

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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

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

October 2, 2017

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

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

Dear Secretary Chiavetta:

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

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

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

Attachment

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

*240411

CERTIFICATE OF SERVICE

Pennsylvania Public Utility Commission	:	
	:	
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 Reply 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 2nd day of October 2017.

SERVICE BY E-MAIL and INTEROFFICE MAIL

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

SERVICE BY E-MAIL and FIRST CLASS MAIL

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

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

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

Daniel Clearfield, Esquire
Carl R. Shultz, Esquire
Deanne M. O'Dell, Esquire
Karen O. Moury, Esquire
Sarah C. Stoner, Esquire
Eckert Seamans
213 Market Street
Harrisburg, PA 17101

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

Todd S. Stewart, Esquire
Hawke McKeon & Sniscak LLP
100 North Tenth Street
Harrisburg, PA 17101

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

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

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

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

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

Counsel for
Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152
*240412

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	:	

REPLY EXCEPTION OF THE
OFFICE OF CONSUMER ADVOCATE

Darryl A. Lawrence
Senior Assistant Consumer Advocate
PA Attorney ID 93682
DLawrence@paoca.org

Kristine E. Marsilio
Assistant Consumer Advocate
PA Attorney I.D. #316479
KMarsilio@paoca.org

Christy M. Appleby
Assistant Consumer Advocate
PA Attorney ID 85824
CAppleby@paoca.org

Harrison W. Breitman
Assistant Consumer Advocate
PA Attorney ID 320580
HBreitman@paoca.org

Counsel for
Tanya J. McCloskey
Acting Consumer Advocate

Office of Consumer Advocate
555 Walnut Street, 5th Floor Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152
Date: October 2, 2017

TABLE OF CONTENTS

I. INTRODUCTION	1
II. REPLY EXCEPTION	2
OCA Reply to OSBA Exception: The ALJs correctly concluded in their Recommended Decision that PGW’s current allocation of universal service costs should be maintained. (R.D at 92-112; OSBA Exc. 3-17).....	
	2
A. Introduction	2
B. OSBA’s Proposal To Shift The Costs From Firm Service Customers To Only Residential Customers Will Not Be Revenue-Neutral.....	4
1. Introduction.....	4
2. OSBA's Proposal Will Not Be Revenue-Neutral.....	4
C. The OSBA’s Reliance On Past Commission Decisions Is Unpersuasive.....	7
D. The OSBA’s reliance on <i>Lloyd</i> is misplaced.	11
E. Commercial Customers Also Receive Services From The CRP.....	15
III. CONCLUSION	18

TABLE OF AUTHORITIES

	Page(s)
Cases	
<u>Lloyd v. Pa. PUC,</u> 904 A.2d 1010 (Pa. Cmwlth. 2006), <u>appeals denied</u> , 916 A.2d 1104 (Pa. 2007) (Lloyd)	11, 12, 14, 15
Administrative Decisions	
<u>Customer Assistance Programs: Funding Levels and Cost Recovery Mechanisms</u> <u>Final Investigatory Order,</u> Docket No. M-00051923, Order (September 28, 2007)(<u>CAP Order</u>)	8, 10, 11
<u>Investigation into Financial and Collections Issues Regarding the Philadelphia</u> <u>Gas Works,</u> Docket Nos. P-00042090, R-00049157, M-0002161, P-00032061, and P- 00042117, Order (October 27, 2004) (<u>Investigation Order</u>)	8, 9
<u>Metropolitan Edison Company and Pennsylvania Electric Company,</u> Docket Nos. R-00061366C0001-C0008, P-00062213, P-00062214, A- 110300F0095, and A-11040F0040, Order (January 11, 2007)	10
<u>Pa. PUC v. Philadelphia Gas Works,</u> Docket No. M-00021612, Order (March 31, 2003) (<u>Restructuring Order</u>)	8, 9
<u>Pa. PUC v. Philadelphia Gas Works,</u> Docket No. R-00061931, Order (September 28, 2007) (<u>PGW 2006 Order</u>)	5, 6, 8, 9
<u>Pa. PUC v. PPL Electric Utilities Corporation,</u> Docket No. R-00049255, Order (December 22, 2004)	10
<u>Petition of Equitable Gas Company for Authorization to Use a Portion of</u> <u>Equitrans LP Refund to Benefit Low Income Customers,</u> Docket No. P-00052192, Order (December 15, 2005) (<u>Equitable Order</u>)	10
<u>PGW Universal Service and Energy Conservation Plan for 2014-2016</u> <u>52 Pa. Code § 62.4,</u> Docket No. M-2013-2366301 (August 22, 2014) (<u>LIME Order</u>)	16,17
<u>PPL Gas Utilities Corporation,</u> Docket No. R-00061398, Order (February 8, 2007)	10
<u>UGI Utilities, Inc.,</u> Docket Nos. A-120011F2000, A-12546F5000, and A-125146, Order (August 18, 2006)	10

<u>Valley Energy, Inc.,</u> Docket No. R-00049345, Order (April 21, 2005).....	10
---	----

Other Authorities

Philadelphia City Council Bill 140607-AA	14
--	----

I. INTRODUCTION

On September 8, 2017, Deputy Chief Administrative Law Judge Christopher Pell and Administrative Law Judge Marta Guhl issued their Recommended Decision regarding the allocation of PGW's universal service costs to all firm service customers. The ALJs determined that PGW's continuation of the historic allocation of universal service costs is reasonable and recommended that the historic allocation of universal service costs be maintained. R.D. at 92-112. The ALJs also recommended that PGW "be required to submit data in its next base rate case to adjust the universal service costs allocations for removal of all non-residential customer costs" in order to allow the parties "to assess the full impact that will result from shifting the universal service cost allocation fully to the residential class." R.D. at 112.¹

In the proceeding below, the OCA, PGW, CAUSE-PA, and TURN *et al.* opposed OSBA's proposal to change the allocation of universal service costs from all firm service customers to only residential customers. The OCA's Main Brief and Reply Brief in this proceeding addressed the position of OSBA on this issue. See, OCA M.B. at 22-38; OCA R.B. at 22-38. Here, the OCA files this Reply Exception in further response to the arguments raised in OSBA's Exception. The OCA supports the determination of the ALJs in this matter regarding the allocation of universal service costs and submits that it should be adopted by the Commission.

¹ The Administrative Law Judges also recommended dismissal without prejudice of the OCA's issues regarding PGW's prioritization of partial payments. On September 22, 2017, the OCA filed Exceptions to the Administrative Law Judges' decision regarding PGW's prioritization of partial payments.

II. REPLY EXCEPTION

OCA Reply to OSBA Exception: The ALJs correctly concluded in their Recommended Decision that PGW's current allocation of universal service costs should be maintained. (R.D. at 92-112; OSBA Exc. 3-17).

A. Introduction

In its Exception, OSBA opposed the ALJs' recommendation to maintain the historic allocation of universal service costs to all firm service customers. In their Recommended Decision, the ALJs correctly concluded:

We note that there is nothing in PGW's allocation of universal service costs to all firm customers that violates the Public Utility Code or the Commission's regulations. Moreover, PGW's allocation of universal service costs and related rate design has been found to be just, reasonable and in the public interest in several past proceedings.

Due to the size of PGW's universal service program, the number of participants in its universal service programs and the amount of universal service costs already allocated to the residential customers, a total realignment of its USC costs to the residential rate class, together with the \$42 million rate increase under the Partial Settlement, is not appropriate at this time. The parties that oppose reallocation of the universal service costs in this proceeding estimated that exempting firm commercial and industrial customers would transfer an additional \$11.6 million in universal service costs to the residential class, and that transferring these costs would increase PGW's proposed overall rate increase for residential customers by 2.3%. It appears that this would result in an overall rate increase for residential customers of about 8.6% (2.3% plus 6.3%).

We must also take into consideration the fact that a substantial number of PGW's low-income customers have service involuntarily disconnected for non-payment. Specifically, the percent of households experiencing an involuntary disconnect for nonpayment has increased to nearly 13% and the percentage of low-income customers in arrears has nearly tripled from 5.1% in 2013 to 13.1% in 2015. Moreover, the percentage of total residential accounts in arrears that are associated with low-income customers has increased from 12% in 2013 to 26% in 2015. Based on the evidence presented in this proceeding, we find that low-income customers will be disproportionately impacted by OSBA's proposed shift of costs to residential customers.

It should also be noted that customers are not necessarily protected by their participation in CRP. Several parties cited that participation in PGW's CRP has

declined by 30% (24,262 customers) from 2010 to 2015, and this decline in CRP participation has occurred despite the fact that the number of confirmed low-income customers on the PGW system has increased by more than 22,000 customers.

We also note that there is the issue of the Commission approved LIME program that benefits tenant buildings that are commercial accounts. The Commission recognized the need to address small businesses and low-income customers in the form of multi-family energy efficiency measures in PGW's service territory. The Commission specifically carved out within the LIME program a benefit to these small business customers. We agree that this new benefit to small business customers must also be considered in light of OSBA's proposal.

R.D. at 110-111. The ALJs recommended that "PGW maintain its current universal services cost allocation with the requirement that PGW submit the aforementioned data regarding adjustments to its universal service cost allocation in the next proceeding." R.D. at 112.²

The OCA submits that the ALJs correctly denied OSBA's proposal to change 25 years of allocation of universal service costs to firm service customers. As the OCA discussed in its Main Brief and Reply Brief, PGW's allocation of the universal service costs is consistent with the allocation of the costs and benefits of the universal service programs for the public good, follows cost-causation principles, and is consistent with sound regulatory policy. See, OCA M.B. at 22-38; OCA R.B. at 22-38. The OCA submits that as the ALJs found, PGW's residential ratepayers are least able to absorb these additional costs of the program. Moreover, PGW's commercial customers receive a direct benefit from the universal service program through PGW's Low-Income Multifamily Energy Efficiency (LIME) program. In their Recommended Decision, the ALJs correctly understood the impact of a shift in costs on PGW's residential customers, and their Recommended Decision should be adopted. See, R.D. at 110-111.

² The ALJs recommended that PGW be required to submit data in the next base rate proceeding regarding the universal service cost allocation. The ALJs stated that this information could be used "to assess the full impact that will result from shifting the universal service cost allocation fully to the residential class." R.D. at 112.

B. OSBA's Proposal To Shift The Costs From Firm Service Customers To Only Residential Customers Will Not Be Revenue-Neutral.

1. Introduction.

In its Exception, OSBA argued that its proposal would be revenue-neutral in this proceeding and the shift would have “no impact to residential or low-income customers” in this proceeding. OSBA Exc. at 5. OSBA stated that the “ALJs simply have their facts wrong” and that “[t]here is no \$11.6 million incremental impact from the OSBA proposal. There is no 2.3 percent incremental impact from the OSBA proposal.” OSBA Exc. at 5. OSBA concluded that “there is no basis for the ALJs’ speculations that this change will increase disconnections for non-payment.” OSBA Exc. at 5. The OSBA’s arguments are simply an attempt to hide the full impact of OSBA’s proposal. When properly viewed, it can be seen that OSBA’s proposal will not be revenue-neutral.

2. OSBA's Proposal Will Not Be Revenue-Neutral.

In its Exception, the OSBA argued, “[c]ontrary to the ALJs’ implication, the OSBA’s proposal for the USEC is revenue neutral *within the context of this proceeding*.” OSBA Exc. at 7 (emphasis added). The critical phrase revealed in OSBA’s Exception is the temporal phrase of “within the context of this proceeding.” OSBA Exc. at 7. While the OSBA proposal makes an attempt at revenue neutrality in the context of this proceeding, it is far from revenue-neutral from here on out.

The Settlement in this proceeding provides for a \$42 million rate increase, \$33 million of which will be borne by the residential customers. Pa. PUC v. Philadelphia Gas Works, Docket No. R-2017-2586783, Joint Petition for Partial Settlement at 17 (Partial Settlement). Under OSBA’s proposal, the percentage increase charged to residential customers would remain the same, but the amount of distribution revenues collected from residential customers would

decrease. While OSBA proposes to, in essence, lower the \$33 million increase in distribution revenue to be collected from the residential class to \$21.4 million, OSBA's proposal misses two key points. First, if universal service costs would increase after those base rates become effective, as they are likely to do if rates and natural gas prices increase and CAP participation increases, the entire burden would fall on the residential customer class, thus disproportionately increasing the burden on the residential class. See also, PGW R.B. at 32-33.

Second, the OSBA proposal makes an artificial adjustment to distribution rates that, if OSBA's allocation proposals are adopted, would have to be made up in a future rate case. The OCA submits that if OSBA's proposal were implemented (and its proposal to assign universal service costs to only residential customers is adopted), residential customers would move *further* away from their cost of service based on the artificially low distribution charges proposed by OSBA. In a future base proceeding, under OSBA's analysis, the difference would have to be made up by residential customers, so residential customers would see both the distribution increase that should have been allocated in this proceeding and whatever base rate increase is approved for future rates, and any increased universal service costs, resulting in rate shock for customers.³

In each of the proceedings where the Commission has addressed the issue of cost allocation for universal service costs for PGW, the Commission has identified a concern with the potential massive shift of costs from non-residential customers to residential customers, and that such a shift in costs would result in rate shock. Part of the reason that the Commission held as it did in the 2006 base rate proceeding was because the Commission recognized the significant potential rate shock to residential customers. Pa. PUC v. Philadelphia Gas Works, Docket No.

³ The OCA would note that if distribution rates were not artificially lowered in this case to achieve the "revenue neutrality" proposed by OSBA, the increase to residential customers under OSBA's allocation would be \$44.6 million, or 8.6%, as found by the ALJs.

R-00061931, Order at 88 (September 28, 2007) (PGW 2006 Order). As discussed in OCA witness Colton's testimony, that fact has not changed in the decade since the 2006 base rate proceeding. See, OCA M.B. at 32-34; OCA R.B. at 25-27; OCA St. 4-R at 31-33.

OCA witness Colton testified:

One important factor to take into account in deciding upon changes in the policy regarding the allocation of PGW's universal service costs involves the ability of residential customers to absorb the increased costs associated with the proposed change. PGW's customers are in no position to absorb a change in the 25-year old policy regarding cost allocations. According to the U.S. Census Bureau, in 2015, the bottom quintile of Philadelphia households by income had an average income of \$7,368. Given that 100% of the Federal Poverty Level in 2015 was \$11,770 for a 1-person household, even if one assumes that every household had only one person, the data shows that, on average, households in the bottom 20% of income in Philadelphia have an income of only 63% of Poverty Level. A 2-person household, in 2015, would have an income of \$15,390 at 100% of Poverty Level. Assuming an average household size of two persons, the bottom quintile would be living at 46% of Poverty.

OCA St. 4-R at 31 (footnotes omitted).

In particular, the ALJs correctly state that "[b]ased on the evidence presented in this proceeding, we find low-income customers will be disproportionately impacted by OSBA's proposed shift of costs to residential customers." R.D. at 111. OCA witness Colton testified:

One impact of these low-incomes is that a substantial number of PGW's low-income customers have service involuntarily disconnected for nonpayment. Over the past three years, the percent of households experiencing an involuntary disconnect for nonpayment has increased to nearly 13%.

OCA St. 4-R at 32. Mr. Colton also found that the percentage of low-income customers in arrears has nearly tripled from 5.1% in 2013 to 13.1% in 2015. OCA St. 4-R at 32. OCA witness Colton testified:

The fact that Philadelphia's low-income population simply cannot absorb a change in the nearly 25-year old policy regarding universal service costs is seen in the facts that low-income arrears (both in terms of dollars in arrears and accounts in arrears) are increasing faster than residential arrears generally. The percentage of total residential arrears (dollars) are associated with low-income customers has

increased from 18% in 2013 to 31% in 2015. The percentage of total residential accounts in arrears that are associated with low-income customers has increased from 12% in 2013 to 26% in 2015.

OCA St. 4-R at 32. The OCA submits that the evidence presented in this proceeding demonstrates that residential ratepayers, in particular low-income and near-low-income customers, are not able to absorb these additional costs of the CRP programs that would result from OSBA's proposal. See, OCA M.B. at 32-34.

OSBA's proposal is not accurately described as revenue-neutral and would have significant impacts on residential customers going forward. The OCA submits that there is no basis to change PGW's historic method of recovering its universal service costs from all firm service customer classes. The ALJs' Recommended Decision regarding the allocation of universal service costs should be adopted.

C. The OSBA's Reliance On Past Commission Decisions Is Unpersuasive.

In its Exception, OSBA argued that the Commission precedent provides no basis for treating PGW differently. OSBA Exc. at 9-15. The OCA submits, however, that PGW has been treated differently than other utilities regarding its universal service cost allocation since the Company came under the Commission's jurisdiction in 2000. The ALJs correctly concluded:

While it is true that Section 2212(e) of the Public Utility Code, 66 Pa. C.S. § 2212(e), provides that "the commission shall follow the same ratemaking methodology and requirements that were applicable to" PGW prior to the Commission assuming jurisdiction over PGW, we note that the Code also provides that "this section shall not prevent the commission from approving changes in the rates payable by any class of ratepayers to the city natural gas distribution operation so long as the revenue requirement and overall rates and charges are not adversely affected by such changes." Although we are declining to impose a new cost allocation in this proceeding, the Public Utility Code does not prohibit such a reallocation. We note that PGW is the only NGDC that does not allocate costs for universal service programs to only residential customers.

The Commission has determined that, because PGW has followed this allocation policy prior to coming under its regulatory authority, PGW is an exception to the

general policy applied to other Commission regulated companies that all of the universal service costs should be allocated to residential customers.

R.D. at 111. As the ALJs correctly found, the Commission has consistently treated PGW in this manner.

PGW's universal service costs have been historically allocated to all firm service customers since 1993. As OCA witness Colton testified:

PGW's universal service costs have been allocated among all customer classes since the CRP program was first created in 1993. Even since the regulation of PGW was transferred to the PUC, the PUC has maintained this cost allocation policy for PGW through an interim base rate proceeding, three full base rate cases, and the PGW restructuring proceeding. The last time this cost allocation decision was raised (in PGW's 2010 base rate case), the case was resolved by settlement.

OCA St. 4-R at 7 (footnotes omitted). As the ALJs determined, the allocation of universal service costs to PGW customers is supported in the law. R.D. at 111.

In its Exception, OSBA cited to several Commission Orders in support of its position. OSBA Exc. at 9-15, citing Pa. PUC v. Philadelphia Gas Works, Docket No. M-00021612, Order at 62 (March 31, 2003) (Restructuring Order); PGW 2006 Order at 136; Investigation into Financial and Collections Issues Regarding the Philadelphia Gas Works, Docket Nos. P-00042090, R-00049157, M-0002161, P-00032061, and P-00042117, Order at 23-24 (October 27, 2004) (Investigation Order); Customer Assistance Programs: Funding Levels and Cost Recovery Mechanisms Final Investigatory Order, Docket No. M-00051923, Order at 85-88 (September 28, 2007) (CAP Order). The OCA addressed each of these cases in its Main Brief and Reply Brief. See, OCA M.B. at 34-37; OCA R.B. at 22-25. These Commission decisions, however, do not support OSBA's position.

As OSBA correctly noted, the Investigation Order and Restructuring Order did not address the issue of cost allocation and left the issue to a base rate proceeding. OSBA Exc. at

10-11, citing Restructuring Order at 62-64 and Investigation Order at 23-24. The issue was then addressed in PGW's 2006 base rate proceeding. PGW 2006 Order at 88. In PGW's 2006 proceeding, OSBA raised the issue of the historic allocation for universal service costs, and the Commission again did not change the historic allocation of PGW's universal service costs to all firm service customers, even though the Commission had the full record to consider in the 2006 base rate proceeding. See, OCA M.B. at 35 and OCA R.B. at 23, citing PGW 2006 Order at 88. The Commission decided to maintain the historic cost allocation because of the impact that such a reallocation of costs would have on PGW's residential ratepayers. PGW 2006 Order at 88.

The key fact identified by the Commission's Order in the 2006 base rate proceeding, that one third of PGW's customers are below 150% of the Federal Poverty Level, has not changed. PGW 2006 Order at 85. Of the Company's approximately 500,000 customers, in 2015, PGW had nearly 180,000 estimated low-income customers. OCA St. 4 at 9. PGW stated here that "Philadelphia is home to perhaps the greatest concentration of Pennsylvania's vulnerable citizens; almost one in three households qualifies as low-income." PGW M.B. at 39, citing PGW St. 4 at 19. In fact, in the Recommendation Decision, the ALJs specifically state "we must also take into consideration the fact that a substantial number of PGW's low-income customers have service involuntarily disconnected for nonpayment." R.D. at 110. The ALJs' acknowledgement of the current financial situation of PGW's low-income and residential customers underscores the potential significant financial impact of shifting the allocation of costs to only residential customers. See, R.D. at 110-111.

In each of the non-PGW case-related Orders relied upon by OSBA, the Commission found that universal service costs should be allocated solely to residential customers. Importantly, however, in those cases, the Commission was continuing the existing practice of

each utility of allocating universal service costs to only residential customers. The Commission found that it did not want to change the existing practice, and for PGW, that existing, historic practice has been to allocate the costs to all firm service customers.

In its Exception, OSBA cited to PPL's 2004 base rate proceeding. OSBA Exc. at 14, fn. 29, citing Pa. PUC v. PPL Electric Utilities Corporation, Docket No. R-00049255, Order at 98 (December 22, 2004). OSBA argued that "the Commission expressly held that universal service programs should only be funded by the residential class." OSBA Exc. at 14.⁴ Importantly, in the PPL Electric case, the Commission was continuing the existing practice of PPL to allocate universal service costs only to residential customers. The Commission found that it did not want to change the existing practice in the PPL case. It was the existing allocations in the cases relied upon by OSBA that the Commission did not want to change. Here, the existing allocation is to all firm service customers.

In its Exception, OSBA also cited to the CAP Order. OSBA Exc. 13, fn. 27. OSBA's reliance on the CAP Order is similarly misplaced. OSBA quoted the following language from the CAP Order:

After careful consideration of the comments and the arguments presented, the Commission will continue its current policy of allocating CAP costs to the only customer class whose members are eligible for the program – residential customers. The Commission believes that we should not initiate a policy change

⁴ OSBA also cites to Valley Energy, Inc., Docket No. R-00049345, Order at 21 (April 21, 2005); Equitable Gas Company, Docket No. P-00052192, Order at 14 (December 15, 2005); UGI Utilities, Inc., Docket Nos. A-120011F2000, A-12546F5000, and A-125146, Order at 31-32 (August 18, 2006); Metropolitan Edison Company and Pennsylvania Electric Company, Docket Nos. R-00061366C0001-C0008, P-00062213, P-00062214, A-110300F0095, and A-11040F0040, Order (January 11, 2007) and PPL Gas Utilities Corporation, Docket No. R-00061398, Order at 116 (February 8, 2007). OSBA Exc. at 13, fn. 27. The OSBA also cited to Petition of Equitable Gas Company for Authorization to Use a Portion of Equitrans LP Refund to Benefit Low Income Customers, Docket No. P-00052192, Order at 14 (December 15, 2005) (Equitable Order). See, OCA M.B. at 36-37 for OCA response to Equitable Order. The OCA submits that the same reasoning applies to these cases. The Commission found in each of the cases that it did not want to change the existing practice and relied upon the historic allocation for support.

that could have a detrimental impact on economic development and the climate for business and jobs within the Commonwealth.

CAP Order at 31 (emphasis added). Importantly, the CAP Order specifically maintained the historic allocation exception for PGW and states: “PGW’s cost allocation was determined prior to the Commission’s oversight of the company.” CAP Order at 31, fn. 24. Moreover, there is no showing here of detrimental impact on economic development or climate for businesses and jobs.

The OCA submits that PGW’s historic allocation for the past 25 years, 17 of which have been under the Commission’s jurisdiction, has included an allocation of the costs to firm service customers. The OCA submits that the Commission has determined in each of its prior litigated proceedings that PGW should maintain its historic allocation. There are a multitude of factors as discussed in the OCA’s, PGW’s, and TURN *et al.*’s briefs that support PGW’s practice. OCA M.B. at 23-36; PGW M.B. at 38-41; TURN *et al.* M.B. at 8-16. The ALJs correctly applied these factors and the law, and the ALJs recommendation to maintain the historic allocation of universal service costs should be maintained.

D. The OSBA’s reliance on *Lloyd* is misplaced.

In its Exception, the OSBA argued, among other things,⁵ that the ALJs’ Recommended Decision regarding universal service costs violates Lloyd v. Pa. PUC, 904 A.2d 1010 (Pa. Cmwlth. 2006), appeals denied, 916 A.2d 1104 (Pa. 2007) (Lloyd). OSBA Exc. at 14-15. Specifically, the OSBA argued that:

More recently, the Commonwealth Court held in *Lloyd v. Pennsylvania Public Utility Commission*, 904 A.2d 1010, 1020 (Pa. Cmwlth. 2006), *appeals denied*, 916 A.2d 1104 (Pa. 2007), that cost of service is the “polestar” of ratemaking concerns. In *Lloyd*, the Commonwealth Court held that the Commission may consider the effects of gradualism, but that the utility *must have a plan* for eliminating interclass subsidies over time. Consequently, the ALJs’ approval of

⁵ The OCA addresses the OSBA’s other arguments regarding precedent in Section C, above.

the recovery of universal service costs from PGW's non-residential firm service customers violates *Lloyd*.

OSBA Exc. at 14-15 (emphasis in original) (internal footnote omitted).

The OCA submits that the OSBA's reliance on Lloyd to challenge the Recommended Decision is misplaced. The issue in Lloyd was whether the distribution and transmission rates approved by the Commission for commercial and industrial customers were unreasonable in light of the cost of service studies on record in that proceeding. See Lloyd at 1015-1021. The Commonwealth Court prohibited the Commission from allowing one class of customers to subsidize the cost of service for another class of customers over an extended period of time. Lloyd at 1020. The issue here is not an unreasonable subsidy between classes as to cost of service. Rather, the issue here pertains to the treatment of universal service costs within the cost of service. Universal service costs are properly assigned to all PGW customer classes, as universal service programs are a public good that benefit all customer classes.

The National Regulatory Research Institute (NRRI) has defined a public good in the utility context. OCA St. 4-R at 15. OCA witness Colton testified regarding the NRRI definition of public good, as follows:

A public good can be defined as "any publicly induced or provided collective good" that "arise[s] whenever some segment of the public collectively wants and is prepared to pay for a different bundle of goods and services than the unhampered market will produce." (note omitted). In sharp contrast to the private-good model..., the emphasis of the public-good model is on the total societal benefits – both direct and indirect – associated with network modernization [emphasis in original omitted]. As applied to the telecommunications network, the public-good model is based upon the premise that the costs of achieving and supporting a modern, state-of-the-art network infrastructure are ultimately borne by the general body of ratepayers as opposed to limited subsets of customers who exhibit a high demand for specific new services. The public-good model is conducive to establishing social policies which provide for a "supply driven definition" of infrastructure.

Under the public-good model, infrastructure investment[s] that are in the “public interest” are mandated by regulatory commissions, which act as surrogates for marketplace forces for the very reason that those forces break down either because of the enormous risks involved because of uncertainty with respect to costs and demand or both, or because of the intangible or unmeasurable societal benefits which are not valued by the marketplace.

OCA St. 4-R at 15-16 (footnotes omitted). The record contains substantial evidence as to the benefits, both direct and indirect, that commercial firm service customers receive from universal service programs. See e.g. OCA St. 4-R at 14-25. For example, OCA witness Roger Colton summarized the benefits that commercial firm service customers receive from universal service programs, and specifically the Customer Responsibility Program (CRP), as follows:

The conclusion from this multitude of research is that all PGW customer classes will benefit from the CRP. Commercial and industrial customers, as well as small businesses, will gain direct benefits from the CRP. Accordingly, this discussion has a direct relationship to the question of whether universal service costs should be allocated to all customer classes. There is a direct relationship between the offer of CRP and economic benefits to local commercial and industrial customers. For example:

- Turnover costs business money. We know that unaffordable home energy bills lead to the frequent mobility of households.
- Time missed due to family care provision costs business money. We know that unaffordable home energy bills lead to more frequent childhood illnesses.
- Time missed due to lack of employee productivity and employee illness costs business money. We know that the inability to stay warm due to unaffordable home energy bills leads to increased illnesses.

In sum, increasing employee productivity directly contributes to the increased profitability of firms. With low-wage employees, in particular, unaffordable home energy directly contributes to lowered productivity related to the unaffordability of home energy. Increased personal illness, increased employee turnover, and increased family care responsibilities are but three of the factors contributing to lower employee productivity. The provision of affordable energy through universal service programs such as CRP positively affects each of these productivity factors.

OCA St. 4-R at 21-22. The OCA has discussed at length the treatment of universal service programs as a public good and the benefits that they provide to commercial firm service customers. See OCA M.B. at 23-30. Additionally, the record demonstrates that the City of Philadelphia has determined that these types of programs are a public good that provide benefits to the City as a whole. See e.g. Philadelphia City Council Bill 140607-AA; see also OCA M.B. at 28-30. Simply put, CRP is part of the cost of service for all firm customer classes.

As such, the OCA submits that the subsidization prohibition in Lloyd does not apply here. To the contrary, OCA witness Roger Colton explained the basic ratemaking associated with public goods as follows:

One well-accepted tenet of utility ratemaking is that certain expenses incurred by a public utility are for “public goods.” Due to the nature of public goods, all customers receive benefits from public goods and, accordingly, the costs of such goods are spread over all customer classes. Each end user makes a financial contribution to the utility’s delivery of public goods. The “public goods” doctrine is applied in a variety of settings as a justification to spread designated utility costs over all customer classes. Each end user makes a financial contribution to the utility’s delivery of public goods. The “public goods” doctrine is applied in a variety of settings as a justification to spread designated utility costs over all customer classes.

OCA St. 4-R at 14-15.

As such, the OCA submits that the continued allocation of universal service costs to firm service customers is appropriate in this case. The OSBA’s reliance on Lloyd is misplaced, as Lloyd is not applicable in this proceeding.

Even if the Commission should agree with the OSBA’s application of Lloyd in this case, the OSBA’s allocation proposal would be inconsistent with its own view of Lloyd. As noted, the OSBA made the following allocation proposal:

[T]he Commission would start with the proof of revenues as presented in the Partial Settlement in Exhibit 2. It would then eliminate the \$1.1335 per mcf USEC charges for all non-residential firm service customers, and increase the

volumetric delivery charges by \$1.1335 per mcf. In effect, the revenue responsibility for those classes would remain unchanged. Similarly, the Commission would increase the USEC for the residential classes to the value necessary to recover all USEC costs. This value would be modestly different from the \$1.5597 per mcf calculated by Mr. Knecht, due to the effect of changes in loads resulting from the use of 20-year weather normalization in the Joint Petition.) The residential class delivery charge would then be reduced by the magnitude of the increase in the USEC.

OSBA Exc. at 7 (internal footnote omitted). Here, the OSBA is proposing to artificially set distribution charges, not based primarily on OSBA's cost of service allocation, but rather as a means to achieve its end goal of eliminating universal service costs for non-residential firm customers. The effect of OSBA's proposal on OSBA's own determination of cost of service would be to move the residential customer class distribution rates further away from the cost of service. As such, the OCA submits that OSBA's proposal is internally inconsistent with the OSBA's understanding of Lloyd.

For the reasons discussed above, the OCA submits that the OSBA's reliance on Lloyd is misplaced.

E. Commercial Customers Also Receive Services From The CRP.

In its Exception, OSBA argued that the fact that commercial customers benefit from the universal service program through the Low-Income Multi-Family Energy Efficiency program (LIME) does not justify rejecting the OSBA proposal. OSBA Exc. at 15-16.⁶ OSBA argued that only the residential customer class should pay for universal service costs since it is residential customers that "cause" those costs to be incurred." See, OSBA St. 1 at 33-34; OCA M.B. at 30. The OCA submits that this argument is incorrect.

As an initial matter, residential customers do not "cause" these costs, and cost causation taken to its logical conclusion as OSBA states it would mean that only CAP customers would

⁶ The LIME program provides energy efficiency measures to master-metered commercial customers and the costs of the program are recovered through the Universal Service Charge (USC).

pay for universal service costs. Moreover, as the ALJs correctly identify, commercial customers are provided a benefit through the LIME program. The ALJs stated that they “agree that this new benefit to small business customers must also be considered in light of OSBA’s proposal.” R.D. at 111.

The Commission has, in part, predicated its approval of funding PGW’s LIME program through the universal service charge on the fact that commercial accounts, in part, pay for PGW’s LIURP program. The Commission Order stated:

The Commission has recognized that low-income multifamily housing is often underserved and is excluded from traditional LIURP program eligibility if it is master-metered and classified as commercial...PGW is in the unique position of recovering funding for the ELIRP program, in part, through non-residential ratepayers...Currently, (20%) of PGW’s ELIRP funding comes from the commercial sector...The Commission agrees with the parties who raised the issue that PGW has not addressed low-income multifamily housing stock in its ELIRP program design. Accordingly, we direct PGW...to develop a program and designate a portion of the ELIRP budget to specifically serve low-income multifamily properties. The Commission...notes that commercial ratepayers, which include many multifamily accounts, have been supporting ELIURP and other PGW weatherization programs for years without receiving any direct benefits.

PGW Universal Service and Energy Conservation Plan for 2014-2016 52 Pa. Code § 62.4,
Docket No. M-2013-2366301 (August 22, 2014) (LIME Order).

The Commission’s language in the LIME Order demonstrated that the Commission recognized the need to address small businesses and low-income customers in the form of multifamily energy efficiency measures in PGW’s service territory. OCA witness Colton explained:

The issue of how universal service program costs are allocated among customer classes for PGW is somewhat more complicated than Mr. Knecht proposes. In fact, the Commission has used the fact that all customer classes pay for PGW’s universal service programs to include cost recovery for some non-residential energy efficiency programming in the universal service charge. It would be unfair and unreasonable, with the Commission having just recently extended the universal service charge to include some commercial programs, to now turn

around and allocate the universal service costs exclusively to residential customers.

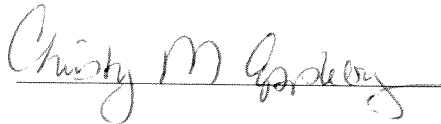
OCA St. 4-R at 14.

OSBA speculated that the Commission could just re-assign these costs through the energy efficiency program charge, but the OCA submits that the OSBA has missed the point. OSBA Exc. at 16. OSBA's argument in this case has been that small commercial customers do not receive a benefit from the program, when in fact, they do. The Commission's LIME Order specifically intended to carve out within the LIME program a benefit to the small business customers. The OCA submits that the ALJs correctly considered this new benefit when they considered the historic allocation of universal service costs.

III. CONCLUSION

WHEREFORE, for the reasons explained above and in its Main and Reply Briefs, the Office of Consumer Advocate respectfully requests that the Administrative Law Judges' Recommended Decision regarding the allocation of universal service costs be adopted.

Respectfully Submitted,



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

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

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

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

Counsel for:
Tanya J. McCloskey
Acting Consumer Advocate

Office of Consumer Advocate
5th Floor, Forum Place
555 Walnut Street
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152
DATE: October 2, 2017
240487.doc