

COMMONWEALTH OF PENNSYLVANIA



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May 25, 2017

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

Re: Pa. Public Utility Commission
v.
Philadelphia Gas Works (PGW)
Docket Nos: R-2017-2586783
C-2017-2592092
C-2017-2593497
C-2017-2595147
C-2017-2593903

Dear Secretary Chiavetta:

Attached for electronic filing please find the Answer of the Office of Consumer Advocate to the Motion in Limine of Philadelphia Gas Works, and the Affidavit of Roger D. Colton in the above-referenced proceeding.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

/s/ Christy M. Appleby
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Assistant Consumer Advocate
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Attachments

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

233635

CERTIFICATE OF SERVICE

Pennsylvania Public Utility Commission	:	Docket Nos:	R-2017-2586783
	:		C-2017-2592092
v.	:		C-2017-2593497
	:		C-2017-2595147
Philadelphia Gas Works	:		C-2017-2593903

I hereby certify that I have this day served a true copy of the foregoing documents, the Answer of the Office of Consumer Advocate to the Motion in Limine of Philadelphia Gas Works, and the Affidavit of Roger D. Colton, 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 25th day of May 2017.

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	:	
	:	
v.	:	Docket Nos. R-2017-2586783
	:	C-2017-2592092
	:	C-2017-2593497
	:	C-2017-2595147
Philadelphia Gas Works	:	C-2017-2593903

ANSWER OF THE
OFFICE OF CONSUMER ADVOCATE
TO THE MOTION IN LIMINE OF
PHILADELPHIA GAS WORKS

Pursuant to Section 5.103 of the Pennsylvania Public Utility Commission's (Commission) rules regarding Motions, 52 Pa. Code Section 5.103, the Office of Consumer Advocate (OCA) provides the following Answer to Philadelphia Gas Works' (PGW or Company) Motion in Limine. For the reasons set forth below, the OCA submits that PGW's Motion in Limine should be denied.

I. INTRODUCTION

On May 22, 2017, PGW filed its Motion in Limine to Limit the Scope of the Evidentiary Hearing and this Proceeding and to Exclude Certain Portions of Testimony Submitted by the Office of Consumer Advocate (Motion in Limine). In its Motion in Limine, PGW requests that the ALJs: (a) limit the scope of the exhibits and evidence introduced at hearing and offered into the evidentiary record to exclude evidence regarding PGW's application of customer's partial payments to prior balances, including late payment charges and (b) strike the testimony of OCA witness Roger D. Colton at OCA Statement No. 4, at page 4, line 25, through page 5, line 2, and

at page 35, line 13, through page 43, line 22, and Schedule RDC-1. The OCA submits that PGW's Motion in Limine should be denied.

PGW avers that the issue of late payment prioritization raised in the OCA's testimony does not "involve PGW's base rates or existing or proposed tariff provisions" and is beyond the scope of a base rate proceeding under Section 1308 of the Public Utility Code. PGW Motion at 1-2. The OCA submits that the issue of how the Company applies the financing charges to its late payments is an appropriate and relevant issue to be addressed in this base rate proceeding. In the OCA's Formal Complaint in this proceeding, the OCA identified that the Company's proposed and existing tariff provisions and rates "may not be just and reasonable or otherwise proper under the Public Utility Code and applicable ratemaking principles." Pa. PUC v. PGW, Docket No. R-2017-2586783, OCA Formal Complaint at Paragraphs L-M. The OCA's testimony is based upon the Company's incorrect application of Section 4.2, Supplement No. 84, Gas Service Tariff – Pa. P.U.C. No. 2, Second Revised Page No. 26 as required by the Commission's Section 56.22 regulations. Section 4.2 of PGW's tariff states:

Finance Charge on Late Payments. PGW will assess a late penalty for any overdue bill, in an amount which does not exceed 1.5% interest per month on the full unpaid and overdue balance of the bill. These charges are to be calculated on the overdue portions of PGW Charges only. The interest rate, when annualized, may not exceed 18% simple interest per annum. Late Payment Charges will not be imposed on disputed estimated bills, unless the estimated bill was required because utility personnel were unable to access the affected premises to obtain an Actual Meter Reading.

Section 4.2, Supplement No. 84, Gas Service Tariff – Pa. P.U.C. No. 2, Second Revised Page No. 26. In his testimony, OCA witness Colton disputes PGW's sequencing of the residential payments to apply those payments against newer non-interest-bearing late charges before applying those payments against older interest-bearing principal. OCA witness Colton shows that the payment sequencing is contrary to the requirements of the Commission's Section 56.22

regulations which governs Section 4.2 of the tariff. OCA St. 4 at 4. As OCA witness Colton testifies, PGW's compounded interest results in an annual percentage interest rate of 19.52%, in excess of the 18% maximum required in Section 56.22 of the Commission's regulations. OCA St. 4 at 38; see 52 Pa. Code § 56.22. Mr. Colton recommends that the Company revise its existing tariff to be in compliance with the Commission's regulations. As such, the OCA submits that Mr. Colton's testimony is directly relevant to this proceeding.¹

II. ARGUMENT

A. Legal Standard

The legal standard for a Motion in Limine is that the Motion "may be presented in a pending matter when exclusion is sought in order to ensure the elimination of anticipated prejudicial evidence, to remove extraneous issues from the underlying proceeding, to preclude references to prejudicial matters, or to prevent encumbering the record with immaterial matters." Pa. PUC v. PGW, Docket No. R-00006042, at 3, citing Commonwealth of Pa. v. Pikur Enterprises, Inc., 596 A. 2d 1253 (Pa. Cmwlth. 1991), Order #3 Denying PGW's Motion in Limine (April 13, 2001). The Public Utility Code and the Commission's rules only require that evidence "be relevant and material to the issues presented and be substantial enough to support the Commission's decision in order to be admissible." Application of Apollo Gas Co., Docket No. A-120450F003, Fourth Interim Order of ALJ Corbett, 1991 Pa. PUC LEXIS 61, 3 (August 2, 1991); see also, Joint Application of West Penn Power d/b/a Allegheny Power, et al., Docket

¹ The OCA notes that upon review of the Motion in Limine, the OCA and Mr. Colton became aware of an error in Mr. Colton's Direct Testimony related to late payment posting. As identified in the attached Appendix A, Affidavit of Roger D. Colton, the inclusion of a request for refunds regarding the payment prioritization process was in error. Appendix A; see also, OCA St. 4 at 5, lines 1-2. Mr. Colton plans to revise his Direct Testimony accordingly, and the OCA will re-serve his testimony to remove lines 1-2 on page 5 of his Direct Testimony. The OCA notes that the removal of the refund language moots the Company's arguments made in the last sentence of Paragraph 10 and Paragraph 13, and the OCA has not responded to the Company's arguments with respect to refunds.

No. A-2010-2176520, Order on Motion in Limine at 2 (September 28, 2010)(Denied motion in limine that sought to exclude Direct Energy testimony as outside the scope of the proceeding and beyond the Commission's authority to grant Direct Energy's request for relief.) In the Recommended Decision for PPL's 2012 base rate proceeding, ALJ Colwell stated that "[i]n a base rate case, any part of the Company's tariff may be brought into question." Pa. PUC v. PPL, Docket No. R-2012-229090597 (Recommended Decision of Administrative Law Judge Susan D. Colwell, October 9, 2012) (PPL R.D.), 2012 Pa. PUC LEXIS 1757, 78.

Mr. Colton's testimony in this matter is relevant and material to the issues presented in this base rate proceeding. Mr. Colton's testimony is substantial enough to support any Commission decision on this matter. Mr. Colton's testimony directly brings PGW's existing tariff into question. Accordingly, PGW's Motion in Limine is without merit and should be denied.

B. The OCA Submits That OCA Witness Colton's Testimony Is Relevant To The Present Base Rate Proceeding, And PGW's Motion In Limine Should Be Denied.

In his Direct Testimony, OCA witness Colton recommends that PGW should: (1) modify its tariff and practices to comply with the PUC mandate that late fees represent annual simple interest rather than posting payments to generate the same effect as compounded interest and (2) that the PUC bar PGW's unreasonable out-of-sequence payment posting to maximize late payment charges and to require PGW to apply payments against bills in the order and timing in which they were incurred. OCA St. 4 at 4-5. In its Motion, PGW argues that "these issues do not involve PGW's base rates or any existing or proposed tariff provision." PGW Motion at ¶¶ 10-11. The OCA submits that the testimony presented by OCA witness Colton is directly related to PGW's existing tariff, Section 4.2, and as such is relevant to this base rate proceeding.

The OCA identified a review of the Company's existing tariff provisions as part of its Formal Complaint in this proceeding. In its Suspension Order in this proceeding, the Commission states that an investigation "shall include consideration of the lawfulness, justness, and reasonableness of the Philadelphia Gas Works' existing rates, rules, and regulations." Pa. PUC v. PGW, Docket No. R-2017-2586783, Order at 3 (March 16, 2017) (Suspension Order). As part of any base rate proceeding, in addition to the Company's request for additional revenues, the Commission must examine the Company's tariff to ensure that the tariff provisions are just and reasonable and consistent with Pennsylvania law. As Mr. Colton has identified, the Company's existing tariff is inconsistent with the Commission's regulations at Section 56.22. 66 Pa. C.S. § 56.22.

The cases upon which PGW relies in support of its request do not support granting PGW's Motion in Limine. PGW Motion at ¶¶ 7-8, citing, Pa PUC v. PPL, Docket No. R-2015-2469275, Sixth Prehearing Order (July 14, 2015) (PPL 2015); Pa. PUC v. PAWC, 1994 Pa. PUC LEXIS 120 at 158 (Order July 26, 1994); Re Gas Cost Rate No. 5, 57 Pa. PUC 158 (1983); Pa. PUC v. Met-Ed, Docket No. R-2016-2537349, Order at 39 (January 19, 2017). In the PPL 2015 Order, PPL filed a Motion to limit the testimony of one of the parties, TASC, regarding a proposed study and cost-benefit analysis for interconnection and net metering standards. Pa PUC v. PPL, Docket No. R-2015-2469275, Sixth Prehearing Order (July 14, 2015). In that case, the ALJs granted the Motion in Limine. Id. The TASC issue is different from the OCA's issue raised in the instant proceeding. PPL argued that TASC's proposal was to amend the Commission's regulations regarding interconnection standards for customer-generators with alternative energy systems to participate in the net metering programs. TASC's proposal did not address either the base rates or PPL's existing or proposed tariff.

In the present matter, unlike the TASC issue, OCA's proposal addresses the Company's collection of revenues and modifications to PGW's existing tariff. The OCA submits that PGW's existing tariff language as it applies to residential customers is inconsistent with the Commission's regulations at Section 56.22 and Section 1501 of the Public Utility Code. OCA witness Colton's testimony recommends that the Commission bring PGW's policies regarding the accrual of late payment charges and the prioritization of payments into compliance with the Commission's regulations. OCA witness Colton's testimony relates specifically to PGW's application of its tariff and whether PGW has appropriately followed the Commission's regulations.

In support of its Motion, PGW also points to an on-going consumer complaint involving commercial landlords. PGW Motion at ¶¶ 14-18, citing SBG Management Services/Colonial Garden Realty Company v. PGW, Docket No. C-2012-2304183, C-2012-2304324 (consolidated), Order (December 8, 2016) (SBG Management Order). PGW argues that other ALJs have refused to address issues in a base rate case where those same issues are already pending before the Commission in another on-going proceeding. PGW Motion at ¶¶ 7-8, citing Pa. PUC v. PAWC, 1994 Pa. PUC LEXIS 120 at 158 (Order July 26, 1994); Re Gas Cost Rate No. 5, 57 Pa. PUC 158 (1983); Pa. PUC v. Met-Ed, Docket No. R-2016-2537349 (Order entered January 19, 2017 at 39)(Met-Ed). The OCA submits that the factual scenarios in each of the cited cases are very different from the present matter. In PAWC and Met-Ed, the respective ALJs referred the excluded issues to very different types of on-going proceedings (a rulemaking for Main Extensions in PAWC and the DSIC proceeding for Met-Ed).

In PAWC, the ALJ excluded an issue related to the Company's main extension. PAWC at 158. At the time of the PAWC proceeding, there was an on-going Policy Statement

proceeding regarding main extensions, and the Commission had not yet issued a Final Order in the matter. Id. The ALJ, therefore, concluded that the issue was not yet ripe for review. Id. In this proceeding, the review of the Company's existing tariff provision is ripe of review.

In the Met-Ed proceeding, the excluded issue involved the calculation of the Company's accumulated deferred income taxes (ADIT) under Act 40. Met-Ed at 38. The Commission specifically stated that it was excluding the issue from the base rate proceeding "in order to ensure consistency with our previous consideration of ADIT issues, Commission orders and other DSIC issues within the context of DSIC proceedings." Met-Ed at 38. The Commission stated that because the contested issue involved the DSIC calculation that it should be considered along with the other DSIC issues. Met-Ed at 38. The issue was then referred to the on-going DSIC proceeding. Id. The OCA submits that this issue is very different from the issue presented in this case.

In the present matter, the OCA submits that there is no pending rulemaking or on-going proceeding that will provide a remedy for all residential ratepayers or address the needed modifications to PGW's tariff. PGW relies on a pending complaint case of a commercial customer to argue that the issue should not be considered here. PGW Motion at ¶ 14; see, SBG Management Order. While the issue of late payment charges is currently being addressed in the cases involving SBG Management Services/Colonial Realty Company, the OCA submits that the complainants in that case are individual commercial landlords, the OCA is not a party, and the issues raised in that case only addressed the way that PGW addressed commercial late fees. Here, the issue is the residential late fees and PGW's tariff provision as it concerns residential late fees and Section 56.22 of the Commission's regulations. The Commission's decision in the

SBG Management Order does not address residential customer payment posting, will not provide a remedy for all residential customers, and may not result in modification to the tariff.²

PGW also inappropriately relies upon the Re Gas Cost Rate No. 5 case. Re Gas Cost Rate No. 5, 57 Pa. PUC 158 (1983). PGW quotes from the case that “the testimony stricken by the ALJ addresses, in part, matters broader than the scope of the instant proceeding.” PGW Motion at ¶ 8, fn. 8. The OCA submits, however, that the issues identified in the Gas Cost Rate No. 5 proceeding were very different than the issues presented in this matter. Of the two issues raised, the first involved bringing a base rate design issue into the gas cost rate proceeding and the second involved a matter of *res judicata* wherein the Commission had concluded that the OCA had raised issues involving the same parties that were previously decided by the Commission. Id. Neither of these circumstances are presented in this case.

The OCA submits that the issues related to PGW’s existing tariff are to be addressed in the context of the base rate proceeding. See, Suspension Order at 3. Unlike the cases cited by PGW, the present case is the most expedient and appropriate forum to address the issue of whether PGW’s current late fee payment tariff provision is consistent with the Commission’s regulations and Section 1501 of the Public Utility Code.

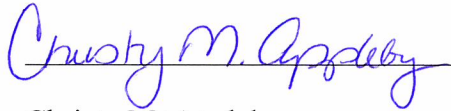
Moreover, the OCA submits that the Commission should not approve a tariff provision for which evidence has been presented to show it is not in compliance with the Commission’s regulations. For the reasons set forth above, the OCA submits that PGW’s Motion in Limine should be denied.

² In addition, the OCA submits that the commercial landlords’ complaint case may only resolve the issue with respect to those individual commercial customers. The Commission has held that class actions are not permitted under the Public Utility Code, and, as such, individual complainants do not have standing to represent the interests of others “similarly situated” before the Commission. See, C Leslie Pettko v. Pennsylvania Water Company, Docket No. C-2011-2226096, Order Granting in Part and Denying in Part Motion for Judgment on the Pleadings at 6 (Oct. 5, 2011) (Pettko)

III. CONCLUSION

WHEREFORE, for the reasons set forth above, the Office of Consumer Advocate respectfully requests that Philadelphia Gas Works' Motion in Limine to limit the scope of the evidentiary hearing and to exclude certain portions of OCA witness Roger Colton's testimony be denied.

Respectfully Submitted,



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DATE: May 25, 2017
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APPENDIX A

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission

v.

Philadelphia Gas Works

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:
:

Docket No. R-2017-2586783

AFFIDAVIT OF
ROGER D. COLTON

1. My name is Roger D. Colton. I am a principal in the firm of Fisher, Sheehan & Colton, Public Finance and General Economics. My address is 34 Warwick Road, Belmont, MA 02478.
2. On May 16, 2017, I filed Direct Testimony in this proceeding on behalf of the Office of Consumer Advocate. The purpose of the information presented in this Affidavit is to identify a correction to my Direct Testimony.
3. The following language was included in error and should be deleted from my Direct Testimony:

PGW be directed to provide a full accounting and refund of the late payment charges to the extent that they have been unreasonably and unlawfully imposed.

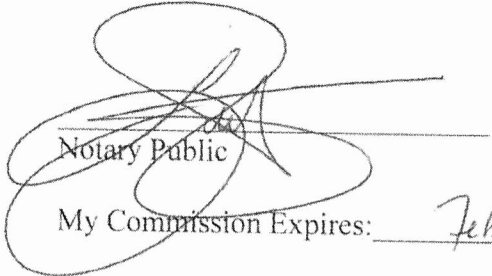
OCA St. No. 4 at 5, lines 1-2.
4. I plan to revise my Direct Testimony to remove the above language. It is my understanding that the Office of Consumer Advocate will serve a corrected version of my Direct Testimony upon Your Honors and all parties.

Further Affiant sayeth not.



Roger D. Colton

Subscribed and sworn to before me on this 24 day of May 2017.



Notary Public

My Commission Expires: Feb 23, 2018

