



COMMUNITY LEGAL SERVICES  
OF PHILADELPHIA

October 2, 2017

VIA ELECTRONIC FILING

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

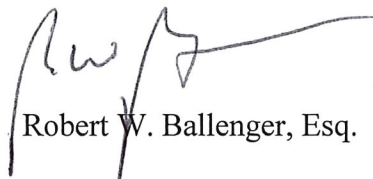
RE: PA Public Utility Commission et al. V. Philadelphia Gas Works, Docket No. **R-2017-2586783**.

Dear Secretary Chiavetta:

Enclosed please find the Joint Reply of Tenant Union Representative Network, Action Alliance of Senior Citizens of Greater Philadelphia, and the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania to the Exceptions of OSBA in the above-captioned matter.

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

Sincerely,



Robert W. Ballenger, Esq.

## **CERTIFICATE OF SERVICE**

I hereby certify that this day I served a copy of the Joint Reply of Tenant Union Representative Network, Action Alliance of Senior Citizens of Greater Philadelphia, and the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania to the Exceptions of OSBA in the Matter of PA Public Utility Commission et al. v. Philadelphia Gas Works, Docket No. R-2017-2586783.

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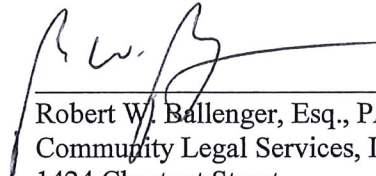
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Dated: October 2, 2017

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

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JOINT REPLY OF TENANT UNION REPRESENTATIVE NETWORK, ACTION  
ALLIANCE OF SENIOR CITIZENS OF GREATER PHILADELPHIA, AND THE  
COALITION FOR AFFORDABLE UTILITY SERVICES AND ENERGY EFFICIENCY IN  
PENNSYLVANIA TO THE EXCEPTION OF THE OFFICE OF SMALL BUSINESS  
ADVOCATE

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## **I. INTRODUCTION AND SUMMARY OF REPLY TO EXCEPTION**

Before the Pennsylvania Public Utility Commission (“Commission”) is Supplement No. 100 to PGW’s Gas Service Tariff – PA. P.U.C. No. 2 (Supplement No. 100), seeking a general rate increase calculated to produce \$70 million in additional annual revenues. PGW also filed a Petition for Waiver seeking waiver of the application of the statutory definition of the fully projected future test year (FPFTY) so as to permit PGW to use a FPFTY beginning on September 1, 2017 in this proceeding.

By Order entered March 16, 2017, the Pennsylvania Public Utility Commission (“Commission”) instituted an investigation into the lawfulness, justness, and reasonableness of the proposed rate increase. Pursuant to Section 1308(d) of the Public Utility Code, 66 Pa. C.S. § 1308(d), Supplement No. 100 was suspended by operation of law until November 28, 2017, unless permitted by Commission Order to become effective at an earlier date. In addition, the Commission ordered that the investigation include consideration of the lawfulness, justness and reasonableness of PGW’s existing rates, rules, and regulations. The matter was assigned to the Office of Administrative Law Judge for the prompt scheduling of hearings. Deputy Chief Administrative Law Judge Christopher P. Pell and Administrative Law Judge Marta Guhl were assigned to this matter.

On March 22, 2017, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) filed its Petition to Intervene in this proceeding. On March 24, 2017, the Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (collectively, TURN *et al.*) filed their Petition to Intervene.



On April 7, 2017, the ALJs granted both CAUSE-PA and TURN *et al.*'s Petitions to Intervene.<sup>1</sup>

On June 27, 2017, the parties agreed to waive cross-examination of all witness and to stipulate to the admission of testimony and exhibits into the record. On June 28, 2017 an evidentiary hearing was held and counsel waived cross-examination of all other party witness. All parties' direct, rebuttal, surrebuttal, and rejoinder testimony and exhibits were admitted into the record.

At the June 28, 2017 hearing, the parties informed the ALJs that most issues had been settled. The two issues reserved for litigation and briefing concern PGW's allocation of partial customer payments, as raised by the Office of Consumer Advocate (OCA), and the allocation of universal service cost recovery, as raised by the Office of Small Business Advocate (OSBA).

The parties filed a joint petition for partial settlement and statements in support of that partial settlement on July 21, 2017. Parties also filed their main briefs on the remaining unresolved issues on July 21, 2017. Reply briefs were filed on August 4, 2017. CAUSE-PA and TURN *et al.* are parties to the Joint Petition and timely filed a joint main brief and reply brief, addressing the issue of allocation of universal service cost recovery as raised by the OSBA.

A Recommended Decision (RD) was issued by Deputy Chief Administrative Law Judge Christopher P. Pell and Administrative Law Judge Marta Guhl on September 8, 2017. In the RD, the ALJs recommended that the joint petition for partial settlement be adopted, that the OSBA's proposals regarding the PGW's allocation of universal service costs be denied, and the OCA's proposal to modify PGW's partial payment practices be denied. RD at 118, ¶¶ 2-5.

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<sup>1</sup> CAUSE-PA is an active party in this proceeding, in addition to those parties listed by OSBA in its statement of known active parties on page 1 of its exception. The Petition to Intervene filed by the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) on March 22, 2017, requested "full status as an intervener in this proceeding with active party status" and was granted by the ALJs in Prehearing Order Number 2, April 7, 2017.

On September 25, 2017, the OSBA filed an exception to the RD (Exception). OSBA's Exception is essentially that the ALJ's erred in concluding that PGW's current allocation of universal service costs, which includes recovery from the commercial and industrial classes, should be retained.

In this Joint Reply to the Exception of OSBA, TURN *et al.* and CAUSE-PA assert that the ALJ's conclusion on this issue was correct as to both fact and law and that the OSBA's exception to the RD is fatally flawed.<sup>2</sup> In fact, the OSBA simply restates the same arguments which it has already presented. These arguments were rebutted in the testimonies, briefs, and reply briefs of the OCA, PGW, TURN *et al.*, and CAUSE-PA. Moreover, these arguments have been reviewed, analyzed, and correctly rejected by the two presiding ALJs in their fully developed 115 page RD containing 27 Findings of Fact<sup>3</sup> and 9 Conclusions of Law.<sup>4</sup> The Commission should now likewise reject the OSBA exception.

In relevant part, the RD states:

We agree with the arguments advanced in this proceeding by PGW, OCA, TURN *et al.* and CAUSE-PA. 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 the universal service costs already allocated to 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 services cost in this proceeding estimated that exempting firm commercial and industrial customers

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<sup>2</sup> Notably, **not once does OSBA cite to a specific Finding of Fact or Conclusion of Law as incorrect.** This failure should, by itself, be considered fatal. See 52 Pa. Code § 5.533 (Procedure to except to initial, tentative and recommended decisions.):

(b) Each exception must be numbered and identify the finding of fact or conclusion of law to which exception is taken and cite relevant pages of the decision. Supporting reasons for the exceptions shall follow each specific exception.

<sup>3</sup> RD at 8-11.

<sup>4</sup> RD at 112-113.

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 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 nonpayment. 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.

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 of the city natural gas distribution operation so long as the revenue requirement and the 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. For the reasons previously stated, we will recommend approval of the cost allocation advanced in this proceeding by PGW, OCA, TURN *et al.* and CAUSE-PA. However, since Section 2212(e) of the Code allows the Commission to approve “changes in the rates payable by any class of ratepayers of the city natural gas distribution operation,” we will also recommend that PGW be required to submit data in its next base rate case to adjust the universal service cost allocations for the removal of all non-residential customer classes. The parties will be able to utilize this information to assess the full impact that will result from shifting the universal service cost allocation fully to the residential class. Moreover, this will provide all parties with sufficient time to prepare for a potential shift in the universal service costs allocation in the next rate proceeding.

Accordingly, we recommend 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 rate proceeding.

RD at 110-112.

This decision is correct and the Commission should reject OSBA’s exception.

## **II. BURDEN OF PROOF**

At the outset of this Joint Reply to the OSBA’s Exception, it is worth noting that throughout its argument, OSBA seeks to have the Commission believe that the ALJs’ RD somehow violates Commission policy for the allocation of responsibility for Universal Service cost recovery in PGW’s service territory and that the RD has thrown “the Commission’s entire regulatory policy under the bus.” OSBA Exception at 16. Nothing could be further from the truth. The RD simply maintains and continues decades of preexisting policy – 17 years of which has been Commission policy – regarding the recovery of PGW universal service program costs from all PGW firm customers. This policy has been periodically reviewed and maintained in each instance. The RD made no changes to Commission policy; rather, it reaffirmed the status quo. Ironically enough, contrary to its hyperbole and attempted rewriting of history, it is the OSBA that is attempting to dramatically change policy. OSBA’s proposal would result in distinct disadvantage and harm to Philadelphia residents, PGW residential customers and especially those customers who are low-income. The ALJs correctly determined that OSBA

failed to present a preponderance of substantial evidence or legal arguments to support its proposed change the existing norm.

The relevant Conclusions of Law reached by the ALJs are specific and correct:

6. 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. *See, e.g., Pa. Pub. Util. Comm'n v. PECO Energy Co.*, Docket No. R-891364, *et al.*, 1990 Pa. PUC LEXIS 155 (Order entered May 16, 1990); *Pa. Pub. Util. Comm'n v. Breezewood Telephone Co.*, Docket No. R-901666, 1991 Pa. PUC LEXIS 45 (Order entered January 31, 1991).<sup>5</sup>

7. A party that raises an issue that is not included in a public utility's general rate case filing bears the burden of proof regarding that issue. *Pa. Pub. Util. Comm'n et al. v. Columbia Gas of Pennsylvania, Inc.*, R-2010-2215623 at 28 (Opinion and Order dated October 14, 2011).<sup>6</sup>

8. The Philadelphia Gas Works' present method of allocation of universal service costs to all firm customers is just, reasonable and in the public interest and is in accord with the rules and Regulations of the Commission and the provisions of the Public Utility Code. *See* 66 Pa.C.S. § 315(a); 66 Pa.C.S. § 1307.<sup>7</sup>

9. The Office of Small Business Advocate has not met its burden of showing that the cost responsibility for universal service charges should be shifted entirely to residential customers.<sup>8</sup>

It is well established that in the context of a rate case, the utility bears the burden of proof to establish the justness and reasonableness of every element of its requested rate increase.<sup>9</sup>

However, as the Commonwealth Court has explained: “[w]hile it is axiomatic that a utility has the burden of proving the justness and reasonableness of its proposed rates, it cannot be called upon to account for every action absent prior notice that such action is to be challenged.”<sup>10</sup>

Therefore, while the ultimate burden of proof does not shift from the utility, a party proposing an adjustment to a ratemaking claim bears the burden of presenting some evidence or analysis

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<sup>5</sup> RD at 113.

<sup>6</sup> Id.

<sup>7</sup> Id.

<sup>8</sup> Id.

<sup>9</sup> 66 Pa.C.S. §§ 315(a); 1308(d).

<sup>10</sup> Allegheny Center Assocs. v. Pa. PUC, 570 A.2d 149, 153 (Pa. Cmwlth. 1990).

tending to demonstrate the reasonableness of the adjustment.<sup>11</sup> Furthermore, a party that raises an issue that is not included in a public utility's general rate case filing bears the burden of proof regarding that issue.<sup>12</sup>

The issue of universal service cost allocation was not raised by PGW in its rate filing and, thus, as the proponents of a shift in the decades long universal service cost allocation structure, OSBA bears the burden of the proof in this proceeding to establish that it is entitled to the relief sought.<sup>13</sup> This burden must be satisfied by a preponderance of the evidence.<sup>14</sup> Accordingly, OSBA had the burden of presenting evidence more convincing than that presented by opposing parties.<sup>15</sup> Significant, substantial, and overwhelming testimony, evidence, and legal argument was presented individually and collectively by the active parties opposed to OSBA's proposed new policy. In weighing the evidence, the ALJs had a substantial record upon which to rely in order to come to the determination that "We agree with the arguments advanced in this proceeding by PGW, OCA, TURN *et al.*" RD at 110.

The ALJs correctly determined that OSBA did not meet its burden. The RD should be affirmed and OSBA's Exception should be rejected and dismissed by the Commission.

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<sup>11</sup> See, e.g., Pa. PUC v. PECO, Docket No. R-891364, *et al.*, 1990 Pa. PUC LEXIS 155 (Order entered May 16, 1990); Pa. PUC v. Breezewood Telephone Company, Docket No. R-901666, 1991 Pa. PUC LEXIS 45 (Order entered January 31, 1991).

<sup>12</sup> Pa. PUC *et al.* v. Columbia Gas of Pennsylvania, Inc., R-2010-2215623 at 28 (Opinion and Order dated October 14, 2011).

<sup>13</sup> 66 Pa.C.S. § 332(a).

<sup>14</sup> Lansberry v. Pa. PUC, 578 A.2d 600 (Pa Commw. Ct. 1990).

<sup>15</sup> Se-Ling Hosiery v. Marguiles, 70 A.2d 854 (Pa. 1950).

### III. REPLY TO OSBA EXCEPTION

#### A. The ALJs' RD was reasoned, sound, supported by the substantial record, and should not be modified or overturned by the Commission.

The thrust of OSBA's exception appears to be built upon a fundamentally incorrect understanding of the basis of the ALJ's RD. Essentially, OSBA argues that the ALJs erred in that they "seem to be inferring that OSBA's proposal runs afoul of the principles of rate shock and gradualism." OSBA Exception at 5. In fact, a close reading of the RD shows that the ALJs do not actually base their ultimate determination on rate shock and gradualism. OSBA's exception is directed at a non-existent Finding of Fact, Conclusion of Law, or basis of the ultimate determination. The basis of the ALJ determination need not be "inferred." It is based upon specific findings of facts and conclusions of law for which there was substantial support in the record:

FOF 21: The Commission has in the past determined that PGW's allocation of universal service costs and related rate design to be just, reasonable and in the public interest. PGW St. 6-R at 2-3.<sup>16</sup>

FOF 22. OSBA proposed a departure from PGW's practice where PGW's universal service costs would be allocated only to residential customers. OSBA St. 1 at 32-36; OSBA 1-R at 13; OSBA St. 1-SR at 2-14.<sup>17</sup>

COL 7: A party that raises an issue that is not included in a public utility's general rate case filing bears the burden of proof regarding that issue. *Pa. Pub. Util. Comm'n et al. v. Columbia Gas of Pennsylvania, Inc.*, R-2010-2215623 at 28 (Opinion and Order dated October 14, 2011).<sup>18</sup>

COL 8. The Philadelphia Gas Works' present method of allocation of universal service costs to all firm customers is just, reasonable and in the public interest and is in accord with the rules and Regulations of the Commission and the provisions of the Public Utility Code. See 66 Pa.C.S. § 315(a); 66 Pa.C.S. § 1307.<sup>19</sup>

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<sup>16</sup> RD at 11.

<sup>17</sup> Id.

<sup>18</sup> RD at 113.

<sup>19</sup> Id.

COL 9. The Office of Small Business Advocate has not met its burden of showing that the cost responsibility for universal service charges should be shifted entirely to residential customers.<sup>20</sup>

Each of these FOFs and COLs are supported by the substantial record that has been developed. PGW's present method of USECP cost allocation has been in place for the last 25 years. Since the inception of its CAP program in 1993, PGW has allocated the costs of its universal service programs to all firm service customer classes.<sup>21</sup> This cost allocation policy has been maintained by the Commission throughout at least seven separate proceedings since regulation of PGW rates was transferred to the Commission,<sup>22</sup> and was explicitly affirmed by the Commission in PGW's 2003 restructuring proceeding.<sup>23</sup> In the restructuring proceeding, the Commission decided to continue the recovery of universal service costs from all firm service customers, recognizing that such recovery was in place prior to PUC jurisdiction, which was conferred via the Natural Gas Choice and Competition Act, 66 Pa. C.S. §§ 2201-2212 (hereinafter, Gas Choice Act).<sup>24</sup>

PGW has recovered universal service costs this way for several decades. The Commission has approved of this structure of allocation in *every rate proceeding since PGW became subject to PUC jurisdiction*. In this case, the OSBA, through its witness Robert Knecht, proposed a change in PGW's historic universal service cost allocation. The ALJs correctly found that the OSBA did not carry its burden to demonstrate, by a preponderance of the

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<sup>20</sup> Id.

<sup>21</sup> See Recommended Decision in the Matter of proposed Changes to PGW's Customer Service Regulations, (September 22, 1993), affirmed, Order and Resolution of the Philadelphia Gas Commission (November 9, 1993).

<sup>22</sup> See Pa. PUC v. Philadelphia Gas Works, Docket No. R-00005654 (Order Entered February 21, 2001); Petition of Philadelphia Gas Works for Extraordinary Rate Relief Pursuant to 66 Pa. C.S. § 1308(e), Docket No. R-00017034 (Emergency Order Entered April 12, 2002); Pa. PUC v. Philadelphia Gas Works - Petition for Emergency Rate Relief, Docket No. R-2008-2073938 (Order Entered December 19, 2008); Pa. PUC v. Philadelphia Gas Works, Docket No. R-00006042 (Order Entered October 4, 2001); Pa. PUC v. Philadelphia Gas Works, Docket No. R-00017034 (Order Entered August 8, 2002); Pa. PUC v. Philadelphia Gas Works, Docket No. R-00061931 (Order Entered September 28, 2007); Pa. PUC v. Philadelphia Gas Works, Docket No. R-2009-2139884 (Order Entered July 29, 2010).

<sup>23</sup> Pa. PUC v. Philadelphia Gas Works, Docket No. M-00021612 (Order Entered April 17, 2003).

<sup>24</sup> Id. at 62, 64.



evidence, the need for or the benefits of altering PGW's consistently upheld and reasonable universal service cost allocation. The theoretical basis of OSBA's Exception is flawed and should be rejected. The RD should therefore be affirmed by the Commission.

**B. The Commission cannot grant the OSBA's Exception without upending the joint settlement to which OSBA was a party.**

In its main brief, OSBA acknowledged that Mr. Knecht's purportedly "revenue neutral" proposal was based on PGW's original rate proposal.<sup>25</sup> In its Exception, OSBA acknowledges that the revenue allocation contained in the Joint Petition for partial settlement now supersedes the original revenue allocation proposal. OSBA Exception at 8. OSBA's continued attempt in its Exception to achieve its desired outcome by altering its stance and by attempting to insert and manipulate its position to fit into the Joint Petition for Partial Settlement should be rejected. The OSBA proposal would fundamentally alter the settlement allocation agreed to by all parties, including OSBA, in the Joint Petition.<sup>26</sup> That settlement has been recommended to be approved without modification by the ALJs in their RD and no party has taken exception to that recommendation.

OSBA claims the "issue to be resolved in this litigation is whether revenue allocation should be effectuated by retaining the existing USEC charge mechanism, or by modifying the USEC charges in conjunction with balancing adjustments to the volumetric distribution charges."<sup>27</sup> It is not possible for the Commission to effectuate OSBA's new proposal in a way that is fair to all the participants in this proceeding. As set forth in the Joint Petition, all parties, including OSBA, agreed to the revenue allocation set forth in Paragraph 17 of the Joint Petition.

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<sup>25</sup> OSBA M.B. at 15-16.

<sup>26</sup> OSBA M.B. at 15.

<sup>27</sup> OSBA M.B. at 15, OSBA Exception at 8-9.

OSBA now proposes that the Commission fundamentally alter that revenue allocation by shifting universal services costs without a concrete proposal for how that could be accomplished.

The ALJ's recommendation that the Joint Settlement be adopted notes the disparate issues and considerations which went into concluding that settlement and that the ultimate result is in the public interest:

In reviewing the settlement terms and the accompanying statements in support, the Partial Settlement provides sufficient information to support the conclusion that the revenue requirement and other settlement terms are in the public interest. The reduction in proposed revenue requirement increases, **the revenue allocations**, the reduction in the proposed residential customer charges, the stay-out provision, along with all the other terms and conditions of the Partial Settlement together represent fair and reasonable compromise. These reductions are particularly important to residential ratepayers who testified concerning the hardship that would be caused to many of them by PGW's proposed increases in rates. Similarly, the "Customer Issues" portion of the Partial Settlement offers a reasonable resolution to address residential consumer issues raised by the parties during this proceeding.

RD at 70 (emphasis added).

On its face, OSBA's proposal, which it has reasserted in its Exception, lacked sufficient detail to allow the parties to study this change, consult experts, and present expert testimony regarding its current, and long term, implications. OSBA offered vague details, stating that notwithstanding the Joint Petition, *the Commission* would be left to determine the appropriate increase to ensure that the universal service charge reached the value necessary to recover the full amount of all universal service costs.<sup>28</sup> Thus, for the Commission to approve the Joint Petition, and also adopt OSBA's exception based upon its revised proposal, the Commission would have to also reject the ALJs RD accepting the proposed settlement and adjust universal service revenues for distribution revenues, by allocating them in some as-yet-undetermined fashion that would disrupt the allocation agreed to in the Joint Petition. Effectively, the OSBA

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<sup>28</sup> OSBA M.B. at 16. See also OSBA Exceptions at 7.

Exception would ask the Commission to undermine the certainty regarding cost allocation set forth in the Joint Petition for results which OSBA could not clearly identify or articulate, and was not accepted by the ALJs in their comprehensive analysis of the facts and law. The OSBA's proposal was appropriately rejected by the ALJs as being contrary to the preponderance of evidence.

**C. Contrary to OSBA's assertion in its Exception, the ALJs were correct in concluding that the effect of the OSBA rate reallocation proposal would place Philadelphia residents, PGW residential customers, and particularly low-income households within PGW service territory at risk.**

The record evidence in this proceeding sufficiently demonstrated that if the OSBA's proposal were adopted, residential ratepayers would be significantly harmed. The OSBA's argument to the contrary is misplaced and disingenuous.<sup>29</sup>

The record demonstrates that if Mr. Knecht's proposal were adopted, it would effectively increase residential customer bills by \$11.6 million<sup>30</sup> while ignoring the benefits that universal service programs provide to all customers, including commercial and industrial ratepayers.

In 2015, PGW had 178,899 confirmed low-income customers, more than any other natural gas utility in the state.<sup>31</sup> Yet, only 58,282 customers were enrolled in CRP, which represented a 30% decline from 2010 even as the number of confirmed low-income customers had increased by a more than 22,000.<sup>32</sup> As OCA witness Roger Colton notes in his rebuttal testimony, "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

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<sup>29</sup> OSBA St. 1 at 36, OSBA Exception at 3.

<sup>30</sup> PGW St. 6-R at 4-5.

<sup>31</sup> See PUC 2015 Report on Universal Service Programs & Collections Performance, at 7, available at [http://www.puc.state.pa.us/General/publications\\_reports/pdf/EDC\\_NGDC\\_UniServ\\_Rpt2015.pdf](http://www.puc.state.pa.us/General/publications_reports/pdf/EDC_NGDC_UniServ_Rpt2015.pdf)

<sup>32</sup> OCA St. 4-R at 33.

than residential arrears generally.”<sup>33</sup> Low-income customers are already burdened with energy costs beyond their means, shifting allocation of universal service costs would only increase the already unwieldy pressure on these customers.

PGW’s circumstances continue to demonstrate that the ALJs had substantial basis and were correct to recommend the rejection of OSBA’s proposed allocation of universal service costs. The Commission should likewise reject the OSBA Exception and affirm the ALJ’s RD.

Although the OSBA proposal was rejected by the ALJs as not being supported by a preponderance of the evidence and was not based solely on the basis of rate shock and gradualism, the facts nevertheless remain that PGW’s status as the utility with the most confirmed low-income customers means that rate shock will ultimately impact an overwhelming number of low-income PGW customers. As the Commission has continued to recognize, rate shock remains a valid concern, even where it may allegedly conflict with cost of service principles.<sup>34</sup> In Lloyd v. Pennsylvania Public Utility Commission, the Commonwealth Court specifically noted that gradualism and rate shock are valid considerations for the Commission stating “gradualism is...one of many factors to be considered and weighed by the Commission in determining rate designs.”<sup>35</sup> While the \$11.6 million increase would be a shock to all residential customers, it would be a particular shock to Philadelphia’s most vulnerable residents. Most of PGW’s low-income customers are not enrolled in CRP and thus pay the costs of PGW’s universal service programs. Furthermore, many of these customers are already struggling to pay their gas bills and keep their service on.

OSBA’s Exception, while asserting sympathy with the plight of the low-income, never addresses the effect that this proposal would have on the large number of confirmed low-income

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<sup>33</sup> Id. at 32.

<sup>34</sup> Pa. PUC v. PGW, Opinion & Order, Docket R-00061931 at 85-88.

<sup>35</sup> Lloyd v. Pennsylvania Pub. Util. Comm’n, 904 A.2d 1010, 1020 (Pa.Cmwlt. 2006)

customers not enrolled in CRP. Instead, the Exception relies on a hypothetical cost allocation framework that was not agreed to by the parties in settlement, and cannot be adopted by the Commission without upsetting the other aspects of the carefully packaged settlement. OSBA is simply incorrect in its continued assertion that a shift in universal service costs would have no effect on the overall rates of PGW's residential customers including the more than 100,000 low-income residents that are not enrolled in CRP.<sup>36</sup>

Indeed, OSBA appears cognizant that its proposal would have an effect on the long-term rates of residential customers. Even if it were possible to allocate universal service costs differently without immediately modifying the *resulting rates* to be charged pursuant to the proposed settlement (which OSBA has failed to demonstrate or prove), OSBA recognizes that its adjustment is only revenue neutral to customers "in the context of this proceeding." OSBA Exception at 3. The impact of OSBA's shift in allocation would result in a direct and immediate impact upon residential customer rates upon the first quarterly reconciliation of PGW's universal service costs following the Commission's final order.<sup>37</sup> As TURN et al. and CAUSE-PA pointed out, this change would cause PGW's residential customers to bear all the risk of universal service costs, at a time when modifications to PGW's universal service programs are imminent.<sup>38</sup>

Accordingly, the ALJs determination that PGW's historic universal service cost allocation should not be altered, as proposed by OSBA, is supported by the significantly higher costs that proposal would cause residential customers to pay. The ALJs appropriately relied upon the disproportionate impact of those higher costs on the large population of low income PGW customers in rejecting OSBA's proposal.

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<sup>36</sup> OSBA St. 1-SR at 4-8.

<sup>37</sup> Joint M.B. TURN et al. and CAUSE-PA, at 10.

<sup>38</sup> Id.

**D. There is ample justification for continuing PGW's long standing USECP rate allocation model.**

The OSBA frames one argument within its Exception by stating there is no precedent for treating PGW differently. This postulation, although incorrect, misses the point of the RD entirely and is certainly not a valid basis for an exception. *It is OSBA's burden* to show that its proposal to dramatically modify PGW's long standing and current structure of USECP rate allocation, and the structure proposed to be continued in this case by PGW, is supported by a preponderance of substantial evidence. OSBA simply failed to meet that burden. The OSBA presents no new evidence and no new facts to support why a change should be made at this time, in this proceeding. In fact, all of the reasons the Commission has provided in the past for continuing to allocate these costs across all firm customer classes remain applicable. The RD should be affirmed simply on that basis.

We nevertheless address OSBA's incorrect assertion in order to highlight that, contrary to OSBA's assertion, there is clear and strong precedent for the USECP allocation model in use in PGW service territory.

For the last 25 years, since the inception of its CAP program in 1993, PGW has allocated the costs of its universal service programs to all firm service customer classes.<sup>39</sup> This cost allocation policy has been maintained by the Commission throughout at least seven separate proceedings since regulation of PGW was transferred to the Commission,<sup>40</sup> and was explicitly

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<sup>39</sup> See Recommended Decision in the Matter of proposed Changes to PGW's Customer Service Regulations, (September 22, 1993), affirmed, Order and Resolution of the Philadelphia Gas Commission (November 9, 1993).

<sup>40</sup> See Pa. PUC v. Philadelphia Gas Works, Docket No. R-00005654 (Order Entered February 21, 2001); Petition of Philadelphia Gas Works for Extraordinary Rate Relief Pursuant to 66 Pa. C.S. § 1308(e), Docket No. R-00017034 (Emergency Order Entered April 12, 2002); Pa. PUC v. Philadelphia Gas Works - Petition for Emergency Rate Relief, Docket No. R-2008-2073938 (Order Entered December 19, 2008); Pa. PUC v. Philadelphia Gas Works, Docket No. R-00006042 (Order Entered October 4, 2001); Pa. PUC v. Philadelphia Gas Works, Docket No. R-00017034 (Order Entered August 8, 2002); Pa. PUC v. Philadelphia Gas Works, Docket No. R-00061931 (Order

affirmed by the Commission in PGW's 2003 restructuring proceeding.<sup>41</sup> In the restructuring proceeding, the Commission decided to continue the recovery of universal service costs from all firm service customers, recognizing that such recovery was in place prior to PUC jurisdiction over PGW, conferred via the Natural Gas Choice and Competition Act, 66 Pa. C.S. §§ 2201-2212 (hereinafter, Gas Choice Act).<sup>42</sup>

PGW has recovered universal service costs this way for several decades, and the Commission has approved of this structure of allocation in *every rate proceeding since that time*. PGW's past, current, and proposed USECP allocation is further supported by its unique position as a city owned Natural Gas Distribution Company. Universal service programs, for PGW, are not merely a part of doing business, but a part of running meaningful government. Critically, the fact that proposals to shift universal service cost allocation solely to residential customers have been rejected in the past is not simply history, but the continuing effectuation of the Gas Choice Act's provisions concerning universal service, as well as a policy determination by the Commission that these costs should be allocated broadly.

Further, the Gas Choice Act does not support and strongly belies OSBA's assertion that there is no legal precedent that would justify continuation of PGW's current USECP allocation policy. Section 2212 of the Gas Choice Act entitled *City natural gas distribution operations*, states in relevant part:

In its restructuring proceeding, a city natural gas distribution operation may propose an automatic adjustment mechanism or mechanisms in lieu of or as a supplement to section 1307 (relating to sliding scale of rates; adjustments) to adjust rates for fluctuations in gas and nongas costs, including, but not limited to, an automatic adjustment mechanism or mechanisms to recover the costs of providing programs for low-income ratepayers and other assisted ratepayers. The

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Entered September 28, 2007); Pa. PUC v. Philadelphia Gas Works, Docket No. R-2009-2139884 (Order Entered July 29, 2010).

<sup>41</sup> Pa. PUC v. Philadelphia Gas Works, Docket No. M-00021612 (Order Entered April 17, 2003).

<sup>42</sup> Id. at 62, 64.

commission may approve or modify the automatic adjustment mechanism or mechanisms proposed by the city natural gas distribution operation, or the commission may approve a section 1307 adjustment for a city natural gas distribution operation.<sup>43</sup>

For PGW the current structure of universal service cost allocation effectuates these requirements. Section §2203(6) of the Gas Choice Act states “the Commission shall establish for each natural gas distribution company an appropriate **nonbypassable**, competitively neutral cost-recovery mechanism which is designed to recover fully the natural gas distribution company’s universal service and energy conservation costs over the life of these programs.”<sup>44</sup>

In Met-Ed Industrial Users Group v. Pennsylvania Public Utility Commission, the Commonwealth Court examined whether universal service charges were nonbypassable for all customer classes after Met-Ed proposed allocating universal service costs to all customer classes. The PUC ordered that the rider should only apply to residential customers. The OCA challenged that order. The Commonwealth Court found that “it [was] reasonable to interpret nonbypassable in the context of deregulation.”<sup>45</sup> The court ultimately ruled that, consistent with the PUC’s final order and the ALJ’s recommendation, funding sources for universal service programs cannot be bypassed *by those ratepayers that contributed prior to deregulation*.<sup>46</sup> For PGW, prior to deregulation **all** firm service customers contributed to universal service costs. As the Met-Ed case demonstrates, the determination as to which customers must not bypass universal service funding obligations requires looking at which customers paid prior to deregulation. For PGW, all firm service customers, including those represented by the Office of the Small Business Advocate, shared and continue to share this obligation.<sup>47</sup>

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<sup>43</sup> 66 Pa.C.S. § 2212(h)(2) (emphasis added).

<sup>44</sup> 66 Pa.C.S. § 2203(6)

<sup>45</sup> Met-Ed Indus. Users Grp. v. Pa. PUC, 960 A.2d 189, 202 (Pa.Cmwlt. 2008).

<sup>46</sup> Id. at 202-203.

<sup>47</sup> Of course, the Met-Ed Court made it clear in interpreting Lloyd that:



Met-Ed appears to make clear that, in fact, tariff-based universal service costs are nonbypassable to those classes of customers who historically bore them. While the Commission undoubtedly has discretion to expand the class of customers who pay for universal service costs,<sup>48</sup> it cannot contract the class of customers from those who historically paid for them.

**E. Multifamily benefits to the non-residential rate classes provide additional basis to demonstrate that OSBA did not meet its burden to prove by a preponderance of the evidence that acceptance of its alternate USECP rate allocation method was warranted.**

In its RD, the ALJs specifically found that “Non-Residential customers that operate residential master-metered multi-family buildings benefit directly from the Low-Income Multifamily (“LIME”) program. OCA St. 4-R at 12-13.” (FoF Number 27, at RD 11.) Further, as part of their recommendation, the ALJs stated:

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.

RD at 111.

In its Exception, calling this argument a “red herring”, the OSBA asserts that the ALJs relied too heavily on the fact that non-residential ratepayers in fact receive some direct benefit from universal service costs. OSBA Exception at 15-16. This argument is misplaced. First, it is

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[T]he Competition Act “only provides that it be funded by ‘non-bypassable rates’ without any requirement that it be by a rate that is directly benefited by the program.” . . . Thus, under Lloyd, there is no statutory requirement that the funding for special programs come only from those who benefit from the programs.

Met-Ed Indus. Users Group v. Pa. PUC, 960 A.2d 189, 202 (Pa. Commw. Ct. Nov. 7, 2008) (citing Lloyd v. Pennsylvania Public Utility Commission, 904 A.2d 1010, 1027 (Pa. Cmwlth. 2006), appeal denied, 591 Pa. 676, 916 A.2d 1104 (2007)).

<sup>48</sup> As the decision in Lloyd and Met-Ed make clear, the PUC would be within its discretion to “appropriately fund” universal service programs from customers who have not traditionally paid for them.

clear from a thorough review of the RD that the ALJs did not base the entirety of their decision on this fact. Second, however, it is difficult to see how the fact that non-residential customer classes receive direct universal service benefits should be ignored when determining whether the current allocation of costs should be maintained. The simple truth is that within PGW's service territory, universal service programs do not only benefit low-income customers, rather, all customer classes benefit from these costs. Some of these benefits are direct – such as PGW's low-income multifamily program (LIME) that is designed to target master-metered, low-income multifamily housing. Non-residential PGW customers also receive substantial indirect benefit from PGW's universal service programs, as discussed more fully in the Joint Main Brief of TURN et al. and CAUSE-PA, at 13-16.

As to direct benefits, non-residential customers can take advantage of PGW's newly enacted energy efficiency and conservation program for non-residential, master-metered multifamily properties. While this program currently is limited to \$250,000 per year over a five year period,<sup>49</sup> there is nothing to guarantee that this program – or others like it – won't increase in the future. When approving this program the Commission specifically cited the fact that some portion of universal service funding comes from commercial customers. See Philadelphia Gas Works Universal Service and Energy Conservation Plan for 2014-2016, Final Order, Docket No. M-2013-2366301 (August 22, 2014).

Finally, in light of the fact that the Commission is currently undertaking a docketed proceeding addressing a comprehensive review of universal service programming, including cost recovery, for all Pennsylvania gas and electric distribution companies,<sup>50</sup> the Commission should not change its longstanding policy of allocating universal service costs to all PGW firm

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<sup>49</sup> OSBA St. 1-SR at 3, n.3

<sup>50</sup> See Review of Universal Service and Energy Conservation Programs, Docket No. M-2017-2596907 (Order entered May 10, 2017) (specifically identifying “cost recovery” as an issue it will consider in the proceeding).

customers in this proceeding. Indeed, given the underlying universal service review, there may well be program changes that create additional benefits for non-residential customers, like PGW's LIME program does.<sup>51</sup>

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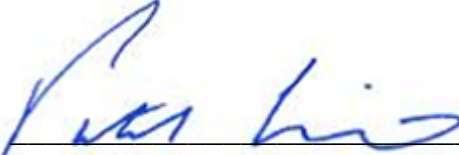
<sup>51</sup> Philadelphia Gas Works Universal Service and Energy Conservation Plan for 2014-2016, Final Order, Docket No. M-2013-2366301 (August 22, 2014).

#### IV. CONCLUSION

For the reasons set forth above, TURN et al and CAUSE-PA jointly urge the Commission to reject OSBA's Exception and to approve the ALJ's RD in its entirety.

Respectfully Submitted,

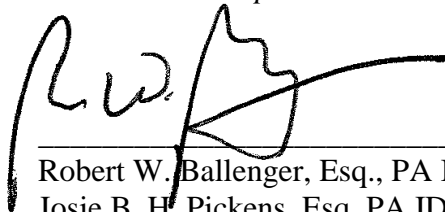
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