



COMMUNITY LEGAL SERVICES  
OF PHILADELPHIA

April 5, 2017

VIA ELECTRONIC FILING

Ms. Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
400 North Street  
Harrisburg, PA 17120

RE: PA Public Utility Commission et al. V. Philadelphia Gas Works, Docket No. **R-2017-2586783**.

Dear Secretary Chiavetta:

Enclosed please find the Response to PGW's Answer in Opposition of Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (TURN *et al.*)'s Petition to intervene, on the above-captioned matter.

A copy of the enclosed Response is being served pursuant to the enclosed Certificate of Service. Please contact me with any questions or concerns.

Sincerely,

Jennifer Collins, Esq.

On behalf of Turn *et al.*

Enclosure

Cc: Service List

### CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of the Response of Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (TURN *et al.*) to PGW's Answer in Opposition of TURN *et al.*'s Petition to Intervene in the Matter of PA Public Utility Commission et al. V. Philadelphia Gas Works, Docket No. R-2017-2586783.

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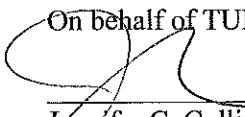
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On behalf of TURN *et al.*



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Dated: April 5, 2017

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

|  |   |                |
|--|---|----------------|
| Pennsylvania Public Utility Commission | : | R-2017-2586783 |
| Office of Consumer Advocate            | : | C-2017-2592092 |
| Office of Small Business Advocate      | : | C-2017-2593497 |
| v.                                     | : |                |
|  | : |                |
| Philadelphia Gas Works                 | : |                |

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**RESPONSE OF TENANT UNION REPRESENTATIVE NETWORK AND  
ACTION ALLIANCE OF SENIOR CITIZENS OF GREATER PHILADELPHIA TO  
PGW'S ANSWER IN OPPOSITION TO TURN *ET AL.*'S PETITION TO INTERVENE**

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The Tenant Union Representative Network (TURN) and Action Alliance of Senior Citizens of Greater Philadelphia (Action Alliance, together with TURN, collectively "TURN *et al.*"), through their attorneys at Community Legal Services, file this Response to Philadelphia Gas Works' (PGW) Answer in Opposition to TURN *et al.*'s Petition to Intervene. As set forth more fully below, TURN *et al.* have significant concerns about the multiple defects and inappropriate content included in PGW's Answer. TURN *et al.* submit that they have satisfied the Public Utility Commission's applicable regulations concerning intervention (see 52 Pa. Code §§ 5.71-5.76), and that their Petition to Intervene should be approved without further delay.<sup>1</sup> TURN *et al.* respectfully request the Commission grant TURN *et al.*'s Petition to Intervene.

**I. BACKGROUND**

On February 28, 2017, Philadelphia Gas Works (PGW) filed Supplement No. 100 to PGW's Gas Service Tariff – PA. P.U.C. No. 2 (Supplement No. 100) to become effective April

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<sup>1</sup> Approval of TURN *et al.*'s Petition to Intervene is soundly within the discretion of the Commission. City of Pittsburgh v. Pa. PUC, 33 A.2d 641 (Pa. Super. 1943). The Commission should exercise that discretion in favor of TURN *et al.*'s intervention, for the reasons set forth in this Response.

28, 2017, seeking a general rate increase calculated to produce \$70 million (11.6%) in additional annual revenues. PGW also filed a Petition for Waiver seeking waiver of the application of the statutory definition of the fully projected future test year (FPFTY) so as to permit PGW to use a FPFTY beginning on September 1, 2017 in this proceeding.

By Order entered March 16, 2017, the Pennsylvania Public Utility Commission (“Commission”) instituted an investigation into the lawfulness, justness, and reasonableness of the proposed rate increase. Pursuant to Section 1308(d) of the Public Utility Code, 66 Pa. C.S.A. § 1308(d), Supplement No. 100 to Philadelphia Gas Works’ Gas Service Tariff – PA. P.U.C. No. 2 was suspended by operation of law until November 28, 2017, unless permitted by Commission Order to become effective at an earlier date. In addition, the Commission ordered that the investigation include consideration of the lawfulness, justness and reasonableness of the respondent’s existing rates, rules, and regulations. The matter was assigned to the Office of Administrative Law Judge for the prompt scheduling of hearings culminating in the issuance of a Recommended Decision.

On March 17, 2017, Administrative Law Judges Christopher P. Pell and Marta Guhl (“the ALJs”) issued a Prehearing Conference Order. That Order scheduled a telephonic prehearing conference for Wednesday, March 29, 2017 at 10:00am. It also required parties to file Prehearing Memoranda by Monday, March 27, 2017.

TURN *et al.* filed their Petition to Intervene and Prehearing Memorandum on March 24, 2017. TURN *et al.* participated in the Prehearing Conference on March 29, 2017. During that Prehearing Conference, PGW announced its intention to oppose the intervention of CAUSE-PA and TURN *et al.* Pursuant to the ALJs Prehearing Order #1, issued March 30, 2017, PGW was required to file its written objections to the Petitions to Intervene of CAUSE-PA and TURN *et*

*al.* by the close of business on Friday, March 31, 2017. Prehearing Order #1, ¶ 4. PGW filed its Answer in Opposition to TURN *et al.*'s Petition to Intervene on March 31, 2017, containing those objections. Pursuant to the ALJs Prehearing Order #1, TURN *et al.* are required to file responses to PGW's objections to their Petition to Intervene by the close of business on April 5, 2017. Prehearing Order #1, ¶ 5. TURN *et al.* submit this Response in accordance with the ALJs instruction.

## II. RESPONSE OF TURN *ET AL.*

### A. PGW's Answer Violates Commission Regulations (52 Pa. Code §§ 1.35, 1.36)

PGW's Answer should be rejected because it is unverified and thus fails to satisfy the requirements of 52 Pa. Code § 1.36(a). Section 1.36(a) requires all "applications, petitions, formal complaints, motions, and answers thereto containing an averment of fact not appearing of record in the action or containing denial of fact" to be personally verified by a party or authorized officer or other authorized employee of the party if a corporation or association. 52 Pa. Code § 1.36(a). Verification means a written statement of fact supported by a signed oath or affirmation or made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities). PGW's Answer includes multiple averments of fact<sup>2</sup> and purports to deny facts<sup>3</sup> set forth in TURN *et al.*'s Petition to Intervene. Accordingly, PGW's Answer was required to be verified by an authorized officer of PGW but was not.<sup>4</sup> The Commission may reject a filing if it does not comply with any applicable statute, regulation or order of the Commission. 52 Pa. Code § 1.38. PGW's failure to provide the required verification, combined

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<sup>2</sup> PGW's Answer includes multiple factual averments. A couple of examples include: The impact of the proposed rate increase on tenants and seniors is "no different than the Commission's determination of whether the proposed rates are just and reasonable for residential customers in general" (PGW Answer at 5); "The low income customers rates that TURN *et al.* seek to represent will not be affected by the rate increase" (PGW Answer at 5).

<sup>3</sup> See Answer at ¶¶ 4, 5, 6, "9 to 11."

<sup>4</sup> See PGW Answer to TURN *et al.* Petition to Intervene.

with its decisions to selectively oppose the intervention of low income representatives in this rate case, warrant striking PGW's Answer in this proceeding. Absent verification TURN *et al.* are unable to determine who at PGW purports to stand behind and attest to the truthfulness of the factual statements in PGW's answer.<sup>5</sup>

Troublingly, internal inconsistencies, unsupported arguments, unverified and factually inaccurate statements, and apparent reliance upon internet and/or third party sources for information permeate PGW's Answer. Moreover, PGW's Answer attempts to belittle and besmirch TURN *et al.*, through mischaracterization and unfounded accusation. Finally, TURN *et al.* observe that at least one segment of PGW's Answer appears to have been duplicated, almost verbatim, from a November 12, 2010 Answer of PPL Electric Utilities Corporation to a Petition to Intervene of the Pennsylvania Communities Organizing for Change.<sup>6</sup> Given the specious arguments and unverified allegations in PGW's Answer, TURN *et al.*, submit that PGW's Answer presents glaring violations of 52 Pa. Code § 1.35. Section 1.35 of the Commission's regulations requires pleadings, submittals and other documents to be signed by a party or the party's attorney, and satisfying particular standards.<sup>7</sup> The intended effect of this regulation, as set forth in Section 1.35(c), is to provide an assurance to the Commission that the document is not frivolous or improper:

(c) *Effect.*

(1) The signature of the individual signing the document filed with the Commission constitutes a certificate by the individual that:

(i) The individual has read the document being signed and filed, and knows the contents thereof.

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<sup>5</sup> PGW also fails to provide the required verification in PGW's Answer to CAUSE-PA Petition to Intervene. That Answer suffers from the same deficiency. TURN *et al.* support CAUSE-PA's petition to intervene and submit that CAUSE-PA has also satisfied the Commission's requirements for intervention.

<sup>6</sup> A copy of that Answer is attached as Appendix A. A large portion of the response at Paragraph 10 of PPL's Answer is duplicated, almost verbatim, by PGW on pages 2-3 of its narrative response.

<sup>7</sup> In PGW's Answer, its outside counsel has signed on PGW's behalf.

- (ii) The document has been signed and executed in the capacity specified upon the document with full power and authority to do so, if executed in a representative capacity.
  - (iii) The document is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law, to the best of the individual's knowledge, information and belief formed after reasonable inquiry.
  - (iv) The document is not interposed for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.
- (2) If a document is signed in violation of this subsection, the presiding officer or the Commission, upon motion or upon its own initiative may impose upon the individual who signed it, a represented party, or both, an appropriate sanction, which may include striking the document, dismissal of the proceeding or the imposition of civil penalties under section 3301 of the act.
- 52 Pa. Code § 1.35(c).

As shown in the sections of this Response that follow, PGW's Answer to TURN *et al.*'s Petition to Intervene does not appear to be well grounded in fact. Nor does it appear to be warranted by existing law or a good faith argument for the modification of existing law. Finally, based on PGW's false and unfair characterizations of TURN *et al.*, it does not appear PGW's Answer could conceivably be the product of reasonable inquiry. TURN *et al.* are particularly sensitive to this issue, considering the lack of verification accompanying PGW's Answer.<sup>8</sup> An inference can easily be drawn from PGW's selective and defective opposition to the intervention of TURN *et al.* and CAUSE-PA,<sup>9</sup> that PGW has submitted documents to the Commission interposed for the improper purpose of harassment, unnecessary delay and/or needless increase in the cost of litigation.<sup>10</sup> TURN *et al.* submit that these blatant violations of the Commission's regulations, not to mention general standards of professional decorum, are appropriate for consideration of sanctions pursuant to 52 Pa. Code § 1.35(c).

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<sup>8</sup> It should not escape the ALJs' attention that the PPL Answer, from which PGW apparently borrowed, includes the legally-required verification. See Appendix A.

<sup>9</sup> PGW notably does not oppose the participation of PICGUG or RESA, both of whom represent subsets of PGW customers that, under PGW's logic, would be adequately represented by statutory parties. See *infra* Section B(3).

<sup>10</sup> Ironically, PGW contends that "duplication of advocacy [ostensibly resulting from the interventions of TURN *et al.* and CAUSE-PA] will be extremely burdensome and increase the costs of litigation, which must be borne by PGW customers. PGW is a municipal utility with limited resources and even more limited staff." PGW Answer at 1-2. As discussed in this Response, PGW has not provided any evidence to support its assertions.



**B. TURN *et al.* Have Adequately Demonstrated a Sufficiently Direct Interest in the Outcome of This Proceeding and Satisfy the Legal Standards for the ALJ's Approval of the Petition to Intervene.**

As set forth in the subsections that follow, TURN *et al.* submit that the Commission should exercise its appropriate discretion, granting TURN *et al.*'s Petition to Intervene. PGW's Answer relies excessively upon assertions directly inconsistent with TURN *et al.*'s factual averments and mischaracterizations of TURN *et al.* TURN *et al.* submit that their Petition to Intervene fully satisfies the Commission's requirements in 52 Pa. Code §§ 5.72 and 5.73.

**1. TURN *et al.*'s Petition to Intervene Sets Out, in Numbered Paragraphs, Specific Verified Factual Averments Satisfying the Requirements of the Commission's Intervention Regulations, 52 Pa. Code §§ 5.71-76.**

In Pennsylvania, an association may have standing as a representative of its members, provided the organization has at least one member who has or will suffer a direct, immediate, and substantial injury to an interest as a result of the challenged action. PPL Electric Utilities Corporation's Universal Service and Energy Conservation Plan for 2011-2013, Docket No. M-2010-2179796 (internal citations omitted). The Commission has previously determined that a not-for-profit organization may have standing in a representational capacity, including both associations and not-for-profit corporations. PPL Electric Utilities Corporation's Universal Service and Energy Conservation Plan for 2011-2013, Docket No. M-2010-2179796, Opinion and Order dated May 5, 2011 at 11.

TURN *et al.* have satisfied the requirements for representational standing by specifically pleading in paragraphs 4 and 5 of their Petition to Intervene that they are not for profit organizations composed of members who are low or moderate income tenants or seniors and

PGW customers or dependent on PGW for natural gas service. *TURN et al.* have further specifically pled that their members have a direct, immediate, substantial and distinct interest in PGW's general base rate filing. *TURN et al.* Petition at ¶ 4, 5. *TURN et al.* have further pled that PGW's general base rate filing is of critical importance to the low income PGW residential customers and consumers who are members of *TURN et al.* who stand to benefit from affordable natural gas service and who, due to limited income, may be harmed disproportionately by the imposition of unjust or unreasonable rates. *TURN et al.* Petition at ¶ 11. PGW incorrectly argues that *TURN et al.* do not have representational standing. PGW's position is based upon its significant misreading and mischaracterization of *TURN et al.*'s Petition to Intervene. Each of PGW's inaccurate statements is discussed at length in the sections that follow.

*TURN et al.* respectfully submit that the ALJs should approve *TURN et al.*'s Petition to Intervene, which satisfies the specific requirements of the Commission's regulations. Indeed, *TURN et al.*'s Petition includes specific factual averments in support of this conclusion. Section 5.72 of the Commission's regulations describe the standards concerning eligibility to intervene, as follows:

(a) *Persons.* A petition to intervene may be filed by a person claiming a right to intervene or an interest of such nature that intervention is necessary or appropriate to the administration of the statute under which the proceeding is brought. The right or interest may be one of the following:

- (1) A right conferred by statute of the United States or of the Commonwealth.
- (2) An interest which may be directly affected and which is not adequately represented by existing participants, and as to which the petitioner may be bound by the action of the Commission in the proceeding.
- (3) Another interest of such nature that participation of the petitioner may be in the public interest.

As to the first requirement, that intervention is necessary or appropriate to the administration of the statute under which the proceeding is brought (52 Pa. Code § 5.72(a)), *TURN et al.* specifically pled their interest in examining the justness and reasonableness of

PGW's proposed rates, generally summarizing the requirements of PGW's cash flow ratemaking model, and identifying specific aspects of PGW's rate proposal that TURN *et al.* intend to explore. See TURN *et al.* Petition at ¶¶ 7, 8, 9, 10. Examining the justness and reasonableness of proposed rates, under the specific standards applicable to PGW, is vital to the administration of the Public Utility Code, including Sections 1301, 1308 and 2212 of the Public Utility Code. Furthermore, given PGW's unique status as a municipally-owned natural gas utility, the interests of tenants and seniors, who are customers of PGW or dependent on its services, and who reside in Philadelphia and pay taxes to the City of Philadelphia, are of special significance in considering the requirements of 66 Pa. C.S. § 2212. Again, these interests were specifically pled. TURN *et al.* Petition at ¶¶ 4, 5. The exclusion of organizations composed of PGW customers and/or consumers of PGW services from participation in PGW's rate proceeding would be unprecedented, and, as discussed more fully herein, is not justified by the rife misstatements and mischaracterizations in PGW's Answer.<sup>11</sup>

As to the next requirement, that participants have an interest which may be directly affected and which is not adequately represented by existing participants, and as to which the petitioner may be bound by the action of the Commission (52 Pa. Code § 5.72(a)(2)), TURN *et al.* specifically pled supporting facts. As set forth paragraphs 4 and 5 of TURN *et al.*'s petition,

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<sup>11</sup> It should not be forgotten that the Natural Gas Choice and Competition Act (Gas Competition Act) preserved the ratemaking methodology for PGW that existed prior to the PUC's jurisdiction. As such, the long-standing interest of customers to participate directly or through associations of which they are members has special significance, and was likewise affirmed in the Gas Competition Act. This significance is a matter of common sense, enshrined by law, and requires no special pleading. See, e.g., Action Alliance of Senior Citizens of Greater Philadelphia, Inc. v. Philadelphia Gas Commission, 6 Pa. D. & C.3d 144 (July 14, 1977):

PGW, however, being a public utility and a governmentally created monopoly, should be responsive to the consumer in its service and rate structure-- consumers should be informed about and allowed to participate in the formal review of rate hike proposals. This court passes no judgment on the need for and amount of such an increase, as this is not our proper function. We merely hold that common sense, State and Federal law mandate that the gas commission afford citizens reasonable notice and a full and meaningful opportunity to be heard before imposing a rate increase on the gas consumers of this city.

TURN and Action Alliance satisfied the first portion of this standard by describing their particular interests and how they may be impacted by PGW's rate proceeding:

4. TURN is a not-for-profit advocacy organization composed of moderate and low income tenants, a substantial number of whom are customers of PGW or dependent on PGW natural gas service and all residing in Philadelphia, PA. In those capacities, they have a direct, immediate, substantial and distinct interest in PGW's general base rate filing.

5. Action Alliance is a not-for-profit membership organization of senior citizens, many of whom are Philadelphia taxpayers, residents and customers of PGW, on which they rely for their natural gas service needs. In those capacities, they have a direct, immediate, substantial and distinct interest in PGW's general base rate filing.

Regarding the adequacy of representation of TURN *et al.*'s interests by other parties, and the binding effect of the Commission's ultimate determination, TURN *et al.* again pled specific facts satisfying the requirements of 52 Pa. Code § 5.72(a)(2). As set forth in paragraph 11 of TURN *et al.*'s Petition:

11. PGW's general base rate filing is of critical importance to the low income PGW residential customers and consumers who are members of TURN *et al.* who stand to benefit from affordable natural gas service and who, due to limited income, may be harmed disproportionately by the imposition of unjust or unreasonable rates. The petitioners therefore have interests in this proceeding, which may be directly affected and which are not adequately represented by other participants, and as to which the petitioners may be bound by the action of the Commission in this proceeding.

As set forth in the paragraphs duplicated above, TURN *et al.* specifically pled adequate factual averments in support of their eligibility to intervene. TURN *et al.* have clearly satisfied the requirements of 52 Pa. Code § 5.72. In addition, TURN *et al.* have satisfied the requirements of 52 Pa. Code § 5.73(a), by clearly and concisely setting forth with particularity the facts from which the TURN *et al.*'s right or interest can be determined (TURN *et al.* Petition at ¶¶ 1,4,5,11), the grounds of TURN *et al.*'s proposed intervention (Petition at ¶¶ 11), and TURN *et al.*'s position regarding the issues in PGW's rate proceeding (Petition at ¶¶ 6-11). As discussed more

fully below, TURN *et al.* submit that the circumstances of this proceeding do not warrant identification of individual members of TURN *et al.* pursuant to 52 Pa. Code §5.73(b).

Additionally, the Commission may approve TURN *et al.*'s Petition to Intervene on the basis that TURN *et al.*'s participation is in the public interest. 52 Pa. Code § 72(a)(3). For the reasons articulated in support of TURN *et al.*'s Petition, the ALJs should conclude that TURN *et al.*'s participation is in the public interest. As set out above, TURN *et al.* represent actual customers and users of PGW's utility service. Unlike statutory advocates, OCA and BIE, TURN *et al.* are not appointed to broadly represent and balance the interests of potentially competing groups.<sup>12</sup> For OCA and BIE to represent the interests of one subset of the large groups they represent would be practically impossible, exposing either or both organizations to accusations of favoring the interests of one subset over another. Accordingly, it is in the public interest that TURN *et al.*'s members be permitted to have their own, distinct voice in PGW's rate proceeding.

2. PGW Fails to Adequately Address TURN *et al.*'s Factual Basis for Intervention.

As set forth above, Paragraphs 4, 5 and 11 of TURN *et al.*'s Petition to Intervene set forth specific factual pleadings satisfying the requirements of 52 Pa. Code §5.72. PGW does not specifically deny these factual averments in the corresponding numbered paragraphs of its Answer. Instead, PGW paradoxically argues in narrative form that those averments are somehow insufficient, notwithstanding its acknowledged lack of "sufficient information to form a belief as to the truth" of them. PGW Answer at ¶ 4, 5. For example, PGW suggests that the alleged facts are insufficient to support representational standing, assuming (without factual

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<sup>12</sup> TURN *et al.* notes that a special provision authorizes the OCA to represent the interest of consumers upon petition in writing by a substantial number of persons who make use of utility service. 71 P.S. § 309-4(c). TURN *et al.* do not believe this provision was utilized in this case, nor that any requests for OCA representation were made by TURN or Action Alliance members. TURN *et al.* contend that OCA filed a complaint in its general authority, and not at the request of customers.

basis) that TURN *et al.*'s members may not even be impacted by a PGW rate increase. PGW Answer at 3. This disregards TURN *et al.*'s specific factual averments regarding representing low and moderate income PGW customers and consumers, and the disproportionate harm increased PGW rates could inflict on TURN *et al.* members. See Petition at ¶ 1, 4, 5, 11.

PGW admits it lacks sufficient information to form a belief as to the truthfulness of TURN's specific averment that the moderate and low income tenants it represents "have a direct, immediate, substantial and distinct interest in PGW's general base rate filing." PGW Answer at ¶ 4. PGW also admits it lacks sufficient information to form a belief as to the truthfulness of Action Alliance's specific averment that the senior citizens, who are Philadelphia taxpayers, residents and customers of PGW "have a direct, immediate, substantial and distinct interest in PGW's general base rate filing." PGW Answer at ¶ 5.

Indeed, TURN *et al.* do in fact have such direct, immediate, substantial and distinct interests. As set forth in the TURN *et al.*'s Petition, that their interests are directly affected, because members of TURN *et al.* are tenants and seniors who are PGW customers and consumers. TURN *et al.* Petition at ¶¶ 4, 5. Because those members, customers and consumers of PGW services, are moderate and low income, the imposition of higher rates is "of critical importance" to them. TURN *et al.*'s members "stand to benefit from affordable natural gas service" but "due to limited income, may be harmed disproportionately by the imposition of unjust or unreasonable rates." TURN *et al.* Petition at ¶ 11.

Without an attempt to reconcile the internal contradictions in its Answer, PGW falsely claims that TURN *et al.*'s Petition fails to allege that TURN *et al.*'s interest is not adequately represented. PGW Answer at 6 ("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.") (emphasis

added.). TURN *et al.* specifically pled that their interests are not adequately represented in Paragraph 11 of the Petition to Intervene, which is duplicated above. Again, PGW did not clearly or specifically deny this factual averment in its numbered paragraphs, instead responding in bulk to paragraphs 9-11 of TURN *et al.*'s petition with the following:

No response is required to Paragraphs 9 to 11 of the Petition, which contain the Petitioners' legal interpretations and conclusions. To the extent that a response is required, it is denied that TURN *et al.* has standing to participate in this proceeding. PGW Answer at ¶ "9 to 11".

PGW's Answer thus mischaracterizes TURN *et al.*'s Petition, ignoring the clear factual averments set forth therein. To the extent PGW could be deemed to have denied the specific facts set forth in paragraph 11 of TURN *et al.*'s Petition, such denial is obviously premised on PGW's failure to observe that TURN *et al.* did in fact allege that their interests are not adequately represented by other parties. The internal inconsistencies and inaccuracies in PGW's Answer verge on the brazen. TURN *et al.* believe the ALJs would be warranted in strongly rebuking PGW's conduct in submitting its unsupported, disjointed and incorrect Answer.

3. PGW Incorrectly Submits That TURN *et al.*'s Petition Should be Denied on the Basis That it Does Not Identify Individual Members of TURN *et al.*

PGW argues that PUC regulations flatly require the attachment of a list of an organization's members who the organization will represent. PGW Answer at 4. This is an incorrect statement of law. The Commission's regulations provide that "*When the circumstances warrant*, petitions to intervene filed on behalf of more than one person may be required to list those persons and entities comprising the represented group." 52 Pa. Code § 5.73(b) (emphasis added). PGW relies, in part, on the Pennsylvania Rules of Civil Procedure for additional support. PGW Answer at 4, fn. 6. But those rules are not applicable to PUC practice.<sup>13</sup>

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<sup>13</sup> See Pa. R. Civ. P. No. 2151.

More importantly, PGW's position is predicated on a significant factual error. PGW states that the failure to include a list of members "is particularly important for TURN, which appears to be an unincorporated association." PGW Answer at 4. TURN cannot fathom how it could appear to be so. PGW's claim is demonstrably false and indicative of PGW's total failure to conduct any reasonable factual inquiry prior to submitting its Answer. Notably, PGW includes mention of the fictitious name registration of TURN filed with the Commonwealth Department of State. PGW Answer at 7, note 14.<sup>14</sup> That registration indicates that the fictitious name "Tenant Union Representative Network" is owned by Pennsylvania Community Real Estate Corporation, which is a duly incorporated Pennsylvania entity.

Moreover, even if PGW were correct, which it is not, about TURN's organizational status, identifying individual members of TURN *et al.* is unwarranted in this case. Members of TURN *et al.* are individual customers and users of PGW's service, having an interest in not being subjected to potentially discriminatory scrutiny regarding their individual circumstances and/or utility service. On their behalf, TURN *et al.* are frequent participants in PGW matters before the PUC, and TURN *et al.* do not recall PGW previously raising any issue or objection with their participation.<sup>15</sup>

Importantly, PGW has not asked for any information on the members of RESA in this proceeding nor submitted any opposition to its participation. If BIE and OCA are adequate representatives of TURN *et al.*'s interests, PGW's legal theory of adequate representation by BIE would apply to RESA as well. The absence of similar challenges is significant and indicative that PGW's efforts to exclude CAUSE-PA and TURN *et al.* may be intended to stymie the

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<sup>14</sup> PGW's failure to include a copy of this document with its Answer appears to be a further violation of the Commission's regulations. See 52 Pa. Code § 5.61(e)(4) (requiring copies of documents relied upon to be included with answers to petitions).

<sup>15</sup> As set forth more fully in footnote 27, TURN *et al.* are long-standing and frequent participants in PGW matters before the Commission.



efforts of PGW's most vulnerable economic customers to ensure their rights are represented in PGW's rate proceeding

TURN *et al.* submit that identifying specific members could result in unwarranted exposure, consistent with PGW's apparent tactic of attempting to belittle financially challenged customers and their advocates. It is also unwarranted given the historical relationship between TURN, Action Alliance and PGW in matters before the Commission, going back to the first proceedings commenced after PGW became subject to the Commission's jurisdiction via the Gas Competition Act. Ultimately, if the ALJs believe that specific members should be identified in order to secure TURN *et al.*'s participation in this proceeding, TURN *et al.* stand ready to identify a limited number of members for this purpose.

4. That OCA and/or BIE Represent Broader Groups of Constituents Does not Affect TURN *et al.*'s Standing or Right to Represent Their Members.

PGW submits that TURN *et al.*'s interests would be adequately represented by statutory advocates, BIE and OCA. This position is unsupportable on its face.

PGW asserts that TURN *et al.* should not be permitted to intervene in its rate proceeding because "BIE has indicated in its Prehearing Memorandum that it intended to examine issues affecting senior citizens and low income customers." PGW Answer at 6. This is an incomplete, if not incorrect, characterization of BIE's Prehearing Memorandum. In addition, PGW provides no factual support for the proposition that BIE may adequately represent the interests of TURN *et al.*

Regarding senior citizens, the passage of BIE's Prehearing Memorandum upon which PGW relies is specific to "Present Rate Revenue" associated with a number of issues to be evaluated by BIE. One of those issues is described as "Evaluation of PGW's Senior Citizen

Discount Program and its Impact on Revenues.” BIE Prehearing Memo at 3. BIE’s focus on the *revenue impact* of PGW’s statutorily frozen Senior Citizen Discount is not identical to TURN *et al.*’s interests as stated in the Petition to Intervene. Among other interests, the interest in avoiding an unjust and unreasonable rate increase, disproportionately impacting Philadelphia senior citizens, including those living on fixed incomes, are clearly not intended to be advanced by BIE’s inquiry in to the revenue impact of PGW’s Senior Citizen Discount.

Regarding low income customers, the passage of BIE’s Prehearing Memorandum upon which PGW relies is specific to Universal Service programs, including PGW’s Customer Responsibility Program. BIE Prehearing Memo at 4.<sup>16</sup> As TURN *et al.* clearly indicated, its members include low and moderate income customers and consumers, who rely upon PGW service. TURN *et al.* did not and do not submit that their membership is comprised solely of low income customers participating in PGW’s Customer Responsibility Program. TURN *et al.*’s interests are not subsumed within BIE’s anticipated exploration of Universal Service programs in PGW’s rate proceeding.

Similarly, PGW asserts that TURN *et al.* should not be permitted to intervene in its rate proceeding because OCA “is also examining all issues relevant to the proposed rate increase on behalf of all customers, with an emphasis on residential customers.” PGW Answer at 6. As with BIE, PGW points out that OCA stated in its prehearing memorandum that it intended to “investigate issues affecting low income customers.” *Id.* Again, PGW provides no factual support for the proposition that OCA will adequately represent the interests of TURN *et al.*

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<sup>16</sup> Notably, PGW bristles at the mere possibility that TURN *et al.* may argue for changes in PGW’s low income energy assistance programs. PGW Answer at 5. Indeed, TURN *et al.* may have no choice but to advocate for changes to those programs, given the likelihood of at least two other parties raising issues related to those programs, which may be adverse to the interests of TURN *et al.* members. See OSBA Prehearing Memo at 3; BIE Prehearing Memo at 4.

In fact, the portion of the OCA's Prehearing Memorandum cited by PGW is considerably narrower than PGW represents. As set forth therein, "[t]he OCA will examine the Company's proposed universal service program costs and cost recovery mechanisms." OCA Prehearing Memo at 5. As with BIE, OCA's focus on Universal Service program cost recovery and reasonableness does not adequately represent the interests of TURN *et al.*'s members.

Ultimately, PGW fails to recognize that OCA and BIE are statutory advocates for much broader groups of potential PGW customers or consumers. First, the interests of low income customers within PGW's service territory are different and distinct from the broader interests represented by OCA and BIE. For this reason, TURN *et al.* heartily support CAUSE-PA's Petition to Intervene, as CAUSE-PA intends to represent the particular interests of all PGW low income customers. Additionally, the interests of low and moderate income tenants and seniors, members of TURN *et al.*, are distinct from the interests represented by OCA, BIE and CAUSE-PA. In Pennsylvania, there is no statutory advocate in PUC cases for: low income customers as a group; low and moderate income tenants as a group; or senior citizens as a group. Having failed to identify such a statutory advocate, or any other party purporting to represent low income customers, tenants or seniors, PGW is incorrect in asserting that CAUSE-PA or TURN *et al.*'s interests are adequately represented by another participant in PGW's rate proceeding.

5. PGW's Position that BIE and OCA Adequately Represent TURN *et al.* is Not Supported on the Basis of Past Proceedings or Analogous PUC Decisions.

TURN *et al.* were participants in past PGW rate cases, and have actively participated in numerous PGW proceedings over the past decade that directly affect the potential interests of their members.<sup>17</sup> That TURN *et al.*'s positions have not been adequately represented by OCA and BIE (formerly OTS) is readily ascertainable based on an examination of these proceedings.

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<sup>17</sup> See *infra* Section C.

As but one example, TURN *et al.* reference PGW's proposed modification of its Universal Services and Energy Conservation Plans with Respect to the Customer Responsibility Program, Docket No. P-2010-2178610. In that proceeding, PGW proposed to set CRP payment levels so that CRP customers would realize the PUC-recommended targeted energy burdens after taking into account the effect of LIHEAP payments. PGW Petition to Modify its Universal Services and Energy Conservation Plans with Respect to the Customer Responsibility Program, Docket No. P-2010-2178610 (June 8, 2010) at 2. OCA and BIE supported PGW's petition to modify CRP.<sup>18</sup> TURN *et al.* strongly opposed PGW's petition as contrary to law.<sup>19</sup> Ultimately, PGW filed a request to withdraw its petition and a final order was entered October 16, 2013 approving that withdrawal and discontinuing the proceeding.

Similarly, Commission decisions applying the intervention standards set forth in the PUC's regulations do not support PGW's position. For example, in *Re Morris-Rospond Assocs.* the PUC found that 52 Pa. Code § 5.72(a)(2):

Is not intended to preclude participation in a proceeding by a party simply because it has some identity of interest with another participant. Indeed, parties to a proceeding often have an identity of interest with other parties, and it would be absurd to read this requirement so expansively as to preclude intervention in such cases." *Re Morris-Rospond Assocs.*, 61 Pa. P.U.C. 227 (Mar. 6, 1986).

In fact, the PUC identified the purpose of the regulation is simply to limit "duplicative testimony and briefs" and not to limit the participation of parties that are directly affected by the

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<sup>18</sup> See OCA Answer to Petition, Docket No. P-2010-2178610 (June 23, 2010) at 1-2; OTS Letter In Re: PGW Petition, Docket No. P-2010-2178610 (June 21, 2010) at 1-2.

<sup>19</sup> See TURN *et al.* Answer and New Matter, Docket No. P-2010-2178610 (June 23, 2010).

proceeding.<sup>20</sup> Again, TURN *et al.* have adequately pled their members' specific interests that will be directly affected by the Commission's actions in this proceeding.<sup>21</sup>

Furthermore, specific cases involving BIE and OCA affirm and extend this principal against claims that either of them adequately represents the interests of specific customers. Regarding BIE, the Commission has specifically held that BIE's role is not to act as private counsel for specific customers. Indeed, in granting an individual customer's *untimely* petition to intervene, the Commission held that even though BIE had the broad authority to enforce laws, certain customers' specific interests may be directly and substantially impacted, warranting their intervention.<sup>22</sup> Similarly, in 2009, the Commission addressed whether OCA adequately represented the interests of advocates for low income customers. In a universal services proceeding, a group of utilities opposed PCOC's intervention partially because "the interests of low income customers are sufficiently represented by the OCA."<sup>23</sup> The Commission noted that

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<sup>20</sup> This limitation is to be distinguished from PGW's broad view that these rules are intended to protect it from having to litigate against multiple parties on the same issues, a view which PGW does not back up with any citation or authority. See PGW Answer at 6.

<sup>21</sup> TURN *et al.* note that one Commission decision that could, arguably, provide some support for PGW's position, in which a petition to intervene by an organization seeking to advocate for low income customers was denied, is not even cited by PGW. That case, PPL Electric Utilities Corporation's Universal Service and Energy Conservation Plan for 2011-2013, Docket No. M-2010-2179796, denied the petition to intervene of Pennsylvania Communities Organizing for Change d/b/a Action United (PCOC). However, there are significant differences between that case and this one. First, unlike a universal service proceeding, this is a rate case. In fact, it is PGW's first base rate case in eight years. A rate case may involve more significant inquiry than a universal service proceeding, and the issues customers may raise in a rate case are broadly defined. The Commission, in suspending the effectiveness of PGW's proposed rate increase tariff, specifically affirmed that consideration of PGW rules and regulations is appropriate in this proceeding: "this investigation shall include consideration of the lawfulness, justness, and reasonableness of the Philadelphia Gas Works' existing rates, rules, and regulations." Order dated March 16, 2017, Pa. PUC v. PGW, Docket No. R-2017-2586783, at ¶ 4. Second, the Commission's holding in the referenced PPL case was based, in large part on the intervention of a named customer, who was a member of PCOC and introduced testimony originally intended to be sponsored by PCOC. That customer was represented by the same counsel named for PCOC. Based on this direct alignment of interest, the Commission held that PCOC's interest was adequately represented by the individual customer. PPL Electric Utilities Corporation Universal Service and Energy Conservation Plan for 2011 through 2013, Docket No. M-2010-2179796, May 5, 2011 Opinion and Order at 13-14. The factual predicates for the Commission's holding in the PPL case are absent here, and the Commission should accordingly grant TURN *et al.*'s Petition to Intervene.

<sup>22</sup> See Pa. P.U.C. v. West Penn Power Company, Docket No. C-2012-2307244, 2013 WL 4761265 (slip copy).

<sup>23</sup> Joint Petition of Metro. Edison Co., Pennsylvania Elec. Co. & Pennsylvania Power Co. for Consolidation of Proceedings & Approval of Energy Efficiency & Conservation Plans, M-2009-2092222, 2011 WL 765626 (Jan. 27, 2011).

PCOC was granted intervention in several similar proceedings, and ultimately reached the following conclusion:

We believe that PCOC has demonstrated that it has an adequate interest in this proceeding that is not represented by the OCA. PCOC acts as an advocate on behalf of low-income households. Our regulations at 52 Pa. Code §5.72(a)(3) permit the intervention of a petitioner whose interest is of such nature that participation in the matter may be in the public interest. PCOC is acting in the public interest by focusing on the energy needs of low-income households. Further, PCOC solely represents the interest of low-income customers while the OCA represents the interests of all residential customers. While there may be some overlap between their interests, PCOC and the OCA may have different positions.<sup>24</sup>

On the basis of the Commission's past consideration and resolution of virtually identical disputes in favor of petitioners representing distinct customer groups, PGW's arguments that TURN *et al.*'s or CAUSE-PA's interests may be adequately represented by OCA and/or BIE must fail. To the contrary, the Commission should grant TURN *et al.* and CAUSE-PA's Petitions to Intervene on behalf of their members, whose interests are not exclusively represented by OCA or BIE.

6. PGW Falsely Characterizes TURN *et al.* as "Simply Policy Advocacy Organizations."

PGW submits unverified factual statements disparaging TURN *et al.* TURN *et al.* are astonished by PGW or its counsel's disregard for the pleading standards and decorum imposed in Commission proceedings. PGW submits that:

Unlike the OCA or the Office of Small Business Advocate ("OSBA"), [TURN *et al.*] have not been established by state law and are simply policy advocacy organizations who seek to become involved in contested, on the record proceedings, such as this rate case, to attempt to advance their policy goals. PGW Answer at 2.

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<sup>24</sup> Id.

This deliberate, inaccurate, and insulting characterization is a clear effort by PGW to belittle TURN *et al.* Again, because PGW's Answer is unverified, it is not clear to TURN *et al.* who, if anyone, at PGW may stand behind this false statement.<sup>25</sup>

Although TURN *et al.* are briefly described, consistent with the Commission's rules regarding the form and content of petitions to intervene (see 52 Pa. Code § 5.73), PGW suggests by clear implication that TURN *et al.* exist solely for the purpose of intervening in PGW rate proceedings. PGW cites no facts in support of this assertion, which is patently untrue. In fact, to the extent PGW relies upon anything at all for this proposition, it has failed to attach and include the documents upon which it relies, in violation of the Commission's regulation at 52 Pa. Code § 6.61(e)(4). Moreover, even a basic review of the third-party website PGW appears to rely upon indicates that PGW's claim is totally false, and that PGW knew or should have known it to be false when made.<sup>26</sup>

**C. TURN *et al.*'s Current and Past Participation in PGW Proceedings Strongly Favor TURN *et al.*'s Intervention in This Proceeding.**

PGW acknowledges in a footnote that TURN *et al.* participated in PGW's prior base rate cases and that PGW did not object to such participation. PGW Answer at 2, Footnote 1. This is an understatement; TURN *et al.* have participated in PGW's most recent base rate proceedings and numerous other PGW proceedings before the PUC and prior to the PUC's jurisdiction over

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<sup>25</sup> Again, as discussed more fully above, PGW's response to the specific numbered paragraphs of TURN *et al.*'s Petition, conflict with the statement at issue here. Indeed, PGW admits that TURN and Action Alliance advocate on behalf of tenants and seniors, without any suggestion that such advocacy is limited to contested PUC proceedings such as this one. PGW Answer at ¶¶ 4, 5.

<sup>26</sup> PGW cites to a website maintained by the Philadelphia Corporation for Aging that provides its description of TURN. PGW Answer at 7, citing [http://www.pcacares.org/service\\_provider/tenant-union-representative-network-turn/](http://www.pcacares.org/service_provider/tenant-union-representative-network-turn/). TURN's website is publicly available at [www.ourturn.net](http://www.ourturn.net) or [www.rturn.net](http://www.rturn.net) and is easily located when "Tenant Union Representative Network" is entered in the Google search bar. Notwithstanding PGW's apparent failure to navigate to TURN's website, even the Philadelphia Corporation for Aging website relied upon by PGW verifies that TURN "provides the spectrum of advocacy educational and supportive services for tenants."

PGW, without objection from PGW or any other party, for at least the past twenty years.<sup>27</sup> In addition, TURN *et al.* have submitted voluminous comments to the PUC concerning PGW's universal service and energy conservation plans and other filings.<sup>28</sup> Inexplicably, PGW now alleges deficiencies in TURN *et al.*'s petition to intervene that PGW did not find or did not care to oppose in prior petitions submitted by TURN *et al.*, which contained the same or substantially similar intervention language.<sup>29</sup>

PGW's opposition is clearly premised on something other than alleged insufficiencies in the contents of TURN *et al.*'s filings or TURN *et al.*'s conduct in base rate proceedings over the past several decades. TURN *et al.* are skeptical of PGW's suggestion that TURN *et al.*'s intervention in this base rate proceeding will cause burdensome duplication of advocacy and increase the costs of litigation. PGW Answer at 1-2. PGW cannot cite to any evidence to suggest that TURN *et al.*'s intervention in this base rate proceeding will lead to duplication of advocacy, increased costs, or otherwise improperly burden PGW.<sup>30</sup>

TURN *et al.* are deeply concerned by PGW's assertion that this rate case is not the "proper forum" for the rate related concerns of TURN *et al.* PGW Answer at 2, 3. Through its opposition to TURN *et al.*'s Petition to Intervene and other actions, PGW seeks to deny TURN *et*

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<sup>27</sup> See, e.g., PA PUC v. PGW, Docket No. R-2009-2139884 (PGW rate case filed December 18, 2009); PA PUC v. PGW, Docket No. R-00006042 (PGW rate case filed January 5, 2001) (Action Alliance participated in this proceeding as a member of the Consumers Education and Protective Association, an association that included the Association of Community Organizations for Reform Now, the Action Alliance of Senior Citizens of Greater Philadelphia, and the Tenant's Action Group); See also, PA PUC v. PGW, R-00061296 (GCR proceeding filed by PGW February 1, 2006); Petition of Philadelphia Gas Works for Approval of Demand-Side Management Plan for FY 2016-2020 and Philadelphia Gas Works Universal Service and Energy Conservation Plan for 2014-2016 52 Pa. Code § 62.4 – Request for Waivers (PGW DSM II), Docket No. P-2014-2459362.

<sup>28</sup> Philadelphia Gas Works Universal Service and Energy Conservation Plan for 2017-2020 Submitted in Compliance with 52 Pa. Code § 62.4, Docket No. M-2016-2542415; Philadelphia Gas Works Universal Service and Energy Conservation Plan for 2014-2016 Submitted in Compliance with 52 Pa. Code § 62.4, Docket No. M-2013-2366301.

<sup>29</sup> See, PGW DSM II, Docket No. P-2014-2459362, Petition to Intervene of Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia.

<sup>30</sup> PGW's 2009 base rate case concluded in approximately six to seven months and resulted in a settlement. TURN *et al.* were signatory parties to the Joint Petition for Settlement in that proceeding. Similarly, TURN *et al.* were intervening parties in PECO's recent base rate proceeding at Docket No. R-2015-2468981, which concluded in approximately nine months and also resulted in a settlement.



*al.* an opportunity to investigate their concerns in a formal proceeding before the PUC. This is underscored by PGW's recent actions in its universal service and energy conservation plan proceeding. Philadelphia Gas Works Universal Service and Energy Conservation Plan for 2017-2020 Submitted in Compliance with 52 Pa. Code § 62.4, Docket No. M-2016-2542415. In its pending USECP, PGW has opposed TURN *et al.*'s request to refer numerous unresolved issues of material facts to the OALJ.<sup>31</sup> Ironically, PGW opposes TURN *et al.*'s request for an on the record proceeding in that case because "turning the regular Commission review of PGW's universal service program into a '*mini-rate case*' would involve significant time and expense for such litigation."<sup>32</sup> In that same proceeding, PGW has refused to respond to discovery requests issued by CAUSE-PA concerning the operation of PGW's universal service programs and data on its low income customers, because of PGW's position that discovery is not permitted in the non-adjudicatory phase of the proceeding.<sup>33</sup> Now that TURN *et al.* seek to intervene in an adjudicatory proceeding in which they can thoroughly investigate the operation of PGW's universal service programs as they relate to the justness and reasonableness of PGW's rate request, PGW seeks to exclude TURN *et al.*'s participation.

PGW should not be permitted to dodge and disregard the concerns of its moderate and low income customers by repeatedly asserting that these concerns are best addressed in some other forum. PGW claims that "universal service issues are being addressed in a separate proceeding where TURN *et al.* is actively participating" while neglecting to mention PGW's

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<sup>31</sup> Philadelphia Gas Works Universal Service and Energy Conservation Plan for 2017-2020 Submitted in Compliance with 52 Pa. Code § 62.4, Docket No. M-2016-2542415, PGW Reply Comments at 9.

<sup>32</sup> *Id.* at 9. Emphasis added.

<sup>33</sup> Philadelphia Gas Works Universal Service and Energy Conservation Plan for 2017-2020 Submitted in Compliance with 52 Pa. Code § 62.4, Docket No. M-2016-2542415, PGW's Letter Objection to CAUSE-PA Discovery Requests. PGW has objected to CAUSE-PA's discovery requests notwithstanding the Commission's directive for the parties to be cooperative in the exchange of information and data relative to the proceeding. See, Philadelphia Gas Works Universal Service and Energy Conservation Plan for 2017-2020 Submitted in Compliance with 52 Pa. Code § 62.4, Docket No. M-2016-2542415, Tentative Order at 1.

concerted efforts to deny access to information to low income representatives in that proceeding. When PGW refers to the “proper forum” for the concerns raised by TURN *et al.*, it is essentially arguing that TURN *et al.*’s concerns should be relegated to PUC comment proceedings, in which TURN *et al.* cannot fully investigate their concerns or examine PGW’s assertions on the record. This is unacceptable. PGW should not be allowed to pick and choose which customers and which customer representatives have access to information and an opportunity to participate in the Commission’s formal proceedings.

**D. PGW’s Statements on Rate Class are Inaccurate and Mischaracterize the Requirement for Intervention in a Rate Case**

PGW’s Answer seeks to create a new, unwarranted standard for intervention – that organizations only have standing to intervene on behalf of their members if their members are part of a discrete rate class. PGW cites no basis for this proposition, which is directly at odds with the legal standards set forth in the Commission’s regulations. Again, PGW seeks to apply this new standard only to advocates for low and moderate income customers, CAUSE-PA, TURN and Action Alliance. PGW’s Answer states that “in PGW’s service territory all residential customers are served under the same rate schedule, so there is not a ‘low income or moderate income rate class.’ Nor is there a ‘tenant’ rate class or a ‘senior citizen’ rate class for TURN *et al.* to represent.” This is irrelevant for purposes of satisfying the standards to intervene in PGW’s rate proceeding.

Furthermore, PGW’s Answer appears inconsistent with its tariff. PGW makes the blanket claim that there is no senior rate class while noting several lines down in a footnote on the same page “PGW does have a senior citizen discount program.” PGW Answer at 5. This program, like PGW’s CRP, is distinct from the rate schedule of non-participating customers.

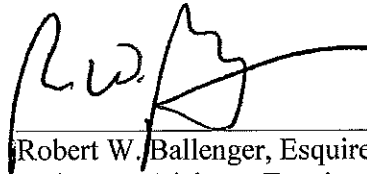
Commission decisions have held that programs like CRP and the senior citizen discount constitute distinct tariff rates. See, e.g., Beverly Harris v. PGW, F-2013-2351064, 2013 WL 5912565, at \*4 (Oct. 4, 2013) (“In terms of applicable rates, for payment purposes, participants in the CRP program whose gross household income has been verified at being greater than 50% and up to and including 100% of the federal poverty level are considered Group B and *are entitled to a rate of 9% of gross income.*”) (emphasis added).

But more important than PGW’s misclassification here, PGW appears to be saying that standing is limited to groups based on rate class. Yet, PGW cites no Commission decisions or other legal basis for this particular limitation on standing. Under PUC practice and regulation, TURN *et al.* must have a distinct interest from other parties, not represent a distinct rate class. As TURN *et al.* argue in detail throughout this response, the interests of TURN *et al.* are the distinct interests of low and moderate income tenants and seniors. TURN *et al.*’s Petition to Intervene should be approved.

### III. CONCLUSION

For all the reasons set forth herein, TURN *et al.* respectfully submit that the ALJs should enter an order granting TURN *et al.* full status as an intervener in this proceeding with active party status. TURN *et al.* also submit that there are ample grounds for the Commission to consider sanctions based on PGW's Answer, including striking PGW's Answer and imposing civil penalties under Section 3301 of the Public Utility Code.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. W. Ballenger', written over a horizontal line.

Robert W. Ballenger, Esquire (Attorney ID: 93434)  
Josie B. H. Pickens, Esquire (Attorney ID: 309422)  
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Date: April 5, 2017

### VERIFICATION

I, **Phil Lord**, Executive Director of Tenant Union Representative Network ("TURN"), on behalf of TURN, hereby state that the facts contained in the foregoing pleading are true and correct to the best of my knowledge, information and belief, that I am duly authorized to make this Verification, and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 10 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

Date: 4/5/17

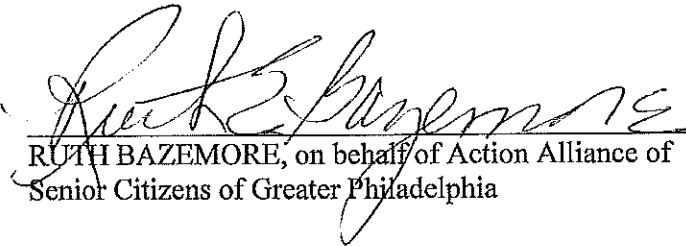
A handwritten signature in black ink, appearing to be 'Phil Lord', written over a horizontal line.

PHIL LORD, on behalf of Tenant Union Representative Network ("TURN")

### VERIFICATION

I, **Ruth Bazemore**, Acting President of Action Alliance of Senior Citizens of Greater Philadelphia, hereby state that the facts contained in the foregoing pleading are true and correct to the best of my knowledge, information and belief, that I am duly authorized to make this Verification, and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 10 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

Date: April 5, 2017

  
RUTH BAZEMORE, on behalf of Action Alliance of  
Senior Citizens of Greater Philadelphia

# APPENDIX A

PPL Answer to Amended Petition to Intervene of Pennsylvania Communities Organizing for Change, Docket No. M-2009-2093216 (November 12, 2010) (attachments and appendices omitted).

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PPL Electric Utilities  
Corporation for Approval of Changes to its  
Act 129 Energy Efficiency and  
Conservation Plan

Docket No. M-2009-2093216

**ANSWER OF PPL ELECTRIC UTILITIES CORPORATION  
TO THE AMENDED PETITION TO INTERVENE OF  
THE PENNSYLVANIA COMMUNITIES ORGANIZING FOR CHANGE**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Pursuant to Section 5.66 of the Pennsylvania Public Utility Commission's ("Commission") regulations, 52 Pa. Code § 5.66, PPL Electric Utilities Corporation ("PPL Electric") hereby answers the Amended Petition to Intervene ("Amended Petition") of the Pennsylvania Communities Organizing for Change ("PCOC") in the above-captioned proceeding. By way of general response, PPL Electric objects to PCOC's intervention in this proceeding because it has failed to comply with the Commission's regulations regarding petitions to intervene and because it has failed to allege sufficient facts to support its standing to participate in this proceeding. *See* 52 Pa. Code §§ 5.71-5.74. In support of this Answer, PPL Electric states as follows:

1. No response is required to Paragraph No. 1, as the paragraph merely identifies PCOC's Petition to Intervene.

2. The averments of Paragraph No. 2 of the Amended Petition are admitted.

3. In response to Paragraph No. 3 of the Amended Petition, it is admitted that 66

Pa.C.S. § 2806.1(b)(i)(G), states in pertinent part that:

The [Energy Efficiency and Conservation Plans] shall include specific energy efficiency measures for households at or below 150% of the Federal poverty income guidelines. The number of measures shall be proportionate



to those households' share of the total energy usage in the service territory.

4. In response to Paragraph No. 4 of the Amended Petition, it is admitted that the *Energy Efficiency and Conservation Program Implementation Order*, Docket No. M-2008-2069887, (Order Entered January 15, 2009), at p. 22 states that:

There are clear requirements in the Act regarding proportionate measures for low-income customers (within a residential customer class) as well as for governments, schools, etc. (within a commercial customer class). Beyond those requirements, we believe that EDCs should develop plans to achieve the most energy savings per expenditure.

5. The averments of Paragraph No. 5 of the Amended Petition are admitted.

6. The averments of Paragraph No. 6 of the Amended Petition are admitted in part and denied in part. PPL Electric admits that the Pennsylvania Association of Community Organizations for Change Now ("ACORN") filed, on October 18, 2010, a Petition to Withdraw in Docket No. M-2009-209321. The remaining averments of Paragraph No. 6 are denied. It is denied that ACORN was the only intervener in this proceeding representing low-income customers and that with ACORN's withdrawal low-income households would be without an active advocate in this proceeding. The Pennsylvania Office of Consumer Advocate intervened and has been active in this proceeding advocating on behalf of PPL Electric's residential customers, including low income residential customers.

7. The averments of Paragraph No. 7 of the Amended Petition are admitted.

8. The averments of Paragraph No. 8 of the Amended Petition are admitted.

9. The averments of Paragraph No. 9 of the Amended Petition are admitted in part and denied in part. It is admitted that PCOC is a non-profit domestic corporation operating and existing pursuant to the laws of the Commonwealth. After reasonable investigation, PPL Electric is without sufficient information as to the truth of the averment that PCOC is a

membership-based advocacy organization or that its application for 501(c)(4) status is pending and, therefore, denies the same.

Further, it should be noted that, after reasonable investigation, PPL Electric alleges that there is no corporate entity "Action United, Inc." Rather, it appears that "Action United" is a fictitious name registered with the Pennsylvania Department of State and is not a separate corporate entity. A true and correct copy of Pennsylvania Department of State Business Entity Filing for Action United is attached hereto as Appendix A. Also, it is not clear whether individuals or entities that become members are actually members of PCOC or Action United. Indeed, it is unclear from PCOC's membership enrollment/donation website whether the members are joining PCOC or Action United. A true and correct copy of the membership enrollment/donation page is attached hereto as Appendix B. In fact, it is not clear that individuals who enroll through the website even know whether or not they are becoming members of PCOC.

PPL Electric also denies that PCOC's mission is to advocate on behalf of low and lower income persons for the purpose of access to affordability of utility service. Rather, PCOC's mission statement provides that "Action United is a membership organization of low and moderate income Pennsylvanians working to build power through organizing communities to win changes on the issues that are important to them." A true and correct copy of the PCOC/Action United Mission Statement is attached hereto as Appendix C. It is therefore denied that PCOC represents exclusively the interests of low and lower income citizens. In addition, it does not appear that there is any income requirement for membership in PCOC. Indeed, it appears that anyone can join PCOC regardless of income. *See Appendix B.*

10. The averments of Paragraph No. 10 of the Amended Petition are admitted in part and denied in part. It is admitted that PCOC does not have an office within PPL Electric's service territory. The remainder of the averments set forth in Paragraph 10 of the Amended Petition are denied. PCOC has failed to sufficiently show that it has an adequate interest in this proceeding.

Pursuant to the Commission's regulations, a petition to intervene may be filed by a person claiming, *inter alia*, an interest which may be directly affected and which is not adequately represented by existing participants, and as to which the petitioner may be bound by the action of the Commission in the proceeding. See 52 Pa. Code § 5.72(a).<sup>1</sup> A petition to intervene must set out clearly and concisely, *inter alia*, the facts from which the alleged intervention right or interest can be determined, and the grounds of the proposed intervention. See 52 Pa. Code § 5.73(a).

From the representations made in the Amended Petition, PCOC has no interest, direct or otherwise, that can be affected by this proceeding in which it seeks to intervene. PCOC does not assert that it is a customer of PPL Electric, consequently, there is no factual basis on which PCOC can assert that its interests are or could be affected by the outcome of this proceeding. In the absence of such an interest, PCOC is not eligible to intervene in this proceeding. See 52 Pa. Code § 5.72(a). Therefore, because PCOC's Petition contains no statement of any interest, direct or otherwise, that could be affected by the outcome of this proceeding, the Petition does not comply with 52 Pa. Code § 5.73 and, on that basis alone, should be denied.

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<sup>1</sup> The purpose of the requirement of standing is to protect against improper parties. In order to meet that requirement, a party must allege and prove an interest in the outcome of the action that surpasses the common interest of all citizens in procuring obedience to the law. To surpass the common interest, the interest is required to be, at least, substantial, direct, and immediate. *Application of Biester*, 487 Pa. 438, 442-443, 409 A.2d 848, 851 (1979) (citing *William Penn Parking Garage v. City of Pittsburgh*, 464 Pa. 168, 192, 346 A.2d 269, 281 (1975)).

To the extent that PCOC purports to obtain standing through its members that reside within PPL Electric's service territory and are customers of PPL Electric, the Amended Petition fails to comply with the requirements for representational standing. An association may have standing solely as a representative of its members. *Tripps Park v. Pa. PUC*, 415 A2d 967 (Pa. Cmwlth. 1980). However, to have representational standing before the Commission, the association must not only demonstrate an immediate direct and substantial interest or injury, it must also demonstrate either: (a) the representative will fairly and adequately represent those who have a sufficient interest, and that those entitled to complain are unable to adequately pursue their interests; or (b) there is a showing that the allowance of the representative's participation will aid the Commission in the development of facts necessary for a proper disposition of the proceedings. *Manufacturers Association of Erie v. The City of Erie-Bureau of Water*, Docket No. 20518, 50 Pa. PUC 43, 1976 Pa. PUC LEXIS 79 (1976). On the facts alleged, PCOC does not have representational standing to represent the interests of low income customers in PPL Electric's service territory. As explained above, it appears that anyone can join PCOC regardless of income, and that PCOC does not exclusively represent the interests of low income citizens. See Appendix B. Further, the Amended Petition fails to allege how PCOC's participation will aid the Commission in the development of the facts necessary in this proceeding.

Further, the Amended Petition fails to comply with the Commission's regulations regarding representational standing. Section 5.73(b) of the Commission's regulations provide that:

When circumstances warrant, petitions to intervene filed on behalf of more than one person may be required to list those persons and entities comprising the represented group.

52 Pa. Code § 5.73(b). Although PCOC has inserted a footnote into the Amended Petition indicating that four of its members are customers of PPL Electric, PCOC has failed to provide a

list of its members as required by the Commission's regulations.<sup>2</sup> Therefore, consistent with 52 Pa. Code § 5.73(b), to the extent that PCOC claims to represent more than one person it should be required to list those persons and entities comprising the represented group, confirm whether the members are members of PCOC or Action United, confirm whether its members are low income individuals and/or actually participate in the Universal Service and Energy Conservation programs at issue in this proceeding, and confirm that it is authorized to represent the interests of those individuals in this proceeding.

Moreover, the Amended Petition does not explain the relationship between Action United and PCOC. The verification appended to the Amended Petition is signed by the Executive Director of PCOC d/b/a Action United, Inc. However, as explained above, there is no corporate entity "Action United, Inc." and it is not clear whether individuals or entities that become members are actually members of PCOC or Action United. As such, it is unclear whether the members of PCOC/Action United have authorized PCOC to represent any interests they may have in this proceeding.

11. The averments of Paragraph No. 11 of the Amended Petition are denied. The averments of Paragraph 11 of the Amended Petition contain statements of PCOC's subjective intent in this proceeding. As such, they are not averments of facts, and therefore, no response is required. To the extent that a response is deemed necessary, PPL Electric denies the same.

By way of further response, it is denied that no other active party exclusively represents the interests of low-income customers. PCOC does not exclusively represent the interests of

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<sup>2</sup> PPL Electric acknowledges that the four individuals referenced in footnote 2 of the Amended Petition are customers of PPL Electric. However, footnote 2 of the Amended Petition fails to satisfy the requirement that PCOC provide a list of its members and identify whether these members have a substantial, direct, and immediate interest that may be affected by this proceeding, or whether these members have authorized PCOC to represent any interests they may have in this proceeding.

low-income customers. Indeed, as noted above, PCOC's mission statement indicates that it is "a membership organization of both low and moderate income Pennsylvanians." *See* Appendix C. Further, it appears from the membership enrollment/donation website that any individual or entity may become a member of PCOC/Action United regardless of their economic status. *See* Appendix B. The Pennsylvania Office of Consumer Advocate intervened and has been active in this proceeding advocating on behalf of all PPL Electric's residential customers, including low-income residential customers. For these reasons, PCOC has failed to allege sufficient facts to support a finding that, absent PCOC's intervention, the interests of its purported members will not adequately be represented in this proceeding.

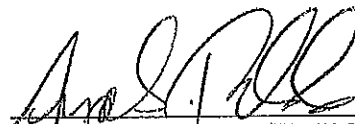
PPL Electric also denies that ACORN's withdrawal constitutes extraordinary circumstances. The withdrawal of ACORN does not affect the interests of the low or lower income PPL customers. Those customers are adequately represented by the Office of Consumer Advocate. PCOC does not assert that there is no representation of low or lower income customers, it simply alleges that no party is "exclusively advocating" on their behalf. PCOC has given no information to show that its intervention is necessary to prevent prejudice to low-income customers. The withdrawal of ACORN does not leave low-income customers unrepresented in these proceedings, and therefore cannot constitute extraordinary circumstances which would allow PCOC's belated intervention.

12. The averments of Paragraph No. 12 of the Amended Petition are statements of PCOC's subjective intent in this proceeding. As such, they are not averments of facts, and therefore, no response is required.

13. Paragraph No. 13 of the Amended Petition identifies PCOC's counsel in this proceeding, to which no response is required. To the extent a response is deemed necessary, PPL Electric denies the same.

WHEREFORE, PPL Electric Utilities Corporation objects to intervention of the Pennsylvania Communities Organizing for Change d/b/a Action United, Inc. in the above-referenced proceeding and, for the reasons explained above, respectfully requests that the Commission deny the Amended Petition to Intervene.

Respectfully submitted,



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Of Counsel:

Post & Schell, P.C.

Date: November 11, 2010

Attorneys for PPL Electric Utilities Corporation

### VERIFICATION

I, Joseph M. Kleha, being the Manager – Regulatory Compliance and Rates at PPL Electric Utilities Corporation, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief and that I expect that PPL Electric Utilities Corporation to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date:

11-12-10

  
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Joseph M. Kleha