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September 25, 2017

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Bldg.  
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Harrisburg, PA 17120

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

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's  
Exceptions in the above-referenced proceeding.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

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Attachment

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

\*240366

# CERTIFICATE OF SERVICE

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	:	
v.	:	Docket No. R-2017-2586783
	:	
Philadelphia Gas Works	:	

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Exceptions, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code §1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 25<sup>th</sup> day of September 2017.

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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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EXCEPTIONS OF THE  
OFFICE OF CONSUMER ADVOCATE

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## TABLE OF CONTENTS

I.	INTRODUCTION .....	1
II.	EXCEPTIONS .....	4
	OCA Exception No. 1: The ALJs erred in dismissing the OCA’s claim regarding PGW’s partial payment allocation. (R.D. at 72-77). ....	4
	a. The OCA’s claims regarding partial payment allocation are properly before the ALJs and the Commission in this proceeding. ....	5
	b. To the extent the ALJs dismissed the OCA’s claims regarding PGW’s partial payment allocation on the basis that the OCA challenged the application, rather than the language of an existing tariff provision, such a consideration is inconsistent with Pennsylvania law. ....	6
	c. The fact that the ALJs considered the evidence presented by the OCA and relied upon the pending outcome of the SBG case in their decision to dismiss the OCA’s claims relating to PGW’s partial payment allocation raises several legal concerns. ....	8
	d. The ALJs’ dismissal of the OCA’s claims regarding PGW’s partial payment allocation on the basis that the challenge raised by the OCA can effectively be pursued in a complaint proceeding raises several issues. ....	10
	OCA Exception No. 2: The ALJs erred in their application of the burden of proof. (R.D. at 27-29.) .....	11
	OCA Exception No. 3: PGW failed to meet its burden of proof to demonstrate that Section 4.2 of its tariff (relating to partial payment allocation) is reasonable and consistent with the Commission’s regulations and the Public Utility Code. (R.D. at 72-77). ....	15
III.	CONCLUSION .....	18

## TABLE OF AUTHORITIES

	Page(s)
<b>Cases</b>	
<u>Allegheny Center Assocs v. Pa. PUC</u> 570 A. 2d 149 (Pa. Cmwlt. 1990) ( <u>Allegheny Center</u> ) .....	12
<u>Sharon Steel Corp. v. Pa. PUC</u> , 78 Pa. Cmwlt. 447 (1986) ( <u>Sharon Steel</u> ) .....	12, 13
<b>Administrative Decisions</b>	
<u>C Leslie Pettko v. Pennsylvania Water Company</u> , Docket No. C-2011-2226096, Order Granting in Part and Denying in Part Motion for Judgment on the Pleadings (Oct. 5, 2011).....	10
<u>Pa. PUC v. Aqua Pennsylvania, Inc.</u> , Docket No. R-00038805, 236 PUR 4th 218 (August 5, 2004).....	12
<u>Pa. PUC v. Breezewood Telephone Co.</u> , 1991 Pa. PUC LEXIS 45, Docket No. R-901666 (Jan. 31, 1991) ( <u>Breezewood</u> ).....	13
<u>Pa. PUC v. PECO</u> , Docket No. R-891364, Slip Opinion (May 16, 1990).....	13
<u>Pa. PUC v. PGW</u> , Docket No. R-2017-2586783, Order (March 16, 2017) ( <u>Suspension Order</u> ) .....	2, 5, 13
<u>Pa. PUC v. PGW</u> , Docket No. R-2017-2586783, Prehearing Order No. 5 (May 26, 2017) ( <u>Prehearing Order No. 5</u> ) .....	3, 14
<u>Pa. PUC v. PPL</u> , Docket No. R-2012-229090597, Recommended Decision of Administrative Law Judge Susan D. Colwell (October 9, 2012) .....	6
<u>Pa PUC v. PPL</u> , Docket No. R-2015-2469275, Sixth Prehearing Order (July 14, 2015) ( <u>PPL Order</u> ).....	10
<u>Pennsylvania Public Utility Commission v. Philadelphia Gas Works</u> , Opinion and Order, Docket No. R-00061931, <i>et. al.</i> (September 28, 2007) .....	7

**Statutes**

66 Pa. C.S. § 315(a) .....12

66 Pa. C.S. § 332(a) .....12

66 Pa. C.S. § 526(a) .....7

66 Pa. C.S. §§ 1301, 1303.....3, 6, 15, 17

66 Pa. C.S. § 2212.....1

**Regulations**

52 Pa. Code §§ 56.1, 56.22, 56.23, 56.24 .....15, 17

52 Pa. Code §§ 56.22, 56.23, and 56.24 .....3, 6

52 Pa.Code § 56.22(a).....9, 16, 17

## **I. INTRODUCTION**

PGW is a municipal public utility company, owned by the City of Philadelphia and managed and operated by the Philadelphia Facilities Management Corporation. The Company is engaged in the business of furnishing natural gas to approximately 500,000 residential, commercial, and industrial natural gas customers in Philadelphia, Pennsylvania. The natural gas service being furnished or rendered by PGW became subject to the regulation and control of the Pennsylvania Public Utility Commission on July 1, 2000, pursuant to the Natural Gas Choice and Competition Act, 66 Pa. C.S. § 2212.

On February 27, 2017, PGW filed Supplement No. 100 to PGW's Gas Service Tariff- Pa. P.U.C. No. 2 (Supplement No. 100).<sup>1</sup> In Supplement No. 100, the Company sought an increase in annual distribution revenues of \$70 million, to become effective April 28, 2017. The Company proposed to increase the residential monthly customer charge from \$12.00 per month to \$18.00 per month, or by 50%. Additionally, for a residential customer, the delivery charge would increase from \$6.0067/Mcf to \$6.7275/Mcf, or by 12% under the Company's filing. According to PGW's filing, the bill for a typical PGW residential heating customer who uses 76 Mcf per year would increase from \$94.06 to \$104.65 per month, or by 11.3%. The Company also proposed the following Tariff revisions: add a rate schedule for back-up service; add a Pilot Technology and Economic Development Rider for certain firm-service, non-residential customers; update its Interruptible Transmission rate; and eliminate existing rate schedules that are no longer necessary or appropriate.

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<sup>1</sup> For the sake of brevity, the Office of Consumer Advocate (OCA) is summarizing the procedural history in these Exceptions. A full procedural history is provided in the OCA's Main Brief. OCA M.B. at 1-6.



On March 6, 2017, the Office of Consumer Advocate (OCA) filed a Formal Complaint in this proceeding. By Order entered March 16, 2017, the Commission instituted an investigation into the lawfulness, justness, and reasonableness of the proposed rates, suspended Supplement No. 100 by operation of law until November 28, 2017, and assigned the matter to the Office of Administrative Law Judge. Pa. PUC v. PGW, Docket No. R-2017-2586783, Order (March 16, 2017) (Suspension Order). Of particular relevance to these Exceptions, in its Suspension Order, the Commission ordered “[t]hat this investigation shall include consideration of the lawfulness, justness, and reasonableness of the Philadelphia Gas Works’ existing rates, rules, and regulations.” Suspension Order at 9.

Through the course of the proceeding, the OCA challenged, among other things, PGW’s partial payment allocation practices. Specifically, the OCA presented evidence supporting its positions that: (1) PGW’s tariff and practices do not comply with the Commission’s regulations that provide that late fees must represent annual simple interest, rather than, effectually, a compounded interest, and (2) PGW’s payment posting practices are unreasonable and serve to maximize late payment charges for residential customers. OCA St. No. 4 at 35-43 (Revised); OCA St. No. 4-S at 13-23, Exh. RDC-1SR.

On May 22, 2017, PGW filed a Motion in Limine seeking to exclude certain portions of the testimony of OCA witness Roger D. Colton related to PGW’s partial payment allocations, asserting that the challenges raised by the OCA are beyond the scope of this rate proceeding. The OCA filed its Response to PGW’s Motion on May 25, 2017. On May 26, 2017, the ALJs denied PGW’s Motion in Limine, holding, in pertinent part:

We agree with OCA that the Company’s late payment procedure, which appears in its current tariff, is subject to review pursuant to the Commission’s March 16, 2017 *Suspension Order*. Specifically, PGW’s procedure for assessing late payments appears at Section 4.2 of their current tariff. As previously noted, the

Commission instituted an investigation into the lawfulness, justness, and reasonableness of the proposed rate increase through the *Suspension Order*. More precisely, at ordering paragraph 4 the Commission specifically directed that this investigation “include consideration of the lawfulness, justness, and reasonableness of the Philadelphia Gas Works’ existing rates, rules, and regulations.” The Commission did not place any limitations on that directive in the March 16, 2017 Order. As the Commission did not impose any limitations, and since the procedure for assessing late payments is set out in PGW’s current tariff, consideration of this tariff provision is appropriate within the context of this proceeding. Accordingly, we will deny PGW’s Motion in Limine.

Pa. PUC v. PGW, Docket No. R-2017-2586783, Prehearing Order No. 5 at 8-9 (May 26, 2017) (Prehearing Order No. 5) (internal footnote omitted).

Accordingly, the OCA argued that Section 4.2 of PGW’s existing tariff, as applied to residential customers, is inconsistent with Sections 56.22 (relating to the accrual of late payment charges), 56.23 (relating to the application of partial payments between a public utility and another service), and 56.24 (relating to the application of partial payments among several bills for public utility service) of the Commission’s regulations, 52 Pa. Code §§ 56.22, 56.23, and 56.24, and Sections 1301 (relating to the requirement that rates be just and reasonable) and 1303 (relating to the requirement that a utility must charge rates that adhere to its tariff) of the Public Utility Code, 66 Pa. C.S. §§ 1301, 1303. OCA M.B. at 11-22; OCA R.B. at 6-21.

On August 28, 2017, the Office of Administrative Law Judge issued the Recommended Decision (R.D.) of Administrative Law Judges Christopher Pell and Marta Guhl (ALJs). In their Recommended Decision, the ALJs dismiss the OCA’s claim regarding partial payment allocation, concluding that the OCA’s challenges can be effectively pursued in a complaint proceeding. R.D. at 72-77.

For the reasons expressed below, the OCA submits that the ALJs erred in dismissing the OCA’s claim regarding PGW’s partial payment allocation. The OCA’s challenges to PGW’s partial payment allocation are properly before the ALJs and the Commission in this proceeding,

as they directly relate to PGW's existing tariff and have a direct effect on the rates charged to PGW's customers. Furthermore, the ALJs erred by not applying the appropriate burden of proof to PGW to demonstrate that all aspects of its existing tariff, including the application thereof, are consistent with Commission regulations and the Public Utility Code. Finally, PGW failed to meet its burden of proof and demonstrate that Section 4.2 of its tariff (relating to partial payment allocation) is reasonable and consistent with Commission regulations and the Public Utility Code.

## **II. EXCEPTIONS**

**OCA Exception No. 1:**     **The ALJs erred in dismissing the OCA's claim regarding PGW's partial payment allocation. (R.D. at 72-77).**

In their Recommended Decision, the ALJs dismiss the OCA's claim regarding partial payment allocation. R.D. at 72-77. In support of their conclusion, the ALJs rely on three general factors: (1) because the language in PGW's Tariff is consistent with the Commission's regulations, PGW's tariff is not at issue here. R.D. at 75-76; (2) the record in this proceeding does not contain any actual billing data reflecting how PGW's payment allocation practices have affected its customers, whereas the record in a pending consumer complaint case regarding PGW's late payment charges does, SBG Management Services/Colonial Garden Realty Company v. PGW at Docket Nos. C-2012-2304183 and C-2012-2304324 (SBG case). R.D. at 76; and (3) the challenge raised by the OCA in this case regarding PGW's partial payment allocation can be effectively pursued in a complaint proceeding. R.D. at 77.

The OCA submits that the ALJs erred in dismissing its claims regarding PGW's partial payment allocation and that these claims are properly before the ALJs and the Commission in

this proceeding. The factors relied upon by the ALJs do not support a dismissal of the OCA's claims regarding PGW's partial payment allocation.

**a. The OCA's claims regarding partial payment allocation are properly before the ALJs and the Commission in this proceeding.**

In its March 16, 2017 Order in this proceeding, the Commission ordered "[t]hat this investigation shall include consideration of the lawfulness, justness, and reasonableness of the Philadelphia Gas Works' existing rates, rules, and regulations." Suspension Order at 9. As such, this rate proceeding is not limited to the issues specifically raised in the Company's filing. Rather, all provisions of the legal tariff that the Commission will approve at the end of this base rate case are subject to investigation in this proceeding.

The OCA submits that the issues pertaining to PGW's partial payment allocation are appropriately addressed in this proceeding, as they are directly related to a provision of the Company's existing tariff, Section 4.2,<sup>2</sup> and must be considered in order to determine whether PGW is charging rates that are just and reasonable and in compliance with the Commission's regulations and the Public Utility Code. Specifically, and as discussed in more detail in OCA Exception No. 3, below, the OCA has challenged the "lawfulness" of PGW's existing Tariff. The OCA makes two essential claims related to PGW's partial payment allocation: (1) PGW's tariff and practices do not comply with the Commission's regulations that provide that late fees must represent annual simple interest, rather than, effectually, a compounded interest, and (2)

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<sup>2</sup> Section 4.2 of PGW's tariff provides:

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.

PGW's payment posting practices are unreasonable and serve to maximize late payment charges for residential customers. OCA M.B. at 11-22; OCA R.B. at 6-21. In support of its claims, the OCA has presented evidence and legal arguments demonstrating that Section 4.2 of PGW's existing tariff, as applied to residential customers, is inconsistent with Sections 56.22 (relating to the accrual of late payment charges), 56.23 (relating to the application of partial payments between a public utility and another service), and 56.24 (relating to the application of partial payments among several bills for public utility service) of the Commission's regulations, 52 Pa. Code Sections 56.22, 56.23, and 56.24, and Sections 1301 (relating to the requirement that rates be just and reasonable) and 1303 (relating to the requirement that a utility must charge rates that adhere to its tariff) of the Public Utility Code, 66 Pa. C.S. Sections 1301, 1303. OCA M.B. at 11-22; OCA R.B. at 6-21. The OCA has demonstrated that PGW's payment prioritization practices have a direct effect on the rates paid by PGW's residential customers. *Id.* As such, issues pertaining to PGW's partial payment allocation are appropriately before the ALJs and the Commission in this proceeding.

**b. To the extent the ALJs dismissed the OCA's claims regarding PGW's partial payment allocation on the basis that the OCA challenged the application, rather than the language of an existing tariff provision, such a consideration is inconsistent with Pennsylvania law.**

In their Recommended Decision, the ALJs specifically acknowledge that the investigation into PGW's proposed rate increase should include consideration of the lawfulness, justness, and reasonableness of the existing rates, rules, and regulations. R.D. at 75; see also Pa. PUC v. PPL, Docket No. R-2012-229090597, Recommended Decision of Administrative Law Judge Susan D. Colwell (October 9, 2012) (ALJ Colwell stated, "[i]n a base rate case, any part of the Company's tariff may be brought into question."). Nevertheless, the ALJs determine that

because the language in PGW's Tariff is consistent with the Commission's regulations, PGW's tariff is not at issue here. R.D. at 75-76.

To the extent the ALJs dismissed the OCA's claims regarding PGW's partial payment allocation on the basis that the OCA challenged the application, rather than the language, of an existing tariff provision, such a consideration is inconsistent with Pennsylvania law. In its Suspension Order, the Commission did not place any such limitation on its directive to investigate the lawfulness, justness, and reasonableness of PGW's existing rates, rules, and regulations. Furthermore, a requirement that the language, rather than the application, of an existing tariff provision must be at issue to be considered in a base rate proceeding would essentially prevent the ALJs and the Commission from investigating the actions of a utility in a base rate case. In other words, the ALJs and the Commission would be limited to determining whether a utility's practices look good on paper. Such a limitation was clearly not intended by the General Assembly. Section 526(a) of the public utility code specifically authorizes the Commission to reject a public utility's request for a rate increase if the Commission determines that the utility is providing inadequate quantity or quality of service. 66 Pa. C.S. § 526(a). And, quality of service issues have been specifically investigated in past PGW base rate proceedings.<sup>3</sup>

Furthermore, even if the Commission was to agree with the ALJs' determination that the language, rather than the application, of an existing tariff provision must be at issue to be considered in a base rate proceeding, the OCA notes that it has challenged the language in Section 4.2 of PGW's existing tariff. Specifically, the OCA argued that PGW should be required to revise the language in its tariff to explain its payment posting prioritization practices. OCA

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<sup>3</sup> See e.g. Pennsylvania Public Utility Commission v. Philadelphia Gas Works, Opinion and Order, Docket No. R-00061931, *et. al.* at 124 - 126 (September 28, 2007) (As part of a general rate case, the Commission considered whether the record evidence supported a finding that PGW provided inadequate service to low income households).

M.B. at 22. As such, the OCA submits that issues pertaining to PGW's partial payment allocation are appropriately before the ALJs and the Commission in this proceeding.

**c. The fact that the ALJs considered the evidence presented by the OCA and relied upon the pending outcome of the SBG case in their decision to dismiss the OCA's claims relating to PGW's partial payment allocation raises several legal concerns.**

In support of their determination to dismiss the OCA's claims relating to PGW's partial payment allocation, the ALJs considered the evidence presented by the OCA in this case and compared it to the record evidence in the SBG case. Specifically, the Recommended Decision provides:

The record in this proceeding contains OCA's hypothetical scenarios as to how PGW's partial payment allocation practices may result in the assessment of late payment charges in excess of 18% per year, which would be a direct violation of the Commission's regulations at 52 Pa.Code § 56.22(a). However, the record does not contain any actual billing data reflecting how PGW's partial payment allocation practices have affected its customers. On the contrary, and more significant, the record in the *SBG* cases contains actual billing data that the Commission relied upon in its assessment of the repercussions of PGW's partial payment allocation practices.

R.D. at 76.

The fact that the ALJs considered the evidence presented by the OCA as a basis for dismissing the OCA's claims regarding PGW's partial payment allocation raises several legal concerns. First, the evidence presented by a party to support a claim in a base rate proceeding is not determinative of whether the issue is appropriately before the ALJs and the Commission in that proceeding. As discussed in Section a, above, issues related to any provision of PGW's existing tariff are appropriately pursued in this proceeding. The issues pertaining to PGW's partial payment allocation are appropriately addressed in this proceeding, as they are directly related to a provision of the Company's existing tariff, Section 4.2, and must be considered in

order to determine whether PGW is charging rates that are just and reasonable and in compliance with the Commission's regulations and the Public Utility Code.

As to the evidence presented by the OCA, the OCA submits that it has presented substantial evidence to demonstrate that Section 4.2 of PGW's tariff is inconsistent with the Commission's regulations and the public utility code.<sup>4</sup> See OCA St. No. 4 at 35-43 (Revised); see also OCA St. No. 4-S at 13-23 and Exh. RDC-1SR.; see also Exception 3, infra. There is no dispute as to PGW's partial payment allocation practices. The ALJs acknowledge that the record contains evidence that "PGW's partial payment allocation practices may result in the assessment of late payment charges in excess of 18% per year, which would be a direct violation of the Commission's regulations at 52 Pa. Code § 56.22(a)." R.D. at 76 (emphasis added). As such, the OCA submits that the evidence it has presented in this case is sufficient to arrive at a decision on the merits.

Moreover, to the extent the ALJs have dismissed the OCA's partial payment allocation claims in this proceeding on the basis that the issues raised by the OCA will be fully addressed in the SBG case, the OCA submits that the resolution of that matter may not provide any final determination that is applicable to the residential customers that the OCA represents here. While the issue of late payment charges is currently being addressed in the SBG case, 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 relate to PGW's partial payment allocation for commercial customers. Here, the OCA has challenged PGW's partial payment allocation and tariff provisions as they relate to residential customers. The SBG case outcome may not provide a remedy for all residential ratepayers or address the needed modifications to PGW's tariff. In

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<sup>4</sup> It is worth noting that the OCA only has the burden of going forward, while PGW has the burden of proof, regarding this issue. The OCA submits that it has met its burden of going forward.



fact, the SBG case may only resolve the issue with respect to the individual commercial complainants. 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). As such, the OCA submits that issues pertaining to PGW’s partial payment allocation are appropriate to address in the context of this rate case.

**d. The ALJs’ dismissal of the OCA’s claims regarding PGW’s partial payment allocation on the basis that the challenge raised by the OCA can effectively be pursued in a complaint proceeding raises several issues.**

In support of their dismissal of the OCA’s claims regarding PGW’s partial payment allocation, the ALJs also state that the challenge raised by the OCA can effectively be pursued in a complaint proceeding. R.D. at 77. The ALJs cite Pa PUC v. PPL, Docket No. R-2015-2469275, Sixth Prehearing Order (July 14, 2015) (PPL Order) in support of this position.<sup>5</sup>

The OCA did file a Formal Complaint in this base rate proceeding. Throughout this proceeding, the OCA has challenged the “lawfulness” of PGW’s existing tariff and application thereof, and presented substantial record evidence to support a finding that PGW’s tariff and practices are in violation of the Commission’s regulations and the Public Utility Code. See OCA M.B. 11-22; see also OCA R.B. at 7-21; see also Exception 3, infra. To now require the OCA to file another complaint raising the same claims against PGW related to PGW’s partial payment allocation, present its evidence again, and argue the merits of its claim again would not promote

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<sup>5</sup> The OCA notes that the Recommended Decision actually cites Docket No. R-2015-2469276. It appears, however, that the ALJs, in fact, rely on the Prehearing Order of Judge Colwell at Docket No. R-2015-2469275.

judicial efficiency. As such, the OCA's claims regarding PGW's partial payment allocation should be considered in this proceeding.

Additionally, the OCA submits that the ALJs' reliance on the PPL Order is misplaced. In the PPL Order, PPL filed a Motion to limit the testimony of one of the parties regarding a proposed study and cost-benefit analysis for interconnection and net metering standards. In the PPL Order, the Administrative Law Judge granted the Motion in Limine. The PPL Order, however, is distinguishable from the present case. Unlike the present case, the challenges at issue in the PPL case were not related to either the base rates or PPL's existing or proposed tariff. See PPL Order at 7-8. As discussed above, here, the OCA's challenges to PGW's partial payment allocation are directly related to PGW's existing tariff and have a direct effect on the rates charged to residential customers. The OCA submits that the issues related to PGW's payment posting allocation should be addressed in the context of a base rate proceeding.

**OCA Exception No. 2:      The ALJs erred in their application of the burden of proof. (R.D. at 27-29.)**

The ALJs do not apply their burden of proof discussion directly to either of the two litigated issues: (1) payment posting issue and (2) allocation of universal service costs. R.D. at 27-29. As discussed in Exception No. 1, above, the ALJs should have considered the merits of the OCA's payment posting claims. The ALJs erred by not considering the merits and not applying the appropriate burden of proof to PGW to demonstrate that all aspects of its existing tariff are just and reasonable. In a base rate proceeding, the affirmative burden of proving the justness and reasonableness of the tariff provision remains on the utility, PGW, and not the OCA. As to the payment posting issue here, the OCA only bears "the burden of going forward" and not the burden of proof.

In their Recommended Decision, the ALJs correctly state that the “the public utility bears the burden of proof to establish the justness and reasonableness of its requested rate increase.”

R.D. at 27. The Public Utility Code sets forth the required standard, as follows:

**Reasonableness of rates.** –In any proceeding upon the motion of the Commission, involving any proposed or existing rate of any public utility, or in any proceeding upon complaint involving any proposed increase in rates, the burden of proof to show that the rate involved is just and reasonable shall be upon the public utility.

66 Pa. C.S. § 315(a). A public utility seeking a general rate increase has the burden of proof to establish the justness and reasonableness of every element of the rate increase request. 66 Pa. C.S. § 315(a); Pa. PUC v. Aqua Pennsylvania, Inc., Docket No. R-00038805, 236 PUR 4<sup>th</sup> 218 (August 5, 2004); see also, Sharon Steel Corp. v. Pa. PUC, 78 Pa. Cmwlth. 447, 452 (1986) (Sharon Steel). When the Commission orders an investigation into the propriety of existing and proposed rates, the burden of justifying both existing and proposed rates is on the utility. See Sharon Steel at 451-52, 862.<sup>6</sup>

The ALJs also correctly note that the burden of proof does not shift to parties proposing an adjustment in a rate case. R.D. at 28.<sup>7</sup> The utility’s burden of establishing the justness and

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<sup>6</sup> Sharon Steel involved a base rate proceeding, wherein the Commission, upon its own motion, instituted an investigation to determine the lawfulness, justness and reasonableness of the company’s proposed rates, rules and regulations in its proposed tariff supplement. Id. at 450, 861. In the order instituting the investigation, the Commission also noted that the investigation would include consideration of the lawfulness, justness and reasonableness of the company’s existing rates, rules and regulations. Id. The Commission, however, rejected Sharon Steel’s argument that, pursuant to 66 Pa. Code § 315(a), the company bore the burden of proof regarding the justness and reasonableness of both the company’s existing and proposed rates and instead found that pursuant to 66 Pa. C.S. § 332(a), Sharon Steel had the burden to prove that the company’s existing rates were unjust or unreasonable. Id. at 451-52, 862. The Commonwealth Court disagreed and held that when ordering an investigation into the propriety of existing and proposed rates on Commission motion, the burden of justifying both existing and proposed rates is on the utility. Id. at 452, 862.

<sup>7</sup> In the burden of proof discussion, the ALJs cite to Allegheny Center Assocs v. Pa. PUC, 570 A.2d 149 (Pa. Cmwlth. 1990) (Allegheny Center) and state that the “[utility] cannot be called upon to account for every action absent prior notice that such action is to be challenged.” R.D. at 28. The Allegheny Center case involved the issue of due process and is not applicable. In Allegheny Center, the challenge to the Company’s litigation expenses was not raised until the briefing phase of the proceeding. Allegheny Center at 153. Here, as discussed in Exception No. 1, the OCA appropriately raised the issue of payment prioritization in its Formal Complaint in this proceeding. The OCA submits that the Company can be called upon to account for an issue relating to its tariff that was appropriately

reasonableness of every component of its request is an affirmative one, and that burden remains with the public utility throughout the course of the rate proceeding. See e.g. Pa. PUC v. Breezewood Telephone Co., 1991 Pa. PUC LEXIS 45 at \*9-10, Docket No. R-901666 (Jan. 31, 1991) (Breezewood). A party proposing an adjustment to a ratemaking claim bears the burden of presenting some evidence or analysis tending to demonstrate the reasonableness of the adjustment. Breezewood at \*9-10. Specifically, in Breezewood, the Commission provided:

With respect to rate proceedings before the Commission, Section 315 of the Public Utility Code, 66 Pa. C.S. § 315, provides that the burden of proof shall be upon the utility. Clearly, although the burden of going forward with the evidence may shift, the burden of proof does not shift to an intervenor challenging a requested rate increase. However, the Commission has indicated that where a party proposes an adjustment to a ratemaking claim of a utility, the proposing party does bear the burden of presenting some evidence or analysis tending to demonstrate the reasonableness of the adjustment.

Breezewood at \*9-10 (citing Pa. PUC v. PECO, Docket No. R-891364, Slip Opinion at 42, 53-54 (May 16, 1990)). The burden of going forward is satisfied by presenting some evidence or analysis of the reasonableness of the proposal. Id. at 18 (citing Breezewood at \*10).

Here, PGW has the burden of proof to demonstrate that every element of its rate increase request is just and reasonable. In this matter, consistent with Sharon Steel, the Commission directed that an investigation be instituted to determine the lawfulness, justness and reasonableness of the rates, rules and regulations. The Suspension Order suspends all aspects of the Company's rates, including the Company's existing and proposed rates. Suspension Order at 3. As noted above, in its Suspension Order, the Commission states that this investigation "shall include consideration of the lawfulness, justness, and reasonableness of the Philadelphia Gas

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raised in the base rate proceeding and be required to have the burden of proof regarding the justness and reasonableness of its tariff provision.

Works' existing rates, rules, and regulations.” Id. As the ALJs correctly identified in their Prehearing Order No. 5 regarding PGW's Motion to Strike this issue:

[T]he Commission did not place any limitations on that directive in the March 16, 2017 Order. As the Commission did not impose any limitations, and since the procedure for assessing late payments is set out in the current tariff, consideration of this tariff provision is appropriate within the context of this proceeding.

Prehearing Order No.5 at 9.

As such, the OCA submits that PGW has the burden of proof in this proceeding to prove that all provisions of its existing tariff are just and reasonable and consistent with the Commission's regulations and the Public Utility Code. As to the payment posting issue in this proceeding, since PGW's payment allocation practice is identified in Section 4.2 of the Company's existing tariff, and the Commission has instituted an investigation into the existing “rates, rules and regulations,” the burden of proof is on the Company to show the reasonableness of this tariff provision and its application thereof.

In this proceeding, the OCA has challenged Section 4.2 of PGW's existing tariff and its application thereof and has proposed an adjustment to that tariff provision. Specifically, the OCA has recommended that PGW adjust its payment posting practices to be consistent with the Commission's regulations and Pennsylvania law and that PGW should be required to revise the language in its tariff to explain its payment posting prioritization practices. As such, the OCA has the burden of going forward with regard to the payment posting issues. The burden of proof, however, remains with PGW to demonstrate that Section 4.2 of its existing tariff is just and reasonable and consistent with the Commission's regulations and the Public Utility Code.

The ALJs should have considered the merits of the OCA's payment posting challenges and, in doing so, should have put the burden of proof on PGW to demonstrate that Section 4.2 of its existing tariff is just and reasonable and consistent with the Commission's regulations and the

Public Utility Code. As discussed in Exception No. 3, below, the OCA provided ample record evidence to satisfy its burden of going forward with respect to the payment posting issues. The evidence presented by the OCA demonstrates that Section 4.2 of PGW's existing tariff and PGW's payment posting practices are inconsistent with the Commission's regulations and the Public Utility Code. See OCA St. No. 4 at 35-43 (Revised); see also OCA St. No. 4-S at 13-23 and Exh. RDC-1SR; see also OCA M.B. at 11-22; see also OCA R.B. at 6-21. The OCA has demonstrated that its proposals related to PGW's payment posting practices are reasonable and consistent with the Commission's regulations and the Public utility Code. To the contrary, and also discussed in more detail in Exception No. 3, below, PGW has failed to satisfy its burden of proof to demonstrate that Section 4.2 of its existing tariff is just and reasonable and consistent with the Commission's regulations and the Public Utility Code.

**OCA Exception No. 3: PGW failed to meet its burden of proof to demonstrate that Section 4.2 of its tariff (relating to partial payment allocation) is reasonable and consistent with the Commission's regulations and the Public Utility Code. (R.D. at 72-77).**

PGW failed to meet its burden of proof and demonstrate that Section 4.2 of its tariff (relating to partial payment allocation) is reasonable and consistent with Commission regulations and the Public Utility Code. The OCA has provided substantial evidence demonstrating that PGW's application of its tariff language regarding the sequencing of residential customer payments results in violations of Sections 56.1, 56.22, 56.23, and 56.24 of the Commission's regulations and Section 1301 and 1303 of the Public Utility Code. See OCA St. No. 4 at 35-43 (Revised); OCA St. No. 4-S at 13-23, Exh. RDC-1SR; OCA M.B. at 11-22; OCA R.B. at 6-21; 66 Pa. C.S. § 1301, 1303; 52 Pa. Code §§ 56.1, 56.22, 56.23, 56.24. Specifically, the OCA has demonstrated that PGW sequences its payments to apply partial payments against newer, non-interest-bearing late charges before applying the payments against older, interest-bearing

principal amounts contrary to the requirements of the Commission's regulations and the Public Utility Code. OCA St. 4 (Revised) at 37-38. PGW's posting practices result in an interest rate of 19.562%, which exceeds the 18% limit in the Commission's regulations. 52 Pa. Code § 56.22(a). As discussed above, it is the Company that must demonstrate that the application of its tariff provision at Section 4.2 results in rates that are consistent with the Commission's regulations. PGW has failed to do so.

To the contrary, the OCA has met its burden of going forward to demonstrate that the Company's practices are resulting in rates that violate the Commission's regulations. All of the factual information necessary has been presented in this proceeding. See OCA St. No. 4 at 35-43 (Revised); OCA St. No. 4-S at 13-23, Exh. RDC-ISR.

There are several important facts that are not disputed in this proceeding. Section 56.22(a) limits the amount of interest that PGW can charge to a customer per simple annum to 18%. 52 Pa. Code § 56.22(a). PGW and OCA agree on how the partial payments are allocated by PGW. The partial payments are posted to a hierarchy: (1) deposit, if required, is posted first; (2) late payment charges are then paid; and (3) finally the "remaining balance of the payment is posted to the oldest money." PGW St. 10-R at 7. PGW witness Cummings also confirmed in his testimony that "I do not disagree that a customer may ultimately pay more for services when late charges are zeroed out before partial payments are posted to 'principal.'" PGW St. 10-R at 15. Moreover, PGW acknowledges in its Reply Brief that "the Company allows interest to be assessed on balances that have already been assessed interest." See PGW R.B. at 19. PGW provides policy rationalizations for allowing its rates to exceed the maximums set forth in the Commission's regulations, but those rationalizations do not change the fact that PGW's payment prioritization can result in the effect of a compound interest that exceeds 18% per simple annum.

The ALJs state, “the record in this proceeding contains OCA’s hypothetical scenarios as to how PGW’s partial payment allocation practices may result in the assessment of late payment charges in excess of 18% per, which would be a direct violation of the Commission’s regulations at 52 Pa. Code § 56.22(a).” R.D. at 76. The ALJs go on, however, to conclude that actual billings are necessary to demonstrate that the Company has violated Section 56.22(a). R.D. at 76, citing the actual billings provided in the SBG case. R.D. at 75, citing the SBG case. In the SBG case, an actual accounting was necessary because SBG was seeking a refund. An actual accounting is not needed in this case because unlike with the SBG case, the OCA is not requesting that PGW provide a refund. A refund would require an actual accounting. Here, the question is whether the Company’s payment prioritization practices are consistent with the law. The basic facts regarding how payment prioritization occurs are not disputed in this case. OCA witness Colton’s exhibits are an illustration of the effects of the payment hierarchy used and how it results in a violation of Section 56.22 of the Commission’s regulations.

As discussed in Exception 1, above, the ALJs erred in their determination to dismiss the payment posting practice challenges. PGW has the burden of demonstrating that its tariff provisions are reasonable and consistent with Commission regulations and the Public Utility Code. The OCA has provided substantial evidence to demonstrate that PGW’s payment posting practices allow PGW to charge a rate in excess of what is permitted under the Commission’s regulations and identified in the Company’s tariff. The OCA submits that the Company cannot be permitted to continue a practice that violates the Commission’s regulations and the Public Utility Code. The Company’s payment posting practices are wholly inconsistent with the Commission’s regulations and the Public Utility Code. 52 Pa. Code §§ 56.1, 56.22, 56.23, 56.24; 66 Pa. C.S. §§ 1301, 1303. The OCA recommends that PGW be required to change its

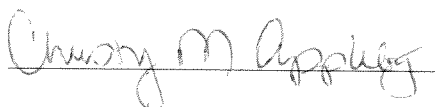


payment posting methodology and provide customers with effective notice of that payment posting methodology in the Company's tariff.

### III. CONCLUSION

For the reasons set forth in the OCA's Main and Reply Briefs and above, the OCA respectfully submits that Administrative Law Judges Christopher Pell and Marta Guhl erred in their Recommended Decision by dismissing the OCA's claims related to PGW's partial payment allocation practices and by not applying the burden of proof to PGW to demonstrate that its tariff is just and reasonable and in compliance with the Commission's regulations and the Public Utility Code. Furthermore, the OCA submits that PGW did not meet its burden of proof to demonstrate that Section 4.2 of its tariff is just and reasonable and consistent with Commission regulations and the Public Utility Code.

Respectfully Submitted,



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