first billing cycle of June, and will reflect the allocation of the required revenue increase based on the revenue distribution approved by the Commission.

The charges for the respective gas service schedules for the revenue month beginning June 2011 per billing period are:

Rate GSR, Rate SVGTS - Residential Service	\$ 0.72
Rate GSO, Rate GDS, Rate SVGTS - Commercial or Industrial Service	\$ 2.69
Rate IUS, Rate IUDS	\$ 32.10
Rate IS, Rate DS ^{1/} , Rate SAS	\$161.38

^{1/} - Excluding customers subject to Flex Provisions of Rate Schedules DS

DATE OF ISSUE: May 10, 2011

Issued by:

Herbert A. Miller

Issued by authority of an Order of the Public Service Commission in Case No. 2011-00086 dated April 29, 2011

KENTUCKY PUBLIC SERVICE COMMISSION
JEFF R. DEROUEN EXECUTIVE DIRECTOR
TARIFF BRANCH DATE EFFECTIVE May 04 2011 (Unit 1 J <i>Bunt Kirley</i> cycle)
EFFECTIVE 5/31/2011 President
PURSUANT TO 807 KAR 5:011 SECTION 9 (1)

Utah
Questar Gas Tariff

2.07 INFRASTRUCTURE RATE ADJUSTMENT TRACKER

The Infrastructure Rate Adjustment Tracker (Tracker) allows the Company to track costs that are directly associated with Replacement Infrastructure, defined below, through an incremental surcharge to the GS, FS, IS, TS, MT, FT-1 and NGV rate schedules (Surcharge). The Surcharge is designed to track and collect costs of Replacement Infrastructure between general rate cases. The Company will file its next year's annual plan and budget describing the estimated costs and schedule for the Replacement Infrastructure with the Commission no later than November 15 of each year. The Company will file quarterly progress reports describing the Replacement Infrastructure program.

REPLACEMENT INFRASTRUCTURE

Replacement Infrastructure is identified as new high-pressure feeder lines that are replacing aging high-pressure feeder lines as required to ensure public safety and provide reliable service. Factors considered in replacing infrastructure include, but are not limited to:

- (1) Age and performance of existing pipeline (e.g. vintage steels, seams, welds and coatings).
- (2) Reconditioned pipe (i.e. refurbished and reinstalled pipe).
- (3) Operating and maintenance history.
- (4) Pipeline safety compliance.

CALCULATION OF TOTAL SURCHARGE

The following components are included in the calculation of the Surcharge:

Replacement Infrastructure	\$X,XXX,XXX
Less: Accumulated Depreciation	XXX,XXX
Accumulated Deferred Income Tax	XXX,XXX
Net Replacement Infrastructure	\$X,XXX,XXX
Current Commission-Allowed Pre-Tax Rate of Return	11.79%
Allowed Pre-Tax Return	\$X,XXX,XXX
Plus: Net Depreciation Expense	XXX,XXX
Net Taxes Other Than Income	XXX,XXX
Total Surcharge	\$X,XXX,XXX

ASSIGNMENT TO CLASSES

The Surcharge will be assigned to each rate class based on the Commission-approved total pro rata share of the DNG tariff revenue ordered in the most recent general rate case. The Surcharge assigned to each class will be collected based on a percentage change to the demand charge, if applicable, and each block of volumetric rates of the respective rate schedules.

ADJUSTMENT OF SURCHARGE

The Company may file semi-annually, but will file at least annually, an application to adjust the Surcharge. The Replacement Infrastructure must be in service when the application is filed. All items included in the Tracker are subject to regulatory audit consistent with the audit procedures in the "Gas Balancing Account," Tariff § 2.06. At the time of the Company's next general rate case all prudently incurred investment and costs associated with the Surcharge will be included in base rates.

Issued by R. W. Jibson, President	Advice No.	Section Revision No.	Effective Date
	10-03	1	August 1, 2010

Massachusetts
Bay State Gas Company (Columbia Gas of Massachusetts) Tariff

LOCAL DISTRIBUTION ADJUSTMENT CLAUSE

7.0 Targeted Infrastructure Reinvestment Costs Allowable for LDAC

7.01 Purpose

The purpose of this provision is to establish a procedure that allows CMA subject to the jurisdiction of the Department to adjust, on an annual basis, its rates for the recovery of costs associated with replacement of non-cathodically protected steel distribution mains and other Eligible Facilities. The associated costs are incurred in order to maintain safe and reliable distribution service and shall be recovered from all firm gas sales and firm transportation customers.

7.02 Applicability

The Targeted Infrastructure Reinvestment Factor (TIRF) component of the LDAC shall be applied to all firm sales and firm transportation throughput of the Company subject to the jurisdiction of the Department as determined in accordance with the provisions of Section 7.09 of this clause. The TIRF shall be determined annually by the Company, as defined below, and subject to review and approval by the Department, as provided for in this clause.

7.03 Description of TIRF Investments

The Company's TIRF Investments provide for the replacement of aging non-cathodically protected steel infrastructure in order to maintain safe and reliable service. The associated costs, less operations and maintenance ("O&M") expense savings of \$2,077 per mile of replaced main, calculated through the most recent Calendar Year, are recovered through the application of the TIRF.

7.04 TIRF Investments

TIRF Investments are the costs of Eligible Facilities and shall include the costs of non-cathodically protected steel main and service replacement projects, including any connected facilities such as services, meters or regulators that must be installed or replaced to enable the main replacement to become operational. TIRF Investments may include investments in one or more of the following plant accounts:

- (1) Account No. 367, Transmission Mains
- (2) Account No. 376, Distribution Mains
- (3) Account No. 380, Distribution Services
- (4) Account No. 381, Meters
- (5) Account No. 382, Meter Installations
- (6) Account No. 383, House Regulators
- (7) Account No. 385, Industrial Measuring and Regulating Equipment

LOCAL DISTRIBUTION ADJUSTMENT CLAUSE

7.05 Eligible TIRF Costs

Eligible TIRF Costs shall include depreciation, property taxes, return and associated income taxes associated with total TIRF Investments made since December 31, 2008, through the Calendar Year preceding the annual recovery period beginning November 1.

7.06 Eligible TIRF Savings

Eligible TIRF Savings represent an offset to the Company's O&M expense to reflect reduced leak repair activity and shall be reflected as an offset to TIRF Costs. Eligible TIRF Savings shall equal \$2,077 per mile of non-cathodically protected steel mains replaced by the Company since December 31, 2008 and through December 31 of the Calendar Year preceding the annual recovery beginning November 1.

7.07 Effective Date

On or before May 1st of each year, the Company shall file with the Department for its consideration and approval, the Company's request for a change in the TIRF applicable to all firm sales and firm transportation throughput for the subsequent twelve month period commencing on November 1.

7.08 Definitions

- (1) **Gross Plant Investments** are the capitalized cost of TIRF plant investments including applicable overhead recorded on the Company's books.
- (2) **Accumulated Deferred Income Taxes** is the net reduction in Federal income and State franchise taxes associated with the use of accelerated depreciation allowed for income tax purposes.
- (3) **Accumulated Reserve for Depreciation** is the net credit balance arising from the provision for Depreciation.
- (4) **Calendar Year** is the annual period beginning on January 1st and ending on December 31st.
- (5) **Depreciation Expense** is the return of the Company's investment in Rate Base at established annual rates as approved by the Department in D.P.U. 09-30.
- (6) **Eligible Facilities** are those facilities in connection with the projects undertaken by the Company to replace non-cathodically protected steel distribution mains and services, and any connected facilities such as services, meters or regulators that must be installed or replaced to enable the main replacement to become operational.

LOCAL DISTRIBUTION ADJUSTMENT CLAUSE

- (7) **Property Tax Rate** is the composite property tax rate paid by the Company calculated in its most recent base rate proceeding as the ratio of total annual property taxes paid to total net plant in service.
- (8) **Rate Base** is the investment value upon which CMA is permitted to earn its authorized rate of return.
- (9) **TIRF Revenue Requirements** are the revenue requirements through December 31 of the Calendar Year preceding the annual recovery period beginning November 1 for the Company's TIRF program for the annual recovery period beginning November 1.
- (10) **TIRF** is the rate determined pursuant to this mechanism that recovers the aggregate TIRF Revenue Requirements for investments made since December 31, 2008 through December 31 of the Calendar Year preceding the annual recovery period beginning November 1.
- (11) **TIRF Savings** is the offset to the Company's O&M expense to reflect reduced leak repair activity. It is determined by multiplying \$2,077 by the total miles of non-cathodically protected steel mains replaced by the Company since December 31, 2008 through the Calendar Year preceding the annual recovery period beginning November 1.

7.09 TIRF Charge Formula

$$\text{TIRF} = \frac{\text{TIRF REV}_T + \text{RA}_{\text{TIRF}}}{\text{A} : \text{TP vol.}}$$

And:

$$\text{TIRF_REV}_T = (\text{RB}_{\text{TIRF}} \times \text{PTRR}) + \text{DEPR}_{\text{TIRF}} + \text{PTMS}_{\text{TIRF}} - \text{SAV}_{\text{TIRF}}$$

and:

$$\text{RB}_{\text{TIRF}} = \text{GP}_{\text{TIRF}} - \text{ARD}_{\text{TIRF}} - \text{ADIT}_{\text{TIRF}}$$

Where:

TIRF_REV_T The TIRF Revenue Requirements for the Rate Year.
RA_{TIRF} Targeted Infrastructure Reinvestment Eligible Cost Reconciliation Adjustment – inclusive of the associated interest, as outlined in Section 7.11.

LOCAL DISTRIBUTION ADJUSTMENT CLAUSE

A:TPVOL	Forecast Annual Throughput Volumes inclusive of all firm sales and firm transportation throughput.
RB _{TIRF}	The Rate Base associated with the TIRF Investments as of the end of the Calendar Year preceding the annual recovery period beginning November 1.
PTRR	The pre-tax rate of return of 11.62% as established by the Department in D.P.U. 09-30.
DEPR _{TIRF}	The depreciation expense associated with the TIRF plant investments.
PTMS _{TIRF}	The property taxes calculated based on the net plant investment in mains and services associated with TIRF investments multiplied by the Property Tax Rate.
SAV _{TIRF}	The total Eligible TIRF Savings associated with reduced leak repair activity
GP _{TIRF}	The Gross Plant Investments associated with TIRF Investments as of the end of the Calendar Year preceding the annual recovery period beginning November 1.
ARD _{TIRF}	The Accumulated Reserve for Depreciation associated with the TIRF Investments as of the end of the Calendar Year preceding the annual recovery period beginning November 1.
ADIT _{TIRF}	The Accumulated Deferred Income Taxes associated with the TIRF Investments as of the end of the Calendar Year preceding the annual recovery period beginning November 1.

7.10 Limitations on Recovery

The total increase in TIRF Revenue Requirements for the most recent Calendar Year above the TIRF Revenue Requirements for the previous Calendar Year shall not exceed one percent (1%) of the Company's total revenues from firm sales and transportation throughput during the most recent Calendar Year, with transportation revenues being adjusted by imputing the Company's cost of gas charges for that annual period. Application of this limitation on recovery shall not affect the calculation of TIRF Revenue Requirements in subsequent periods.

7.11 Reconciliation Adjustments

Account 182.61 shall contain the accumulated difference between revenues toward TIRF Revenue Requirements as calculated by multiplying the Targeted Infrastructure Reinvestment Factor (TIRF) times monthly firm sales and transportation throughput and Steel Infrastructure Replacement Costs allowed, plus carrying charges calculated on the

Rhode Island
The Narragansett Electric Company Tariff

DISTRIBUTION ADJUSTMENT CLAUSE

LIAP _B	Approved low income program funding(s)
Dt _T	Forecasted annual firm throughput in dekatherms
LIAP _{EMB}	LIAP funding embedded in base rates, \$1,785,000

3.4 Infrastructure, Safety and Reliability Plan

**3.4.1 Gas Infrastructure, Safety,
and Reliability Plan Filing:**

In compliance with R.I.G.L. Section 39-1-27.7.1, no later than January 1 of each year, the Company shall submit to the Commission a Gas Infrastructure, Safety, and Reliability Plan ("Gas ISR Plan") for the upcoming fiscal year for review and approval within 90 days. The Gas ISR Plan shall include the upcoming fiscal year's forecasted capital investment on its gas distribution system infrastructure and may include any other costs relating to maintaining safety and reliability that have been mutually agreed upon by the Division and the Company.

**3.4.2 Infrastructure, Safety
and Reliability Factor:**

Each year, beginning April 1, 2011, the Company shall recover through a change in Distribution Adjustment Charge rates the Cumulative Revenue Requirement on the Adjusted Cumulative Non-growth Capital spending as approved by the Commission in the Company's annual gas infrastructure, safety, and reliability filings. For purposes of this section, non-growth capital shall exclude general plant (FERC Accts 389 through 399). Adjusted Cumulative Non-growth Capital Spending shall mean the actual non-growth capital investment since April 1, 2011, plus the forecasted non-growth capital investment for the fiscal year the rate will be in effect. For the purposes of calculating this rate, annual Non-growth Capital Spending will be reduced by the annual depreciation expense net of depreciation expense attributable to general plant that was approved by the Commission in the Company's most recent distribution rate proceeding adjusted, if appropriate, by later proceedings related to capital,

DISTRIBUTION ADJUSTMENT CLAUSE

resulting in Adjusted Non-growth Capital Spending. In its next base rate proceeding, all accumulated Gas ISR investments will be eligible for inclusion in rate base recovery through the new base rates set in that future proceeding.

Cumulative Revenue Requirements will reflect Adjusted Cumulative Non-Growth Capital Spending, associated retirements, cost of removal, accumulated depreciation, accumulated deferred taxes, property taxes, depreciation expense and include the return on the current [fiscal] year's average rate base associated with the cumulative Capital Spending at a rate equal to the pre-tax weighted average cost of capital, as approved by the Commission in the most recent distribution rate proceeding. The Company shall allocate the Cumulative Revenue Requirements to its rate classes based on the rate base allocation approved by the Commission in the Company's most recent distribution rate proceeding. Any other costs, including Operation and Maintenance expenses mutually agreed upon by the Division and the Company shall be allocated on a per unit basis.

**3.4.3 Infrastructure, Safety
and Reliability Factor:
Reconciliation Mechanism:**

The Company shall include an annual reconciliation mechanism associated with the ISR Factor designed to reconcile the actual Cumulative Revenue Requirements and any associated costs approved for recovery through this mechanism to the actual billed revenue for the prior fiscal year. Beginning in 2012, by August 1 of each year, as supplemented on September 1 of each year, as part of its Distribution Adjustment Charge filing, the Company shall submit a reconciliation factor (either positive or negative) related to the ISR Factor recoveries and actual costs to take effect annually for the twelve months beginning November 1 each year.

Georgia
Atlanta Gas Light Order and Stipulation

COMMISSIONERS:

ROBERT B. BAKER, JR., CHAIRMAN
DAVID N. BAKER
BOB DURDEN
LAUREN "BUBBA" McDONALD, JR.
STAN WISE



DEBORAH K. FLANNAGAN
EXECUTIVE DIRECTOR

HELEN O'LEARY
EXECUTIVE SECRETARY

Georgia Public Service Commission

47 TRINITY AVENUE, S.W.
ATLANTA, GEORGIA 30334-5701
(404) 656-4501 OR 1 (800) 282-5813
FAX: (404) 656-2341 www.psc.state.ga.us

DOCKET# 8516
DOCUMENT# 25629

BEFORE THE GEORGIA PUBLIC SERVICE COMMISSION STATE OF GEORGIA

RECEIVED

SEP 09 1998

EXECUTIVE SECRETARY
G.P.S.C.

DOCKET NO. 8516-U

IN THE MATTER OF)
)
ATLANTA GAS LIGHT COMPANY)
also d/b/a GEORGIA NATURAL GAS)
COMPANY and SAVANNAH GAS)
COMPANY)

ORDER ACCEPTING STIPULATION

On July 8, 1998, the Georgia Public Service Commission ("Commission") held a hearing to determine what action to take with respect to the attached Stipulation proposed by the Atlanta Gas Light Company and the Adversary Staff of the Georgia Public Service Commission (also collectively referred to herein as "Parties") in the above-referenced docket.

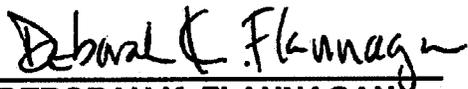
The Commission, having had the opportunity to review the proposed terms of this Stipulation and question a panel of witnesses presented by the Parties in support thereof, hereby:

ORDERS that the attached Stipulation be adopted as a resolution of the issues raised in the Rule Nisi issued on January 6, 1998, in Docket No. 8516-U.

IT IS FURTHER ORDERED that any motion for reconsideration, rehearing or oral argument or any other motion shall not stay the effective date of this Order, unless otherwise specified by the Commission; and

IT IS FURTHER ORDERED that jurisdiction over this matter is expressly retained for the purpose of entering such further Order(s) as the Commission may deem just and proper.

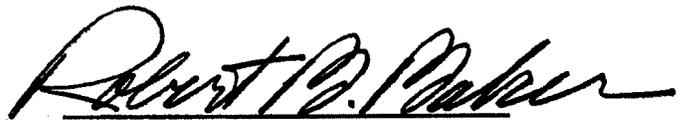
The above by action of the Commission in Administrative Session on July 21, 1998



DEBORAH K. FLANNAGAN
ASSISTANT EXECUTIVE SECRETARY

8/31/98

DATE



ROBERT B. BAKER, JR.
CHAIRMAN

9-3-98

DATE

**BEFORE THE GEORGIA PUBLIC SERVICE COMMISSION
STATE OF GEORGIA**

IN THE MATTER OF:

**ATLANTA GAS LIGHT COMPANY
also d/b/a GEORGIA NATURAL
GAS COMPANY and SAVANNAH GAS
COMPANY**

Respondent.

*
* **DOCKET NO. 8516-U**
*
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*
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*
*

STIPULATION

The Pipeline Safety Unit Staff of the Georgia Public Service Commission (also referred to herein as "Staff") and Atlanta Gas Light Company also d/b/a Georgia Natural Gas Company and Savannah Gas Company (also referred to herein as "Company"), by and through its Vice President - Operations and Engineering, Michael D. Hutchins, having reached a mutually agreeable settlement of all matters between them, the following stipulation is entered pursuant to the provisions of the Administrative Procedure Act, O.C.G.A. § 50-13-13(a)(4). The Company agrees to full performance of the terms and conditions of this Stipulation. The Company and Staff agree that the non-performance provisions of this agreement provide for an equitable remedy for the Commission to levy in the event of non-performance as outlined in Section 15, Non-Performance Penalty. Approval of this Stipulation by the Georgia Public Service Commission shall in no way be construed as

Should any of the terms and conditions of this Stipulation be violated by the Company, the Staff will immediately notify the Commission of such violation(s) and after notice and hearing, a determination shall be made by the Commission whether the Company has breached its obligation under this Stipulation. In the event that the Company is found to be in violation of the Stipulation as set forth in subparagraphs 15(1) and 15(2), the Company shall pay the non-performance penalty within thirty (30) days of an Order being issued by the Commission.

16.

ANNUAL PROGRESS AND COST RECOVERY FILING

The Company is to make an annual filing of its progress on the Pipe Replacement Program, including all costs incurred and cost savings of the replacement program. The Company shall be entitled to the recovery of all net prudent costs of the performance of this Stipulation. Should the regulatory process then in place fail to recover the cost to the Company for performance of its obligations pursuant to this Stipulation, the Company may file for recovery as part of the annual filing above. The Company may recover these costs only once, and must demonstrate in such a filing that all costs, which have been identified and included in the filing, have not been recovered by the Company. The filing must include as a credit any cost savings

resulting from the replacement program. The Company must provide the Commission Staff access to its books of account and other records for verification of the pipe replacement program implementation and other Stipulation items before the Commission will hear any request for cost recovery. The Staff shall submit an audit report concerning the Staff's findings relative to the Company's cost recovery filing. After receipt and acceptance of this report the Commission may issue a procedural and scheduling order to resolve the matter or may accept the audit report without further proceedings if no Commission action is required. The cost recovery will be designed to complement and supplement the regulatory process then in place. This recovery will be through a surcharge to then existing rates. The Company shall be allowed to include capital cost of all property additions and improvements minus such amounts already included in the Commission's last determination of the Company's revenue requirements. Capital cost shall be defined as:

1. The return on capital which shall be the most recent overall rate of return set by the Commission for the Company multiplied by;
2. (Net plant additions and improvements) less (the accumulated depreciation on the net property additions, accumulated deferred income taxes, and any other items

normally associated with the rate base calculation as determined by the Commission in the Company's last revenue requirement determination).

3. The result of this calculation shall be the income required for the return on capital.
4. The Company shall be allowed to recover depreciation expense calculated at the latest Commission approved rate for like items of plant calculated on the net property additions and improvements, fully adjusted to reflect the impact on other items of the addition of depreciation expense to revenue requirements.

The above capital cost shall apply to only those costs properly capitalized in the plant accounts as determined by the Commission's Rule 515-3-1-.10 Accounting Requirements (i.e. FERC USOA 18CFR511 et. Seq.)

The Company will also be allowed any net current expense not recovered above or in previous revenue requirement determinations by the Commission which is directly assignable and identifiable with the implementation of this Stipulation, less any cost savings resulting from the replacement program subject to the "only once recovery rule" contained within this Stipulation. Any of these expenses shall also be fully adjusted to reflect the impact on other items of these expenses, including time value of money for

any lead or lag in recovery calculated according to the most recent method approved by the Commission, to revenue requirements.

The amount of the surcharge shall be determined by adding or subtracting, as may be appropriate, the summation of the depreciation expense, cost savings and other expense items adjusted to reflect the income impact of these expenses to the income required. This shall be the income deficiency (or surplus). The income deficiency (or surplus) shall be adjusted for the effect of items directly associated with revenue, such as are found in the calculation of an expansion factor, as that term is used in the Commission's revenue requirements calculation. The results of this calculation shall be the amount of the surcharge, either positive or negative.

The last year's surcharge will be in the form of a change to base rates equal to the surcharge. The surcharge will end in the year in which the Company has fully performed the requirements of this Stipulation, including, but not limited to, the replacement program. The Commission will increase (or decrease as appropriate) the base rates by the amount of the surcharge for that year. Thereafter, any future rate recovery will be through the rate making process then in place.

**New Jersey
South Jersey Gas Order and Stipulation**



Agenda Date: 03/30/11
Agenda Item: LSD

STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center, Suite 801
Newark, NJ 07102
www.nj.gov/bpu/

ENERGY

IN THE MATTER OF THE ANNUAL FILING OF SOUTH JERSEY GAS COMPANY TO ADJUST ITS CAPITAL INVESTMENT RECOVERY TRACKER ("CIRT") AND FOR APPROVAL OF AN EXTENSION OF THE CIRT PURSUANT TO N.J.S.A. 48:2-21 AND N.J.S.A. 48:2-21.1)	DECISION AND ORDER APPROVING STIPULATION
)	
)	
)	DOCKET NO. GR10100765
)	
And)	
)	
IN THE MATTER OF THE PETITION OF SOUTH JERSEY GAS COMPANY FOR APPROVAL OF INCREASED BASE TARIFF RATES AND CHARGES FOR GAS SERVICE AND OTHE TARIFF REVISION)	DOCKET NO. GR10010035

Ira G. Megdal, Esq. and Daniel J. Bitonti, Esq., Cozen O'Connor, Counsel for Petitioner South Jersey Gas Company

Felicia Thomas-Friel, Esq., Deputy Rate Counsel, for the New Jersey Division of Rate Counsel (**Stefanie A. Brand, Esq.**, Director)

Alex Moreau and Anne Marie Shatto, Deputy Attorneys General, for the Staff of the New Jersey Board of Public Utilities (**Paula T. Dow**, Attorney General of New Jersey)

BY THE BOARD:

BACKGROUND

In an effort to maintain the reliability and safety of its delivery system, while providing stimulus to New Jersey's economy, on January 20, 2009, South Jersey Gas Company ("SJG" or "Company") petitioned the New Jersey Board of Public Utilities ("BPU" or "Board"), in Docket No. GO09010051, for approval to accelerate the timing of certain infrastructure projects ("2009 Filing"). SJG proposed to expedite the planning and construction work related to capital projects that had been in the development stages for future implementation through the Capital Investment Recovery Tracker ("CIRT").

More specifically, according to the Company, these CIRT projects were incremental to its planned fiscal 2009, 2010 and 2011 capital investment programs. Additionally, expediting the work on

these projects would assist in mitigating the negative impact of the recession by creating additional job opportunities in the State while enhancing service and reliability for SJG's existing customers. In the 2009 Filing, SJG also requested approval of a proposed method for recovering the investment costs associated with the CIRT projects.

On April 16, 2009, the BPU issued an Order (the "April 16 Order") which approved a stipulation permitting SJG to proceed with the design and construction of eleven CIRT projects ("Qualifying Projects"). On November 6, 2009, the Company submitted its first Annual Filing in Docket No. GR09110907, and on December 17, 2009, the Board approved, effective January 1, 2010, the stipulation for provisional CIRT rates which had been entered into by SJG, the Division of Rate Counsel ("Rate Counsel") and Board Staff.

In accordance with the Stipulation in Docket No. GR09110907, and as approved by Board Order dated September 17, 2010, in the Company's base rate case (Docket No. GR10010035) ("Base Rate Case"), certain Qualifying Projects were rolled into the Company's rate base. Additionally, in the Base Rate Case, the Parties agreed that SJG would be permitted to continue the recovery of approximately \$24.1 million of Qualifying Projects. These Qualifying Projects remained in the CIRT, subject to a prudency review of costs associated with these projects in the forthcoming Phase II portion of the Base Rate Case.

The Current Filing (CIRT)

Based on the continued need to stimulate the economy and further foster job retention or creation in SJG's service territory, the Company sought BPU approval to continue the acceleration of incremental capital spending for additional capital projects. Accordingly, on October 22, 2010, SJG made a filing (Docket No. GR10100765) for approval of an extension of the CIRT including eleven proposed projects with overall anticipated construction costs of \$150 million over a period of three (3) years.

On March 28, 2011, SJG filed an amended petition reflecting a total of nine (9) Qualified Projects with an associated investment of \$60.3 million, (CIRT II). The proposed Qualified Projects are described below:

Projects [3/28/11 AMENDED PETITION]				Duration	
Name	Type	Scope	Cost (\$Mil.)	Start	Complete
Accelerated Bare Steel/Cast Iron Main & Service Line Replacements	Replacements	82 miles/3736 svcs	\$28.36	Fall 2011	Fall 2012
12" Atlantic City Pipeline	New pipeline	2.1 miles	\$3.50	Spring 2011	Sum. 2011 Winter 2012
24" Black Horse Pike to Delilah Rd	New pipeline	2.7 miles	\$8.00	Spring 2011	Spring 2011
Absecon Island Ventnor Ave Feeder Main	Replacements	4.5 miles	\$9.36	Spring 2011	Fall 2012 Winter 2011
Distribution District Regular Upgrades	Upgrade	8 regulators	\$1.70	Spring 2011	Spring 2011
LNG Tank Foundation, Impoundment Dike, Security & Vapor Fence Safety Upgrades	Upgrade	Various	\$1.20	Spring 2011	Fall 2011 Winter 2011
Transmission System Retrofits & Valving	Upgrade	Various	\$2.55	Spring 2011	Spring 2011
Water Crossing Replacements at Oldman's Creek	Replacements	One site	\$0.50	Spring 2011	Fall 2011
Absecon Island Ventnor Ave Lateral Mains	Replacements	3.5 miles	\$5.08	Spring 2011	Fall 2011
			\$60.3		

Two public hearings were held on January 13, 2011 in Voorhees. No members of the public attended.

After engaging in settlement negotiations, on March 29, 2011 representatives of SJG, Board Staff, and Rate Counsel (collectively, the "Parties"), executed a stipulation¹ ("Stipulation") that provides for the following:

- 1) SJG represents that the nine CIRT II projects identified in Appendix A will assist SJG in providing safe, adequate and proper service to its customers, are incremental in nature and will continue to create jobs in New Jersey.
- 2) SJG expects the design and construction work associated with the CIRT II Qualifying Projects will generate 269 direct jobs within the State.
- 3) The \$60.3 million in estimated costs, excluding AFUDC, are to be recovered through the Company's base rates, subject to review.
- 4) The Company will endeavor to use New Jersey contractors and estimates that design and construction work on these Qualifying Projects will generate approximately 269 direct jobs in its service territory.
- 5) Work on the Qualifying Projects will commence as soon as practicable following the date of a Board Order in this proceeding, and no later than December 31, 2011.
- 6) Any costs incurred after October 31, 2012, will be deemed outside of the CIRT II Program, and considered for rate treatment in the Company's next base rate case. CIRT II projects that are placed into service after October 31, 2012 will begin accruing depreciation and stop AFUDC when they are placed into service and will not accrue a deferred return.
- 7) Any project eliminations or substitutions will only be made with Board approval, given signatory parties consent.
- 8) The Company agrees to make a CIRT filing in June 2011 that proposes a base rate change to be effective in October 2011, coincident but separate from the Company's annual BGSS filing, and seek recovery of the remaining CIRT program costs and the CIRT II program costs up to that point.
- 9) There is no change in rates at this time. The Company is to seek recovery of the remaining CIRT II program costs through an October 2012 CIRT filing.
- 10) CIRT II-related base rate adjustments will include a revenue requirement that reflects a pre-tax adjusted weighted-average cost of capital rate of 11.63 percent.
- 11) The CIRT II base rate adjustments will include depreciation expense for Qualifying Projects placed into service prior to August 31, 2011 for the June 2011 filing, and prior to October 31, 2012 for the October 2012 filing, based on a composite depreciation rate of 2.24 percent.
- 12) The Company agrees that it will exclude any incremental operation and maintenance expenses in the CIRT II filings.
- 13) The details relating to the agreed upon accounting for Construction Work In Progress and AFUDC are as specified in paragraphs 11, 14 and 15 of the Stipulation.
- 14) SJG will submit the minimum filing requirements as set forth in Appendix D of this Stipulation in each annual CIRT filing.
- 15) The Company will recover the costs approved in each of the CIRT II filings on a volumetric basis utilizing the weather-normalized forecast for the up-coming annual October through September BGSS period.

¹Although summarized in this Order, the detailed terms of the Stipulation control, subject to the findings and conclusions of this Order.

- 16) The Company will provide BPU staff and Rate Counsel with quarterly progress reports as specified in paragraph 22 of the Stipulation.
- 17) SJG's annual CIRT II base rate adjustment filing will be subject to review by the Board Staff and Rate Counsel, prior to the final approval and issuance of an Order by the Board establishing that the proposed rates are just and reasonable.
- 18) At the conclusion of the filing to review the June 2012 filing, the reopened Base Rate Case will close.
- 19) Should SJG receive any federal, state, county or municipal funds or credits directly applicable to the CIRT II projects, the Company will use that funding as a benefit to customers by offsetting the costs for which recovery is sought through the CIRT II filing, to the extent permitted by law.

DISCUSSION AND FINDING

In the April 16 Order, the Board recognized that the acceleration of utility infrastructure projects and the treatment of capital expenses on an expedited schedule outside the purview of a rate case is not part of the normal course of utility regulation. However, based on economic conditions at that time, the Board found that it was appropriate and within the Board's authority to allow infrastructure projects which had already been researched and planned by the companies to be accelerated, and that enhanced investments in infrastructure would both increase reliability and promote employment. The Board continues to find those conclusions valid.

Now, as then, the Board takes notice of the fact that the financial markets remain volatile, affecting the utilities' ability to fund incremental infrastructure projects within the usual framework which requires that capital expenditures be recovered through a rate case only after projects are completed. N.J.S.A. 48:2-21. It is within a rate case that the property that is used and useful in the utility's provision of service is evaluated, and the expenses that can become components of just and reasonable rates are determined. In re Investigation of Tele. Cos., 66 N.J. 476 (1975). These difficult economic times continue to require creative responses that respect the law but adapt to extraordinary circumstances. In the past, the Board has found that it has the power to act to meet such challenges. N.J.S.A. 48:2-13; In re Implementation of the Two Bridges/Ramapo Water Diversion Project, BPU Docket No. 8011-870 (March 17, 1981). The Board continues to have that power.

Looking at the proposed infrastructure program extension, the Board is persuaded that the CIRT II, if successfully executed, will both increase employment in the State and enhance the reliability of SJG's distribution system. Only capital projects which enhance the reliability, safety and security of a utility's distribution system are eligible as Qualifying Projects. These are projects originally scheduled for future years which can be brought forward into the 2011--2012 time period because they have already been researched and planned by the Company. In the absence of this program, most of the projects would be completed, but only in future years.

Therefore, after review of the Stipulation and exhibits, the Board HEREBY FINDS the Stipulation to be reasonable, in the public interest, and in accordance with law, and HEREBY APPROVES the attached Stipulation in its entirety and HEREBY INCORPORATES its terms and conditions as though fully set forth herein.

DATED: 3/31/11

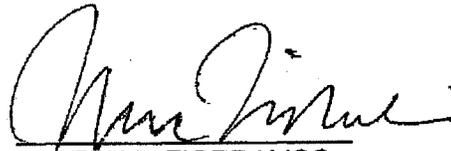
BOARD OF PUBLIC UTILITIES
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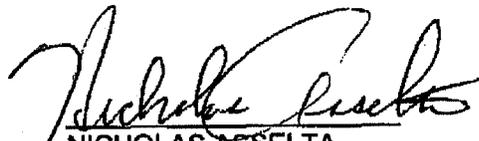
LEE A. SOLOMON
PRESIDENT



JEANNE M. FOX
COMMISSIONER



JOSEPH L. FIORDALISO
COMMISSIONER



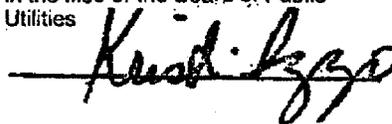
NICHOLAS ASSELTA
COMMISSIONER

ATTEST:



KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities



13. The Company shall make two filings in order to recover the revenue requirements associated with CIRT II investments in base rates through the CIRT Rate Adjustment. The first CIRT Rate Adjustment shall be filed with the Board on or before June 30, 2011 to be effective October 1, 2011. This filing will be made coincident with but separate from its annual BGSS filing. The June 2011 filing will include the remaining CIRT I investment costs and CIRT II investment costs incurred prior to the resolution of that case. The second CIRT Rate Adjustment shall be filed with the Board on or before October 31, 2012 to be effective January 1, 2013. If South Jersey submits a base rate case filing with the BPU prior to the resolution of either upcoming Annual Filing, any pending request for rate relief associated with the CIRT I and CIRT II Qualifying Projects will be withdrawn.

14. The first CIRT Rate Adjustment shall establish an incremental adjustment to base rates based on the revenue requirements associated with the Company's investments in all CIRT Qualifying Projects as of August 31, 2011. Specifically, the revenue requirements shall reflect all CIRT II Qualifying Project investments that are reflected in plant in service and in CWIP for accounting purposes and all associated capitalized AFUDC determined in accordance with this Stipulation. The first CIRT Rate Adjustment shall provide the Company with the following revenue requirement recovery:

- (a.) Rate of return on all Qualifying Project Investments as adjusted for accumulated depreciation and accumulated deferred income taxes at the Pre-Tax Adjusted weighted-average cost of capital rate of 11.63%.
- (b.) Depreciation expense recovery at an annual composite depreciation rate of 2.24% for all CIRT investment that is in service as of August 31, 2011.

(c.) A revenue factor to reflect a gross-up for uncollectibles, PUA and New Jersey sales taxes of 1.07834.

(d.) The calculation of the revenue requirement shall be determined in the same manner as the example calculations set forth in Appendix B.

15. The second CIRT Rate Adjustment shall establish an incremental adjustment to base rates based on the revenue requirements associated with the Company's incremental investments in all CIRT II Qualifying Projects as of October 31, 2012. Specifically, the revenue requirements shall reflect CIRT II Qualifying Project investments that are reflected in plant in service and in CWIP for accounting purposes and all associated capitalized AFUDC determined in accordance with this Stipulation above the investment level reflected in the first CIRT Rate Adjustment. The second CIRT Rate Adjustment shall provide the Company with the following revenue requirement recovery:

(a.) Rate of return on all Qualifying Project Investments as adjusted for accumulated depreciation and accumulated deferred income taxes at the Pre-Tax Adjusted weighted-average cost of capital rate of 11.63%. Accumulated depreciation shall also be adjusted for an additional full year of depreciation expense associated with the Qualifying Project investments in service as of August 31, 2011.

(b.) Depreciation expense recovery at an annual composite depreciation rate of 2.24% for all CIRT investment that has been placed into service between August 31, 2011 and October 31, 2012.

(c.) A revenue factor to reflect a gross-up for uncollectibles, PUA and New Jersey sales taxes of 1.07834.

(d.) The calculation of the revenue requirement shall be determined in the same manner as the example calculations set forth in Appendix C.

16. The revenue requirements associated with the first and second CIRT Rate Adjustments will be recovered through an equal per-therm increase to the distribution charge of all firm rate classes. The increment to base rates shall be calculated on the basis of the billing determinants used to establish current base rates as set forth in Schedule B to the Board-approved Stipulation dated September 17, 2010 in the Rate Case. The margin revenue factors set forth in the Company's CIP and TAC tariffs will be updated to match the change to the base rates.

17. Any remaining CIRT II Qualifying Project investments that are not actually expended by October 31, 2012 will not receive recovery pursuant to the terms of this Stipulation. The Company may make a separate petition for recovery in a subsequent base rate case or other proceeding deemed appropriate by the Board. Each CIRT II Qualifying Project that is not in service by October 31, 2012, shall cease accruing AFUDC under the CIRT II cost recovery mechanism and shall commence accruing depreciation expense upon the date that the Qualifying Project is placed into service.

18. The Rate Case docket remains open for resolution of CIRT I issues in a Phase II proceeding in addition to CIRT Rate Adjustments related to CIRT II. In the Phase II, all remaining CIRT issues will be addressed and it is contemplated that CIRT I projects as defined in Schedule B of the Board-approved stipulation in the Rate Case will be rolled into rate base, effective October 1, 2011. In the Phase II, a prudence review of the costs associated with the CIRT I projects may be conducted. CIRT I Qualifying Projects will continue to be treated as provided in Board-approved stipulation in the Rate Case.

Kansas
K.S.A. §§ 66-2202, 2204



LEXSTAT KAN. STAT. ANN. 66-2202

LexisNexis (R) KANSAS ANNOTATED STATUTES

*** THIS DOCUMENT IS CURRENT THROUGH THE 2008 SUPPLEMENT ***
*** ANNOTATIONS CURRENT THROUGH AUGUST 1, 2008 ***

CHAPTER 66. PUBLIC UTILITIES
ARTICLE 22. GAS SAFETY AND RELIABILITY POLICY ACT

GO TO KANSAS STATUTES ARCHIVE DIRECTORY

K.S.A. § 66-2202 (2008)

66-2202. Definitions.

For the purposes of this act:

- (a) "GSRS" means gas system reliability surcharge;
- (b) "appropriate pretax revenues" means the revenues necessary to produce net operating income equal to:
 - (1) The natural gas public utility's weighted cost of capital multiplied by the net original cost of eligible infrastructure system replacements, including recognition of accumulated deferred income taxes and accumulated depreciation associated with eligible infrastructure system replacements which are included in a currently effective GSRS;
 - (2) recover state, federal and local income or excise taxes applicable to such income;
 - (3) recover depreciation expenses;
- (c) "commission" means the state corporation commission;
- (d) "eligible infrastructure system replacement" means natural gas public utility plant projects that:
 - (1) Do not increase revenues by directly connecting the infrastructure replacement to new customers;
 - (2) are in service and used and required to be used; and
 - (3) were not included in the natural gas public utility's rate base in its most recent general rate case;
- (e) "natural gas public utility" shall have the same meaning respectively ascribed thereto by subsection (a) of *K.S.A. 66-1,200*, and amendments thereto;
- (f) "natural gas utility plant projects" may consist only of the following:
 - (1) Mains, valves, service lines, regulator stations, vaults and other pipeline system components installed to comply with state or federal safety requirements as replacements for existing facilities;

K.S.A. § 66-2202

(2) main relining projects, service line insertion projects, joint encapsulation projects and other similar projects extending the useful life or enhancing the integrity of pipeline system components undertaken to comply with state or federal safety requirements; and

(3) facility, relocations required due to construction or improvement of a highway, road, street, public way or other public work by or on behalf of the United States, this state, a political subdivision of this state or another entity having the power of eminent domain provided that the costs related to such projects have not been reimbursed to the natural gas public utility;

(g) "GSRS revenues" means revenues produced through a GSRS exclusive of revenues from all other rates and charges.

L. 2006, ch. 99, § 2; July 1.



LEXSTAT KAN. STAT. ANN. 66-2204

LexisNexis (R) KANSAS ANNOTATED STATUTES

*** THIS DOCUMENT IS CURRENT THROUGH THE 2008 SUPPLEMENT ***
*** ANNOTATIONS CURRENT THROUGH AUGUST 1, 2008 ***

CHAPTER 66. PUBLIC UTILITIES
ARTICLE 22. GAS SAFETY AND RELIABILITY POLICY ACT

GO TO KANSAS STATUTES ARCHIVE DIRECTORY

K.S.A. § 66-2204 (2008)

66-2204. GSRS charges; requirements; procedure; commission authority.

(a) At the time that a natural gas public utility files a petition with the commission seeking to establish or change a GSRS, it shall submit proposed GSRS rate schedules and its supporting documentation regarding the calculation of the proposed GSRS with the petition and shall serve commission staff and the citizens utility ratepayer board with a copy of its petition, its proposed rate schedules and its supporting documentation.

(b) (1) When a petition, along with any associated proposed rate schedules, is filed pursuant to the provisions of *K.S.A. 2008 Supp. 66-2202* through *66-2204*, and amendments thereto, the commission shall conduct an examination of the proposed GSRS;

(2) the staff of the commission shall examine information of the natural gas public utility to confirm that the underlying costs are in accordance with the provisions of *K.S.A. 2008 Supp. 66-2202* through *66-2204*, and amendments thereto, and to confirm proper calculation of the proposed charge. The staff shall submit a report regarding its examination to the commission not later than 60 days after the petition is filed. No other revenue requirement or ratemaking issues may be examined in consideration of the petition or associated proposed rate schedules filed pursuant to the provisions of *K.S.A. 2008 Supp. 66-2202* and *66-2204*, and amendments thereto;

(3) the commission may hold a hearing on the petition and any associated rate schedules and shall issue an order to become effective not later than 120 days after the petition is filed; and

(4) if the commission finds that a petition complies with the requirements of *K.S.A. 2008 Supp. 66-2202* through *66-2204*, and amendments thereto, the commission shall enter an order authorizing the natural gas public utility to impose a GSRS that is sufficient to recover appropriate pretax revenue, as determined by the commission pursuant to the provisions of *K.S.A. 2008 Supp. 66-2202* through *66-2204*, and amendments thereto.

(c) A natural gas utility may effectuate a change in its rate pursuant to the provisions of this section no more often than once every 12 months.

(d) In determining the appropriate pretax revenue, the commission shall consider only the following factors:

(1) The net original cost of eligible infrastructure system replacements. The net original cost shall be defined as the original cost of eligible infrastructure system replacements less associated retirements of existing infrastructure;

K.S.A. § 66-2204

- (2) the accumulated deferred income taxes associated with the eligible infrastructure system replacements;
 - (3) the accumulated depreciation associated with the eligible infrastructure system replacements;
 - (4) the current state, federal and local income tax or excise rates;
 - (5) the natural gas public utility's actual regulatory capital structure as determined during the most recent general rate proceeding of the natural gas public utility;
 - (6) the actual cost rates for the natural gas public utility's debt and preferred stock as determined during the most recent general rate proceeding of the natural gas public utility;
 - (7) the natural gas public utility's cost of common equity as determined during the most recent general rate proceeding of the natural gas public utility;
 - (8) the current depreciation rates applicable to the eligible infrastructure system replacements; and
 - (9) in the event information pursuant to paragraphs (5), (6) and (7) are unavailable and the commission is not provided with such information on an agreed-upon basis, the commission shall utilize the average of the recommendations contained in the testimony submitted by the natural gas public utility and commission staff during the most recent general rate proceeding of the natural gas public utility to determine the capital structure, recommended cost rates for debt and preferred stock and recommended cost of common equity to determine the average weighted cost of capital.
- (e) (1) The monthly GSRS charge shall be allocated among the natural gas public utility's classes of customers in the same manner as costs for the same type of facilities was allocated among classes of customers in the natural gas public utility's most recent general rate proceeding. If that allocation is not available or determinable, the commission shall utilize the average of the recommendations contained in the testimony submitted by the natural gas public utility and the commission staff regarding class allocation of costs. A GSRS shall be charged to customers as a monthly fixed charge and not based on volumetric consumption. Such monthly charge shall not increase more than \$.40 per residential customer over the base rates in effect for the initial filing of a GSRS. Thereafter, each filing shall not increase the monthly charge more than \$.40 per residential customer over the most recent filing of a GSRS;
- (2) at the end of each twelve-month calendar period the GSRS is in effect, the natural gas public utility shall reconcile the differences between the revenues resulting from a GSRS and the appropriate pretax revenues as found by the commission for that period and shall submit the reconciliation and a proposed GSRS adjustment to the commission for approval to recover or refund the difference, as appropriate, through adjustments of the GSRS charge.
- (f) (1) A natural gas public utility that has implemented a GSRS pursuant to the provisions of *K.S.A. 2008 Supp. 66-2202 through 66-2204*, and amendments thereto, shall file revised rate schedules to reset the GSRS to zero when new base rates and charges become effective for the natural gas public utility following a commission order establishing customer rates in a general rate proceeding that incorporates in the utility's base rates, subject to subsections (h) and (i), eligible costs previously reflected in the currently effective GSRS;
- (2) upon the inclusion in a natural gas public utility's base rates subject to subsections (h) and (i) of eligible costs previously reflected in a GSRS, the natural gas public utility shall immediately thereafter reconcile any previously unreconciled GSRS revenues as necessary to ensure that revenues resulting from the GSRS match as closely as possible the appropriate pretax revenues as found by the commission for that period.
- (g) A natural gas public utility's filing of a petition or change to a GSRS pursuant to the provisions of *K.S.A. 2008 Supp. 66-2202 through 66-2204*, and amendments thereto, shall not be deemed to be a rate increase for purposes of *K.S.A. 66-117*, and amendments thereto.

K.S.A. § 66-2204

(h) Commission approval of a petition, and any associated rate schedules, to establish or change a GSRS pursuant to the provisions of *K.S.A. 2008 Supp. 66-2202 through 66-2204*, and amendments thereto, shall in no way be binding upon the commission in determining the ratemaking treatment to be applied to eligible infrastructure system replacements during a subsequent general rate proceeding when the commission may undertake to review the reasonableness and prudence of such costs. In the event the commission disallows, during a subsequent general rate proceeding, recovery of costs associated with eligible infrastructure system replacements previously included in a GSRS, the natural gas public utility shall offset its GSRS in the future as necessary to recognize and account for any such over collections.

(i) Nothing in this section shall be construed as limiting the authority of the commission to review and consider infrastructure system replacement costs along with other costs during any general rate proceeding of any natural gas public utility.

L. 2006, ch. 99, § 4; July 1.

Missouri
25 R.S.Mo. § 393.1009



1 of 1 DOCUMENT

LEXISNEXIS (TM) MISSOURI ANNOTATED STATUTES

*** CURRENT THROUGH THE 94TH GENERAL ASSEMBLY, SECOND REGULAR SESSION, 2008 ***
*** MOST CURRENT ANNOTATION MARCH 2, 2009 ***

TITLE 25. INCORPORATION AND REGULATION OF CERTAIN UTILITIES AND CARRIERS (Chs. 386-394)
CHAPTER 393. GAS, ELECTRIC, WATER, HEATING AND SEWER COMPANIES
INFRASTRUCTURE SYSTEM REPLACEMENT SURCHARGE FOR GAS CORPORATIONS

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

§ 393.1009 R.S.Mo. (2009)

§ 393.1009. Definitions

As used in *sections 393.1009 to 393.1015*, the following terms mean:

- (1) "Appropriate pretax revenues", the revenues necessary to produce net operating income equal to:
 - (a) The gas corporation's weighted cost of capital multiplied by the net original cost of eligible infrastructure system replacements, including recognition of accumulated deferred income taxes and accumulated depreciation associated with eligible infrastructure system replacements which are included in a currently effective ISRS; and
 - (b) Recover state, federal, and local income or excise taxes applicable to such income; and
 - (c) Recover all other ISRS costs;
- (2) "Commission", the Missouri public service commission;
- (3) "Eligible infrastructure system replacements", gas utility plant projects that:
 - (a) Do not increase revenues by directly connecting the infrastructure replacement to new customers;
 - (b) Are in service and used and useful;
 - (c) Were not included in the gas corporation's rate base in its most recent general rate case; and
 - (d) Replace or extend the useful life of an existing infrastructure;
- (4) "Gas corporation", every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, owning, operating, controlling, or managing any gas plant operating for public use under privilege, license, or franchise now or hereafter granted by the state or any political subdivision, county, or municipality thereof as defined in *section 386.020, RSMo*;

(5) "Gas utility plant projects" may consist only of the following:

(a) Mains, valves, service lines, regulator stations, vaults, and other pipeline system components installed to comply with state or federal safety requirements as replacements for existing facilities that have worn out or are in deteriorated condition;

(b) Main relining projects, service line insertion projects, joint encapsulation projects, and other similar projects extending the useful life or enhancing the integrity of pipeline system components undertaken to comply with state or federal safety requirements; and

(c) Facilities relocations required due to construction or improvement of a highway, road, street, public way, or other public work by or on behalf of the United States, this state, a political subdivision of this state, or another entity having the power of eminent domain provided that the costs related to such projects have not been reimbursed to the gas corporation;

(6) "ISRS", infrastructure system replacement surcharge;

(7) "ISRS costs", depreciation expense and property taxes that will be due within twelve months of the ISRS filing;

(8) "ISRS revenues", revenues produced through an ISRS exclusive of revenues from all other rates and charges.

HISTORY: L. 2003 H.B. 208

Nebraska
R.R.S. Neb. §§ 66-1866

66-1866. Jurisdictional utility; prior filing not subject to negotiations; application for infrastructure system replacement cost recovery charge; duties; public advocate; duties; commission; powers; change in rate schedules.

(1) This section applies to applications for an infrastructure system replacement cost recovery charge by a jurisdictional utility whose last general rate filing was not the subject of negotiations with affected cities as provided for in section 66-1838.

(2) When a jurisdictional utility governed by this section files an application with the commission seeking to establish or change any infrastructure system replacement cost recovery charge rate schedules, it shall submit to the commission with the application proposed infrastructure system replacement cost recovery charge rate schedules and supporting documentation regarding the calculation of the proposed infrastructure system replacement cost recovery charge rate schedules, including (a) a list of eligible projects, (b) a description of the projects, (c) the location of the projects, (d) the purpose of the projects, (e) the dates construction began and ended, (f) the total expenses for each project at completion, and (g) the extent to which such expenses are eligible for inclusion in the calculation of the infrastructure system replacement cost recovery charge.

(3)(a) When an application, along with any associated proposed rate schedules and documentation, is filed pursuant to subsection (2) of this section, the public advocate shall conduct an examination of the proposed infrastructure system replacement cost recovery charge rate schedules.

(b) The public advocate shall cause an examination to be made of information regarding the jurisdictional utility to confirm that the underlying costs are in accordance with the State Natural Gas Regulation Act and to confirm proper calculation of the proposed infrastructure system replacement cost recovery charge rates and rate schedules. The commission shall require a report regarding such examination to be prepared and filed with the commission not later than sixty days after the application is filed. No other revenue requirement or ratemaking issue shall be examined in consideration of the application or associated proposed rate schedules filed pursuant to the act unless the consideration of such affects the determination of the validity of the proposed infrastructure system replacement cost recovery charge rate schedules.

(c) The commission shall hold a hearing on the application and any associated rate schedules at which the public advocate shall present his or her report and shall act as trial staff before the commission. The commission shall issue an order to become effective not later than one hundred twenty days after the application is filed, except that the commission may, for good cause, extend such period for an additional thirty days.

(d) If the commission finds that an application complies with the requirements of the act, the commission shall enter an order authorizing the jurisdictional utility to impose an infrastructure system replacement cost recovery charge rate that is sufficient to recover appropriate pretax revenue, as determined by the commission pursuant to the act.

(4) A jurisdictional utility may apply for a change in any infrastructure system replacement cost recovery charge rate schedules approved pursuant to this section no more than once in any twelve-month period. Any such application for a change shall be pursued in the manner provided for in this

section.

(5) In determining the appropriate pretax revenue, the commission shall consider the following factors:

(a) The net original cost of eligible infrastructure system replacements. For purposes of this section, the net original cost means the original cost of eligible infrastructure system replacements minus associated retirements of existing infrastructure;

(b) The accumulated deferred income taxes associated with the eligible infrastructure system replacements;

(c) The accumulated depreciation associated with the eligible infrastructure system replacements;

(d) The state, federal, and local income tax or excise tax rates at the time of such determination;

(e) The jurisdictional utility's actual regulatory capital structure as determined during the most recent general rate proceeding of the jurisdictional utility;

(f) The actual cost rates for the jurisdictional utility's debt and preferred stock as determined during the most recent general rate proceeding of the jurisdictional utility;

(g) The jurisdictional utility's cost of common equity as determined during the most recent general rate proceeding of the jurisdictional utility; and

(h) The depreciation rates applicable to the eligible infrastructure system replacements at the time of the most recent general rate proceeding of the jurisdictional utility.

(6)(a) The monthly infrastructure system replacement cost recovery charge rate shall be allocated among the jurisdictional utility's classes of customers in the same manner as costs for the same type of facilities were allocated among classes of customers in the jurisdictional utility's most recent general rate proceeding. An infrastructure system replacement cost recovery charge rate shall be assessed to customers as a monthly fixed charge and not based on volumetric consumption. Such monthly charge shall not increase more than fifty cents per residential customer over the base rates in effect at the time of the initial filing for any infrastructure system replacement cost recovery charge rate schedules. Thereafter, each subsequent filing shall not increase the monthly charge by more than fifty cents per residential customer over that charge in existence at the time of the most recent application for any infrastructure system replacement cost recovery charge rate schedules.

(b) At the end of each twelve-month period during which the infrastructure system replacement cost recovery charge rate schedules are in effect, the jurisdictional utility shall reconcile the differences between the revenue resulting from the infrastructure system replacement cost recovery charge and the appropriate pretax revenue as found by the commission for that period and shall submit the reconciliation and any proposed infrastructure system replacement cost recovery charge rate schedules adjustment to the commission for approval to recover or refund the difference, as appropriate, through adjustments of the infrastructure system replacement cost recovery charge rate.

(7)(a) A jurisdictional utility that has implemented any infrastructure system replacement cost

general rate proceeding of such jurisdictional utility.

Source: Laws 2009, LB658, § 6.

Effective Date: August 30, 2009

CERTIFICATE OF SERVICE

RE: Implementation of Act 11 of 2012
Docket No. M-2012-2293611

I hereby certify that I have this day served a true copy of the foregoing document, Comments of the Office of Consumer Advocate, 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:

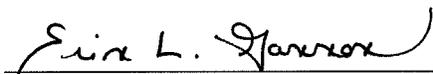
Dated this 31st day of May 2012.

SERVICE BY EMAIL & HAND DELIVERY

RA-Act11@pa.gov (via EMAIL ONLY)

David Screven
Louise Fink Smith
PUC Law Bureau
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17101
dscreven@pa.gov
finksmith@pa.gov

Erin Laudenslager
PUC Bureau of Technical Utility Services
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17101
elaudensla@pa.gov



Erin L. Gannon
Assistant Consumer Advocate
PA Attorney I.D. #83487
Email: EGannon@paoca.org

Shaun A. Sparks
Assistant Consumer Advocate
PA Attorney I.D. #87372
Email: SSparks@paoca.org

Counsel for
Office of Consumer Advocate
555 Walnut Street, 5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152

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