

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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

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

April 5, 2017

Rosemary Chiavetta, Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg.
400 North Street
Harrisburg, PA 17120

Re: Pennsylvania Public Utility Commission
v.
Philadelphia Gas Works
Docket No. R-2017-2586783

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Reply to PGW's Answer in Opposition to the Petition to Intervene of TURN *et al.* in the above-referenced proceeding.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

/s/ Christy M. Appleby
Christy M. Appleby
Assistant Consumer Advocate
PA Attorney I.D. # 85824
E-Mail: CAappleby@paoca.org

Attachment

cc: Honorable Christopher P. Pell, ALJ
Honorable Marta Guhl, ALJ
Certificate of Service

*231466

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission,	:	
	:	
v.	:	Docket No. R-2017-2586783
	:	
Philadelphia Gas Works	:	

REPLY OF THE OFFICE OF CONSUMER ADVOCATE
TO PHILADELPHIA GAS WORKS' ANSWER IN
OPPOSITION TO THE PETITION TO INTERVENE OF
THE TENANT UNION REPRESENTATIVE NETWORK
AND ALLIANCE OF SENIOR CITIZENS OF
GREATER PHILADELPHIA

The Pennsylvania Office of Consumer Advocate (OCA) submits this Reply to Philadelphia Gas Works' (PGW) Answer in Opposition to the Petition to Intervene of the Tenant Union Representative Network and Alliance of Senior Citizens of Greater Philadelphia (TURN *et al.*). The OCA hereby replies to one of the arguments raised by PGW in opposition to the TURN *et al.* Petition to Intervene.

I. INTRODUCTION

On March 24, 2017, TURN *et al.* filed its Petition to Intervene in this matter on behalf of low and moderate income customers. At the Prehearing Conference on March 29, 2017, PGW's counsel stated that PGW opposed the intervention of TURN *et al.* in this matter. Tr. 9. The ALJs established an expedited schedule for responses with an Answer due from the Company on March 31, 2017 and responses due on April 5, 2017. Tr. 11. On March 31, 2017, PGW filed its

Answer in Opposition to the Petition of TURN *et al.* to Intervene.¹ The OCA files this Answer in support of the Petition to Intervene of TURN *et al.*²

In its Answer, PGW opposes the Intervention of TURN *et al.* based in part upon the interventions of the Bureau of Investigation and Enforcement (BIE) and the OCA in this matter.

In its Answer, PGW provided that:

Importantly, the Petition filed by TURN *et al.* does not allege that TURN *et al.* has an interest that is not adequately represented by existing participants. Nor can it. BIE filed a Notice of Appearance, and is examining all issues relevant to the proposed rate increase on behalf of all consumers. BIE indicated in its Prehearing Memorandum that it intended to examine issues affecting senior citizens and low income customers. Similarly, OCA has filed a Complaint and is also examining all issues relevant to the proposed rate increase on behalf of all customers, with an emphasis on residential customers. It too stated in its prehearing memorandum that it intended to investigate issues affecting low income customers. Extensive discovery has already been served by BIE and OCA regarding the effect of the proposed rate increase on all customers, including moderate and low income individuals (such as tenants and/or senior citizens).

The basis for the standing rule is to protect a participant from expending resources to litigate against multiple parties on the same issues. Since BIE and OCA can adequately represent the interests of all residential customers, no justification exists for permitting the intervention of TURN *et al.*

Answer at 6-7 (footnotes and citations omitted). The OCA submits that any reliance on the Office of Consumer Advocate's participation in this proceeding as a basis for the Commission to deny TURN *et al.*'s Petition is in error. For the reasons set forth below, the OCA submits that the presence of the OCA in this proceeding may not be used as a basis upon which to prevent TURN *et al.*'s participation in this proceeding. Moreover, the OCA supports the Intervention of TURN *et al.* in this matter.

¹ On March 31, 2017, PGW also filed an Answer in Opposition to Petition to Intervene of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA).

² The OCA has also separately filed a Reply in Support of the Petition of CAUSE-PA to intervene.

II. ANSWER

Contrary to PGW's arguments in this matter, it is well-settled that the OCA's participation in this proceeding cannot serve as a bar to the participation of other interested parties. Section 309-6 of the Consumer Advocate's authorizing legislation specifies that: "Nothing contained herein shall in any way limit the right of any consumer to bring a proceeding before either the commission or a court." 71 P.S. § 309-6; see also, Barasch v. Pa. PUC, 546 A.2d 1296 (Pa. Commw. 1988), *modified on denial of reargument by*, 550 A.2d 257 (Pa. Commw. 1989) (notice to the Office of Consumer Advocate does not constitute notice to the customers of a utility.)

The Commonwealth Court has established that notice to the Office of Consumer Advocate does not constitute notice to customers and that customers, such as those represented by TURN *et al.*, should be afforded an opportunity to participate in the proceeding if they choose to do so. In South River Power Partners, L.P., v. Pennsylvania Public Utility Commission, 673 A.2d 422, 426 (Pa. Commw. 1996), the Court stated:

We must reject South River's contention that the active participation in this case by the Office of Consumer Advocate and various other parties eliminates the need for notice to be provided to West Penn's customers.

The Court continued:

While the majority of West Penn's customers would undoubtedly be content to allow the Office of Consumer Advocate to fight their battle for them, due process requires at a minimum that West Penn's customers be notified of the PUC hearing and be afforded an opportunity to participate in that proceeding if they so choose.

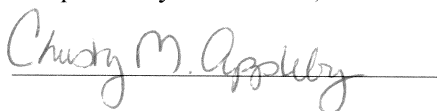
South River at 427. The OCA submits that parties may not be excluded from a proceeding for the reasons that have been advanced here, namely that the OCA already is participating in that same proceeding and has raised issues in its Prehearing Memorandum related to universal services issues.

The OCA submits that the interests represented by the OCA and TURN *et al.* are not identical. The OCA represents the interests of all of the Company's customers, both those who are low-income and those who are not. It would be incorrect to assume that the OCA's broad-based presence will adequately accommodate the specific concerns that TURN *et al.* seeks to address in this proceeding. While the OCA acknowledges that its interest and that of TURN *et al.* may overlap to some degree in this matter, as much can be said of numerous other parties to this proceeding. Likewise, the OCA and TURN *et al.* may also present different perspectives. The OCA submits that both its authorizing legislation and the appellate courts have clearly provided that the OCA's participation in a proceeding should never serve as a bar to customers or customer representatives such as TURN *et al.* from participation in the same proceeding. For the reasons set forth above, the OCA supports the participation of TURN *et al.* in this matter.

III. CONCLUSION

WHEREFORE, the Office of Consumer Advocate respectfully submits that PGW's Answer in Opposition to the Petition to Intervene of the Tenant Union Representative Network and Alliance of Senior Citizens of Greater Philadelphia may not be granted on the basis of the OCA's participation in the case.

Respectfully Submitted,



Darryl A. Lawrence
Senior Assistant Consumer Advocate
PA Attorney I.D. # 93682
E-Mail: DLawrence@paoca.org
Kristine E Marsilio
Assistant Consumer Advocate
PA Attorney I.D. #316479
E-Mail: KMarsilio@paoca.org
Christy M. Appleby
Assistant Consumer Advocate
PA Attorney I.D. # 85824
E-Mail: CAppleby@paoca.org
Harrison W Breitman
Assistant Consumer Advocate
PA Attorney I.D. # 320580
E-Mail: HBreitman@paoca.org

Counsel for:
Tanya J. McCloskey
Acting Consumer Advocate

Office of Consumer Advocate
5th Floor, Forum Place
555 Walnut Street
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152
DATE: April 4, 2017
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CERTIFICATE OF SERVICE

Pennsylvania Public Utility Commission	:	
	:	
v.	:	Docket No. R-2017-2586783
	:	
Philadelphian Gas Works	:	

I hereby certify that I have this day served a true copy of the foregoing documents, Reply of the Office of Consumer Advocate to PGW's Answer in Opposition to the Petition to Intervene of TURN *et al*, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 5th day of April 2017.

SERVICE BY E-MAIL and INTEROFFICE MAIL

Carrie B. Wright, Esquire
Erika L. McLain
Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

SERVICE BY E-MAIL and FIRST CLASS MAIL

Sharon Webb, Esquire
Office of Small Business Advocate
Commerce Building, Suite 202
300 North Second Street
Harrisburg, PA 17101

Charis Mincavage
Adeolu A. Bakare
Alessandra L. Hylander
McNees Wallace & Nurick LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166

Daniel Clearfield, Esquire
Carl Shultz, Esquire
Deanne M. O'Dell, Esquire
Eckert Seamans
213 Market Street
Harrisburg, PA 17101

Brandon J. Pierce
Philadelphia Gas Works
800 West Montgomery Avenue
Legal 4th Floor
Philadelphia, PA 19122

Patrick Cicero, Esq.
Elizabeth R. Marx, Esq.
Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101

Josie B. H. Pickens, Esq.
Robert W. Ballenger, Esq.
Jennifer Collins, Esq.
COMMUNITY LEGAL SERVICES, INC.
1410 West Erie Avenue
Philadelphia, PA 19140

/s/ Kristine E. Marsilio
Kristine E. Marsilio
Assistant Consumer Advocate
PA Attorney I.D. # 316479
E-Mail: KMarsilio@paoca.org

Harrison W Breitman
Assistant Consumer Advocate
PA Attorney I.D. # 320580
E-Mail: HBreitman@paoca.org

Darryl A. Lawrence
Senior Assistant Consumer Advocate
PA Attorney I.D. # 93682
E-Mail: DLawrence@paoca.org

Christy M. Appleby
Assistant Consumer Advocate
PA Attorney I.D. # 85824
E-Mail: CAppleby@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

Todd S. Stewart, Esq.
Whitney E. Snyder, Esq.
Kevin J. McKeon, Esq.
Hawke McKeon & Sniscak LLP
100 North Tenth Street
Harrisburg, PA 17101