**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

Public Meeting held November 8, 2017

Commissioners Present:

Gladys M. Brown, Chairman

Andrew G. Place, Vice Chairman

David W. Sweet, Statement

John F. Coleman, Jr.

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| Pennsylvania Public Utility Commission  Office of Consumer Advocate  Office of Small Business Advocate  Philadelphia Industrial & Commercial Gas Users Group & William Dingfelder  v.  Philadelphia Gas Works | R-2017-2586783  C-2017-2592092  C-2017-2593497  C-2017-2595147  C-2017-2593903 |

**OPINION AND ORDER**

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**BY THE COMMISSION:**

# **I. Matter Before the Commission**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of the Office of Consumer Advocate (OCA) and the Office of Small Business Advocate (OSBA) filed on September 25, 2017, to the Recommended Decision (R.D.) of Administrative Law Judges (ALJs) Christopher P. Pell and Marta Guhl issued on September 8, 2017, relative to the above-captioned proceeding. Also, on September 25, 2017, Letters in lieu of Exceptions were filed by Philadelphia Gas Works (PGW) and the Philadelphia Industrial and Commercial Users Group (PICGUG). On October 2, 2017, Replies to Exceptions were submitted by PGW and the OCA. Also, on October 2, 2017, Joint Replies to Exceptions were filed by the Tenant Union Representative Network, Action Alliance of Senior Citizens of Greater Philadelphia (collectively, TURN *et al*.) and the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA).

For the reasons stated below, we shall (1) deny the Exceptions filed by the OCA and OSBA; (2) deny PICGUG’s request for clarification of the Recommended Decision, as set forth in its Letter in lieu of Exceptions; (3) (3) adopt the ALJs’ Recommended Decision, consistent with this Opinion and Order; and (4) approve the Joint Petition for Partial Settlement, without modification.

# **II. History of the Proceeding**

On February 28, 2017, PGW filed Supplement No. 100 to Tariff Gas – Pa. P.U.C. No. 2 (Supplement No. 100), with the Commission to become effective April 28, 2017, at Docket No. R‑2017-2586783. PGW filed Supplement No. 100 pursuant to Section 1308(d) of the Public Utility Code (Code), 66 Pa. C.S. § 1308(d) (regarding general rate increases), and pursuant to Sections 53.51-53,56 of our Regulations, 52 Pa. Code §§53.51-53,56 (regarding information to be furnished with the filing of rate changes). In Supplement No. 100, PGW proposed a general rate increase applicable to all its jurisdictional customers that would result in an annual increase in base rate revenues in the amount of $70 million, or an approximate 11.6% increase over present 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) to permit the Company to use a FPFTY beginning on September 1, 2017, in this proceeding.

On March 6, 2017, the Commission’s Bureau of Investigation and Enforcement (I&E) filed a Notice of Appearance. On March 6, 2017, the OCA filed a Public Statement, a Notice of Appearance and a Formal Complaint, which was docketed at C-2017-2592092. On March 13, 2017, the OSBA filed a Verification, Public Statement, a Notice of Appearance and Formal Complaint, which was docketed at C‑2017-2593497. On March 16, 2017, William Dingfelder (Mr. Dingfelder or the Complainant) filed a Formal Complaint, which was docketed at C-2017-2593903.

By Order entered March 16, 2017, in this proceeding (*Suspension Order*), the Commission instituted an investigation into the lawfulness, justness, and reasonableness of the proposed rate increase. In the *Suspension Order*, the Commission stated that,pursuant to Section 1308(d) of the Code, 66 Pa. C.S. § 1308(d), Supplement No. 100 was suspended by operation of law on March 16, 2017, until November 28, 2017, unless permitted by Commission Order to become effective at an earlier date. In addition, the Commission ordered that the investigation include consideration of the lawfulness, justness and reasonableness of the respondent’s existing rates, rules, and regulations. Further, the Commission assigned the proceeding to the Office of Administrative Law Judge (OALJ) for the prompt scheduling of hearings culminating in the issuance of a Recommended Decision.

On March 17, 2017, the Retail Energy Supply Association (RESA) filed a Petition to Intervene in this proceeding. On March 22, 2017, CAUSE-PA filed a Petition to Intervene in this proceeding. On March 23, 2017, PICGUG filed a Formal Complaint, which was docketed at C-2017-2595147. On March 24, 2017, TURN *et al*. filed a Petition to Intervene in this proceeding.

In compliance with the Commission’s *Suspension Order*, on March 27, 2017, PGW filed Supplement No. 103 to Gas Service Tariff – Pa P.U.C. No. 2, suspending the effectiveness of rates proposed in Supplement No. 100 until November 28, 2017. On March 31, 2017, PGW filed a Motion for Protective Order pursuant to 52 Pa. Code § 5.423(a). There was no formal opposition to the request and the ALJs granted the Protective Order by Prehearing Order No. 3 issued April 19, 2017.

Also, on March 31, 2017, PGW filed Answers, in which PGW opposed the Petitions to Intervene of both CAUSE-PA and TURN *et al*. On April 5, 2017, CAUSE-PA and TURN *et al*. each filed a response to PGW’s Answers. Additionally, the OCA and I&E each, separately, filed responses to PGW’s Answers. The ALJs granted the Petitions to Intervene of CAUSE-PA and TURN *et al*. by Prehearing Order No. 2 issued April 7, 2017.

On May 9 and 10, 2017, a total of four Public Input Hearings were held in this proceeding. A total of twenty-four customers of PGW gave sworn testimony during these Public Input Hearings.

On May 11, 2017, a Hearing Notice was issued by the ALJs setting the evidentiary hearings for this matter over a span of three days, specifically Wednesday – Friday, June 28 - 30, 2017.

Prior to the convening of the evidentiary hearings, the Parties served direct, rebuttal, surrebuttal and rejoinder written testimonies, along with various exhibits. On May 22, 2017, PGW filed a Motion In Limine to Limit the Scope of the Evidentiary Hearing and this Proceeding and to Exclude Certain Portions of Testimony Submitted by the OCA. On May 25, 2017, the OCA filed an Answer to PGW’s Motion In Limine. By Prehearing Order No. 5 issued May 26, 2017, the ALJs denied PGW’s Motion In Limine. Several Parties also served amended direct testimonies.

On June 23, 2017, PGW filed a Motion to Strike Certain Portions of Testimony Submitted by TURN *et al*. On June 26, 2017, I&E filed a letter indicating its support for PGW’s Motion to Strike and its agreement that portions of the surrebuttal testimony of Harry S. Geller should be stricken. Also, on June 26, 2017, TURN *et al*. filed its Answer to PGW’s Motion to Strike. On that same date, CAUSE-PA filed a letter indicating its opposition to PGW’s Motion to Strike. By Prehearing Order No. 6, issued June 27, 2017, the ALJs denied PGW’s Motion to Strike.

On June 27, 2017, the Parties informed the ALJs that they had agreed to waive cross-examination of all witnesses and were prepared to stipulate to the admission of testimony and exhibits into the record. The evidentiary hearing was held as scheduled on June 28, 2017. During the evidentiary hearing, the written testimonies of PGW, the OCA, I&E, the OSBA, PICGUG, RESA, and TURN *et al*. were admitted into the record.

On July 21, 2017, a Joint Petition for Partial Settlement (Partial Settlement) was filed by PGW, I&E, the OCA, the OSBA, RESA, PICGUG, CAUSE-PA and TURN, *et al*. (collectively, the Joint Petitioners) which resolved all base rate issues except for two issues. The only issues which were not resolved by the Partial Settlement included PGW’s partial payment allocation practices, as well as the allocation of universal service costs.

On July 21, 2017, PGW, the OCA, the OSBA, TURN *et al*. and CAUSE-PA filed Main Briefs.

By letter dated August 3, 2017, the ALJs informed Complainant William Dingfelder of the Partial Settlement and requested that he notify the Presiding Officer, by no later than August 14, 2017, if he wished to join, oppose or take no position on the proposed Partial Settlement. No response was received from Mr. Dingfelder.

On August 4, 2017, PGW, the OCA, the OSBA, TURN *et al*. and CAUSE-PA filed Reply Briefs.

On August 21, 2017, PICGUG filed a Motion to Strike Portions of the OSBA’s Reply Brief. On August 23, 2017, the OSBA filed a response to the Motion to Strike. On August 24, 2017, the ALJs issued an Order granting the Motion to Strike.

On September 8, 2017, the Commission issued the ALJs’ Recommended Decision in which the ALJs found that the proposed Partial Settlement was reasonable and in the public interest and, as such, recommended that it be approved without modification. With regard to the two remaining litigated issues, the ALJs further recommended that the OCA issue regarding PGW’s partial payment allocation be dismissed without prejudice and that the OSBA’s issue regarding the allocation of universal service costs be denied.

As noted, Exceptions were filed on September 25, 2017, by the OCA and the OSBA. On this same date, Letters in lieu of Exceptions were submitted by PGW and PICGUG. Replies to Exceptions were filed on October 2, 2017, by PGW, the OCA and TURN *et al*.

# **III. Discussion**

As a preliminary matter, we note that the ALJs made twenty-seven Findings of Fact and reached nine Conclusions of Law. R.D. at 8-11; 112-113. We will adopt the Findings of Fact and Conclusions of Law unless they are overruled expressly or by necessary implication.

Additionally, as we proceed in our review of the various positions espoused in this proceeding, we are reminded that we are not required to consider expressly or at great length each and every contention raised by a party to our proceedings. *University of Pennsylvania* *v. Pa. PUC*, 485 A.2d 1217, 1222 (Pa. Cmwlth. 1984). Any exception or argument that is not specifically addressed herein shall be deemed to have been duly considered and denied without further discussion.

Moreover, Section 1308(d) of the Code requires that we render a final decision granting or denying, in whole or in part, the general rate increase requested by a public utility, within a general time frame not to exceed seven months from the proposed effective date of the utility’s proposed tariff supplement. *See* 66 Pa. C.S. § 1308(d); *see also* 52 Pa. Code § 53.31.[[1]](#footnote-1) If we Commission do not act in this proceeding within such time frame, the utility’s proposed general rate increase will go into effect at the end of such period, by operation of law. *See* 66 Pa.C.S. § 1308(d).

## **A. Legal Standards**

### **1. Justness and Reasonableness of Rates**

The purpose of this investigation is to establish distribution rates, rules and regulations for PGW’s jurisdictional natural gas customers that are just and reasonable and otherwise lawful. *See* 66 Pa. C.S. § 1301; *see Suspension Order*. The Commission applies certain principles in deciding any general rate increase case brought under Section 1308(d) of the Code, 66 Pa. C.S. § 1308(d), as discussed generally below.

Section 523 of the Code requires the Commission “when determining just and reasonable rates”, to consider “in addition to all other relevant evidence of the record, the efficiency, effectiveness and adequacy of service of each utility. . . .” 66 Pa. C.S. § 523. Additionally, Section 526 of the Code permits the Commission to reject a proposed rate increase, in whole or in part, if the Commission finds “that the service rendered by the public utility is inadequate. . . .” 66 Pa. C.S. § 526(a).

In exchange for the utility’s provision of safe, adequate and reasonable service, we have previously stated the following with respect to the types of costs that may be recovered by the utility through the rates that customers will pay:

[I]n exchange for the utility’s provision of safe, adequate and reasonable service, the ratepayers are obligated to pay rates which cover the cost of service which includes reasonable operation and maintenance expenses, depreciation, taxes and a fair rate of return for the utility’s investors . . . In return for providing safe and adequate service, the utility is entitled to recover, through rates, these enumerated costs.

*Pa. PUC v. Pennsylvania Gas & Water Co.,* 61 Pa. PUC 409, 415-16 (1986). Thus, in determining a utility’s allowed revenue requirement to be used to establish customer rates, typically the focus of review is upon: the reasonable and prudently incurred operating expenses of the utility; depreciation expense; taxes; the used and useful investments of the utility for providing service to customers, or the utility’s rate base; and, the overall rate of return, which is comprised of the return on equity and cost of capital, to be applied to the utility’s rate base. *See* generally *Pa. PUC et al. v. PPL Electric Utilities Corporation*, Docket Nos. R-2015-2469275 *et al*. (Order entered November 19, 2015), adopting the Recommended Decision of ALJ Susan D. Colwell (Issued October 5, 2015). Additionally, the appropriate allocation of the utility’s revenue requirement among its various customer rate classes is a significant part of the review to ensure that the rates established for customers are not unduly discriminatory. *See* *Id*.; *see also* 66 Pa. C.S. § 1304.

A public utility seeking a general rate increase is entitled to an opportunity to earn a fair rate of return on the value of the property dedicated to public service. *Pennsylvania Gas and Water Co. v. Pa. PUC*, 341 A.2d 239 (Pa. Cmwlth. 1975); *Bluefield Water Works and Improvement Co. v. Public Service Comm’n of West Virginia,* 262 U.S. 679 (1923) (*Bluefield*). In determining what constitutes a fair rate of return, the Commission is guided by the criteria set forth in *Bluefield, supra,* and *Federal Power Comm’n v. Hope Natural Gas Co.*, 320 U.S. 591 (1944). In *Bluefield,* the United States Supreme Court stated:

A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties. A rate of return may be too high or too low by changes affecting opportunities for investment, the money market and business conditions generally.

*Bluefield,* 262 U.S. at 692-93.

In determining the rate of return to be applied to the utility’s rate base, typically the Commission will examine the calculations presented by the parties to the proceeding of the utility’s capital structure and the cost of capital during the period in issue. The Commission is granted wide discretion, because of its administrative expertise, in determining the cost of capital. *Equitable Gas Co. v. Pa. PUC*, 405 A.2d 1055, 1059 (Pa. Cmwlth. 1979) (determination of cost of capital is basically a matter of judgment which should be left to the regulatory agency and not disturbed absent an abuse of discretion); *see also* *Pa. Pub. Util. Comm'n, et al. v. PPL Electric Utilities Corporation*, R-2015-2290597 (Order entered December 28, 2012).

### **2. Burden of Proof**

In a general rate proceeding, where the Commission, on its own motion, has ordered an investigation into the proposed and existing rates of the utility, the public utility seeking the proposed rate increase bears the statutory burden of proof to establish the justness and reasonableness of any proposed or existing rate. *See* 66 Pa. C.S. § 315(a); *see Sharon Steel Corp. v. Pa. PUC*, 468 A.2d 860, 862 (Pa. Cmwlth. 1986). Additionally, where a complainant has challenged the utility’s proposed rate increase in a general rate proceeding, the public utility bears the statutory burden of proof to establish the justness and reasonableness of a proposed rate. *See* 66 Pa. C.S. § 315(a); *see also Zucker v. Pa. PUC*, 401 A.2d 1377, 1379 (Pa. Cmwlth. 1979); *see also Sharon Steel Corp. v. Pa. PUC*, 468 A.2d 860, 862 (Pa. Cmwlth. 1986).

Section 315(a) of the Code provides as follows:

1. **Reasonableness of rates.—**In any proceeding upon the motion of the commission, involving any proposed or existing rate of any public utility, or in any proceedings upon complaint involving any proposed increase in rates, the burden of proof to show that the rate involved is just and reasonable shall be upon the public utility. The commission shall give to the hearing and decision of any such proceeding preference over all other proceedings, and decide the same as speedily as possible.

66 Pa. C.S. § 315(a).

In a general base rate proceeding involving a Commission-ordered investigation into any proposed or existing rate of the utility, such as this case, the statutory burden of proof does not shift to a party challenging a proposed or existing rate of the utility.[[2]](#footnote-2) Instead, the utility’s burden, to establish the justness and reasonableness of every component of its proposed and existing rate, is an affirmative one, and it remains with the public utility throughout the course of the rate proceeding. *See* *Berner v. Pa. PUC*, 116 A.2d 738, 744 (Pa. 1955); *see also Lower Frederick Twp. v. Pa. PUC*, 409 A.2d 505, 507 (Pa. Cmwlth. 1980); *see also Brockway Glass v. Pa. PUC*, 437 A.2d 1067, 1070 (Pa. Cmwlth. 1981); *see also* *Pa. PUC v. Aqua Pennsylvania,* Docket No. R-00038805, (Order entered August 5, 2004); *see also Sharon Steel Corp. v. Pa. PUC*, 468 A.2d 860, 862 (Pa. Cmwlth. 1986); *see also Zucker v. Pa. PUC*, 401 A.2d 1377, 1379 (Pa. Cmwlth. 1979); *see also* *Pa. PUC v. National Fuel Gas Distribution Corp.*, Docket Nos. R-00942991 *et al*., 1994 Pa. PUC LEXIS 134 \*5 (Order entered December 6, 1994); *see also* *Pa. PUC v. Equitable Gas Co.*, Docket NO. R-822133 *et al*., 1983 Pa. PUC LEXIS 33 \* 126, 127 (Order entered July 8, 1983).

As the Pennsylvania Supreme Court has stated, “the burden of proof is met when the elements of that cause of action are proven with substantial evidence which enables the party asserting the cause of action to prevail, precluding all reasonable inferences to the contrary.” *Burleson v. Pa. PUC*, 461 A.2d 1234, 1236 (Pa. 1983). Furthermore, it is well-established that the “degree of proof before administrative tribunals…is satisfied by establishing a preponderance of the evidence.” *See* *Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990), *alloc. denied,* 529 Pa. 654, 602 A.2d 863 (1992). That is, the evidence must be substantial and legally credible, and cannot be mere “suspicion” or a “scintilla” of evidence. *See Id*. The evidence must be more convincing, by even the smallest amount, than that presented by the other party. *See* *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854, 856 (Pa. 1950).

Indeed, the Pennsylvania Supreme Court has held that the burden of proof does not shift to the other parties to justify a proposed adjustment to a utility’s general rate filing:

[T]he appellants did not have the burden of proving that the plant additions were improper, unnecessary or too costly; on the contrary, that burden is, by statute, on the utility to demonstrate the reasonable necessity and cost of the

installations, and that is the burden which the utility patently failed to carry.

*Berner v. Pa. PUC*, 116 A.2d 738, 744 (Pa. 1955).

However, as the Commonwealth Court has explained: “While 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.” *See* *Allegheny Center Assocs. v. Pa. PUC,* 570 A.2d 149, 153 (Pa.Cmwlth. 1990) (*citing Central Maine Power Co. v. Public Utilities Commission*, 405 A.2d 153, 185 (Me. 1979)). Therefore, while the statutory burden of proof does not shift from the public utility in a general rate proceeding, a party proposing an adjustment to a ratemaking claim bears the burden of presenting some evidence or analysis, during the reception of evidence in the proceeding, tending to demonstrate the reasonableness of the adjustment. *See Id*.; *See*, *e.g*., *Pa. PUC v. PECO,* Docket No. R-891364 *et al.*, 1990 Pa. PUC Lexis 155 (Order entered May 16, 1990); *see also* *Pa. PUC v. Breezewood Telephone Company*, Docket No. 901666, 74 Pa. PUC 431 (Order entered February 15, 1991).

Moreover, the statutory burden of proof placed on the utility under Section 315(a) of the Code, 66 Pa.C.S. § 315(a), cannot reasonably be read to place the burden of proof on the utility with respect to an issue that the utility did not propose in its general rate case filing, and which, frequently, the utility would oppose, or, in a case being investigated on motion of the Commission, an issue that does not challenge the utility’s existing rates, rules and regulations of service. Inasmuch as the Legislature is not presumed to intend an absurd result in interpretation of its enactments, *see*, 1 Pa.C.S. § 1922(1), *PA Financial Responsibility Assigned Claims Plan v. English*, 541 Pa. 424, 430-431, 64 A.2d 84, 87 (1995), the statutory burden placed on a proponent of a rule or order under Section 332(a) does not shift to the utility simply because such rule or order is proposed within the context of the utility’s 1308(d) general base rate proceeding. *See* 66 Pa. C.S. 332(a) (“Except as may be otherwise provided in section 315…or other provisions of this part…the proponent of a rule or order has the burden of proof.”); *see generally* *Pa. PUC et al. v. PPL Electric Utilities Corporation*, Docket Nos. R-2015-2469275 *et al*. (Order entered November 19, 2015), adopting the Recommended Decision of ALJ Susan D. Colwell (Issued October 5, 2015); *see generally* *Pa. PUC. et al. v. West Penn Power Company*, Docket Nos. R-2014-2428742 et al. (Order entered April 9, 2015), adopting the Recommended Decision of ALJs Dennis J. Buckley and Katrina L. Dunderdale (Issued March 9, 2015); *see also* *Pa. PUC v. Metropolitan Edison Company, et al.,* Docket Nos. R-00061366 *et al*., 2007 Pa. PUC LEXIS 5 \*111 (Order entered January 11, 2007).

### **3. Settlements Must Serve the Public Interest**

Here, the Joint Petitioners reached an unopposed accord on all the issues and claims that arose in this proceeding, except for two issues. The Joint Petition submitted for our review and approval set forth the terms and conditions of the Partial Settlement, which the Joint Petitioners requested be approved in their entirety without modification.

The Commission has expressed a policy encouraging settlements. *See* 52 Pa. Code §§ 5.231 and 69.401. A settlement may reduce or eliminate the substantial time, effort, and expense that otherwise may be used or incurred in litigating a proceeding. Rate cases, in general, are expensive to litigate and settlements may reduce a utility’s rate case expense; an expense which, if reasonable and prudently incurred, is entitled to be recovered from customers through rates approved by the Commission, as a cost of regulation. Thus, a settlement, whether full or partial, benefits not only the named parties directly but also may indirectly benefit the customers of the public utility through potential expense savings. For this and other sound reasons, settlements are encouraged by long‑standing Commission policy.

In order to accept a settlement, the Commission must determine that the proposed terms and conditions of the settlement are in the public interest. *Pa. PUC v. York Water Co.*, Docket No. R‑00049165 (Order entered October 4, 2004); *Pa. PUC v. Philadelphia Gas Works*, Docket No. M‑00031768 (Order entered January 7, 2004); *Pa. PUC v. C S Water and Sewer Assoc.*, 74 Pa. P.U.C. 767 (1991) (*CS Water and Sewer)*; *Pa. PUC v. Philadelphia Electric Co.*, 60 Pa. P.U.C. 1 (1985). The focus of the inquiry for determining whether a proposed settlement should be approved by the Commission is whether the proposed terms and conditions foster, promote and serve the public interest. *Pa. PUC, et al. v. City of Lancaster – Bureau of Water*, Docket Nos. R-2010-2179103, *et al*. (Order entered July 14, 2011), citing *Warner v. GTE North, Inc*., Docket No. C‑00902815 (Order entered April 1, 1996) and *CS Water and Sewer.* Because the Joint Petitioners request the Commission enter an order in this proceeding approving the Partial Settlement without modification, they share the burden of proof to show that the terms and conditions of the Partial Settlement are in the public interest. See 66 Pa. C.S. § 332(a) (“Except as may be otherwise provided in section 315…or other provisions of this part . . . the proponent of a rule or order has the burden of proof.”)

### **4. Commission Orders Must Be Supported by Substantial Evidence**

Finally, we recognize that Section 704 of the Administrative Agency Law requires that adjudications by the Commission must be supported by substantial evidence in the record. 2 Pa.C.S. § 704. “Substantial evidence” is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC,* 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 166 A.2d 96 (Pa. Super. 1961); *Murphy v. Comm. Dept. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

## **B. Joint Petition for Approval of Partial Settlement**

### **1. Terms and Conditions of the Partial Settlement**

The Joint Petition represents a Partial Settlement of all the issues raised in this proceeding, except for the two litigated issues addressed further herein, and provides for increases in rates designed to produce a net increase in PGW’s annual distribution operating revenues in the amount of $42 million, or an approximately 6.8% increase over present rates, based upon a FPFTY ending August 31, 2018, to become effective for service rendered on and after November 28, 2017. Joint Petition at 4. The Joint Petition consists of an eighteen-page document with attached Exhibit 1 and attached Statements A through H. The body of the document contains the terms and conditions of the Partial Settlement as agreed to by the Joint Petitioners. Exhibit 1 consists of a *pro forma* tariff supplement reflecting the rates and tariff changes agreed to by the Joint Petitioners. Statements A through H are the Statements in Support of the Joint Petition submitted by PGW, I&E, the OCA, the OSBA, RESA, PICGUG, CAUSE-PA and TURN *et al*., respectively.

The essential terms and conditions of the Partial Settlement are set forth in Paragraphs 12 through 42 of the Joint Petition, and are repeated verbatim below as follows:

**REVENUE REQUIREMENT**

12. PGW will be permitted to charge the Settlement Rates set forth in Exhibit 1 pursuant to the terms set forth therein for service rendered on and after the effective date. The Settlement Rates are designed to produce an increase in operating revenues of $42 million and Total Operating Revenue of $680.837 million for the Fully Projected Future Test Year (“FPFTY”) (which is comprised of the period from September 1, 2017 through August 31, 2018), calculated using the 20-year average of heating degree days experienced in PGW's service territory.

*Health Insurance Cost Tracking*

13. Starting with Fiscal Year (“FY”) 2018, PGW will track a health insurance cash expense schedule for each fiscal year which shows cash payments for health insurance, claims and administrative expenses and cash received for employee contributions. PGW will present this tracking in its next base rate case filing. The tracking schedule will provide this information for both active and retired employees separately. The health insurance cash expense for the fully projected future test year, FY 2018, is $30.811 million for current employees and $34.448 million for retired employees.

*Actual Results for FPFTY*

14. In PGW’s next base rate filing, PGW will prepare a comparison of its actual expenditures and financial results for FY 2018 compared to the FPFTY in this case.

*Rate Case Filing*

15. PGW shall not file a general rate increase pursuant to 66 Pa. C.S. § 1308(d) any sooner than December 1, 2019. This Paragraph does not apply to petitions for extraordinary rate relief under 66 Pa. C.S. § 1308(e) or to petitions for emergency rate relief.

*Weather Normalization Adjustment Clause*

16. PGW’s Weather Normalization Adjustment (“WNA”) shall continue as currently structured except that PGW will utilize normal weather as the 20-year average of heating degree days experienced in PGW's service territory. On January 10 of each year, PGW will provide an annual report to be submitted in this docket that details the actual charges or credits that resulted from application of the WNA and the actual number of heating degree days (“HDDs”). In its next base rate case, PGW will provide an analysis of the normalized HDDs that it selects.

**REVENUE ALLOCATION AND RATE DESIGN**

17. (a) The Joint Petitioners agree to the following revenue allocation:

|  |  |  |
| --- | --- | --- |
| **Rate Class** | **Percent of Increase** | **Revenue Allocation** |
|  |  |  |
| Residential | 78.67% | $33,039,250 |
| Commercial | 11.13% | $4,575,560 |
| Industrial | 0.60% | $350,300 |
| PHA GS | 0.41% | $170,200 |
| Municipal/PHA Rate 8 | 3.60% | $1,511,800 |
| NGVS | 0.00% | $0 |
| Interruptible Sales | 0.00% | $0 |
| GTS/IT | 5.60% | $2,352,800 |
| **TOTAL** | **100.00%** | **$41,999,910** |

The revenue allocation and rate design in this Settlement reflect a compromise and do not endorse any particular cost of service study.

(b) Exhibit 2 to this Petition sets forth a Proof of Revenue demonstrating that the proposed rates produce $42 Million in additional revenues, assuming *pro forma* revenue at present rate using 20-year heating average degree days.

*Customer Charges*

18. The Joint Petitioners agree to the following customer charges:

|  |  |
| --- | --- |
| **Rate Class** | **Customer Charge** |
| Rate GS - Residential | $ 13.75 |
| Rate GS - Commercial | $ 23.40 |
| Rate GS- Industrial | $ 70.00 |
| Rate GS- Philadelphia Housing Authority | $ 13.75 |
| Rate MS – Municipal Service | $ 23.40 |
| PHA (Rate 8) | $ 23.40 |
| NGVS | $ 35.00 |
| Rate IT-A | $152.16 |
| Rate IT-B | $273.89 |
| Rate IT-C | $273.89 |
| Rate IT-D | $273.89 |
| Rate IT-E | $426.06 |

*Technology and Economic Development (“TED”) Rider*

19. The TED Rider is approved as a three-year pilot program. Six months before the end of the three-year pilot program, PGW will report on the economics of the TED Rider.

1. PGW will maintain records of all TED Rider investments and TED Rider negotiated rates. In the event that PGW files a general base rate case during the three-year TED Rider pilot program following the effective date of rates established in this proceeding, PGW will provide information, as part of its initial filing, showing the *pro forma* rate of return on incremental investment for TED Rider customers as a sub-class in its filed cost of service study. Further, as part of its annual Gas Cost Rate (“GCR”) filings, PGW agrees to provide data on all sales to and costs incurred for TED customers.

*Micro-Combined Heat and Power (“Micro-CHP”) Incentive Program*

20. PGW’s filed Micro-CHP Incentive Program is modified as follows: PGW agrees that the economic test that will determine eligibility for participation in the Pilot Micro-CHP Incentive Program will include the costs of the incentives.

*Rate BUS: Back-Up Service*

21. PGW’s filed Rate BUS is modified as follows: As part of its annual GCR filings, PGW agrees to provide data on the number of customers, sales levels and costs incurred for BUS customers. In two years (or PGW’s next base rate case, whichever is sooner) PGW will provide an analysis of the BUS rate and provide a recommendation as to whether it should continue.

*Rate IT – Pricing*

22. PGW will withdraw its “value based” rate proposal in this case without prejudice to any position that may be advanced in future proceedings.

23. Within 120 days of the entry of a PUC order approving this settlement PGW will file a proposed “Large Customer Transportation Service Tariff (“LT”).

1. Within 60 days of entry of a PUC order approving this settlement, PGW will meet with PICGUG and any other interested parties to discuss the components of the LT Tariff. All parties retain all rights to challenge the rates, terms and conditions proposed by PGW for the LT Tariff.

1. The LT rates will be voluntary and available only to new IT load or existing IT customers.
2. At its discretion, PGW will be able to require that a customer subscribing to LT rates have some limited ability to reduce load when requested by PGW after notice.

1. The LT rates will be an increment of the IT rates established in this case.

24. The IT rate class has been allocated 5.6% of the rate increase agreed to or found to be reasonable by the Commission in this case. The rate increase for the IT customer subclasses are set forth in Exhibits 1 and 2, attached.

25. PGW shall add a provision to its existing IT Rules that permits PGW and IT customers to negotiate long-term contracts of up to five years. The rates may be higher than, but no lower than, the approved tariffed rates and may contain additional minimum take requirements. Any such long-term contract would have to be mutually agreed to by PGW and the customer.

a. Within 60 days of the entry of a PUC order approving this Settlement, PGW will meet with PICGUG to determine whether a negotiated contract applicable to all interested PICGUG members can be achieved.

**CUSTOMER ISSUES**

*Hazardous Heating Remediation Pilot*

26. PGW will implement a hazardous heating remediation pilot (“HH Pilot”) for at least two years, that will address heating system hazards and weatherize the homes of customers who meet the following criteria: (1) customers must, in the current or prior PGW fiscal year, have been on CRP, received a Low Income Home Energy Assistance Program (“LIHEAP”) grant, or been on a Level 1 (150% Federal Poverty Level (“FPL”) and below) or Level 2 (151%-200% FPL) payment arrangement (and sign an affidavit confirming their income as part of the HH Pilot); and, (2) customers must have received a hazard tag from a PGW service representative indicating a heating system component is not operating safely or at all.

1. Consumers whose gas service is off would be eligible for this HH Pilot provided that the consumer first reinstates gas service in accordance with otherwise applicable requirements, including but not limited to payment of arrears. To assist this group of consumers with reinstatement of service, PGW will consider more flexible reinstatement terms including but not limited to enrollment in CRP if the household would otherwise be eligible for CRP enrollment.

27. Customers would be selected for this pilot on a monthly basis based on PGW hazard tags issued in the prior month, prioritized for treatment by highest usage and lowest arrearages, from November through April or until funds are exhausted. Customers who are selected would be notified by letter, and called on two separate occasions (one call during the day and one in the evening) to be invited to participate in the program.

28. The HH Pilot budget will be $250,000 per year for the first two years of the pilot, incremental to the LIURP budget. Amounts not expended in the first two years of the Pilot would be rolled over into a third year. All program costs would be recovered through the Universal Services and Energy Conservation surcharge. At the end of the HH Pilot, PGW will evaluate the pilot and make a recommendation to the Commission regarding any future hazardous heating remediation pilot program in its next Universal Service and Energy Conservation Plan (i.e. the 2021-2023 plan) proceeding. PGW will provide the results of its evaluation and underlying data to the parties to this proceeding 30 days prior to the filing of its 2021-2023 plan filing. The parties agree that: a) this HH Pilot budget is a settlement amount; b) has not been set pursuant to any need based determination; and c) no party shall argue that the HH Pilot budget amount is a legally required floor for a future HH program (if any).

1. If the project can be treated cost-effectively, the service provider will complete the treatment as usual and include all costs in the cost effective analysis. If the heating system repair or replacement is cost ineffective, the measure costs can be excluded from the LIURP cost effectiveness analysis up to the maximums detailed in Table 1 below (average costs for such measures in CY16), adjusted annually; provided however, if the measure remains cost ineffective after applying the cost exclusions, the measure will not be installed.

b. To the extent feasible, PGW will coordinate its activities with the City of Philadelphia’s Basic Systems Repair Program. PGW agrees to inform the PA Department of Community and Economic Development, the PA Department of Human Services’ LIHEAP administrators, PECO Energy Company, and the City’s Heater Hotline of its new PGW program.

|  |  |
| --- | --- |
| **Table 1. Maximum Measure Cost TRC Exclusions** | |
| **Measure** | **Maximum Exclusion** |
| Boiler Replacement | $6,001 |
| Boiler Repair | $306 |
| Furnace Replacement | $4,038 |
| Furnace Repairs | $363 |
| Flue and Chimney Related Repairs | $413 |

*Credit and Collection Collaborative*

29. PGW will hold a credit and collection collaborative with interested stakeholders to obtain stakeholder input on bill management efforts for customers and applicants seeking to restore service previously shut off for non-payment, including customers and applicants with $10,000 or more of arrearages.

*Cost/Benefit Analysis of Crisis Acceptance Policy*

30. PGW will conduct a cost/benefit analysis of the impact of modifying its Crisis acceptance policy to permit customers to maintain or restore service when the grant amount is less than the amount needed to maintain or restore service. This cost/benefit analysis will be completed within 60 days from the date of the final order approving this Settlement and will be provided to the parties. PGW agrees to discuss the analysis at the collaborative identified in paragraphs 32 and 33, below.

*PGW Section 1521 Policies*

31. PGW will document its 66 Pa. C.S. § 1521 *et seq*. policies in a written training document, which will be provided to all of PGW’s customer service representatives. PGW will provide a copy of this document to the parties in this proceeding.

*Low Income Issue Collaborative*

32. PGW agrees to hold a collaborative with the parties to this proceeding within 120 days from the date of the final order in this proceeding to:

1. Discuss the results from its cost/benefit analysis of the impact of modifying its Crisis acceptance policy;
2. Discuss ways to improve its outreach to households who are unable to reconnect to PGW service because of high balances; and,

c. Discuss ways to address improving CRP enrollment.

33. PGW agrees to consider in good faith the issues and suggestions raised in the collaborative provided in Paragraph 32 above, in determining whether it wishes to revise any of its existing policies. The parties to the collaborative agree that they will participate in the collaborative in good faith.

*Tracking of Certain Unauthorized Use Determinations*

34. PGW will track the number of instances in which it reverses a previous determination of unauthorized use, as defined in PUC regulations, due to:

1. A customer or applicant prevailing in an informal or formal complaint with the PUC; and/or
2. Its own determination without the customer filing an informal or formal complaint with the PUC in instances in which the customer is suspected, or has, diverted the gas away from the meter physically by bypassing the meter or taking some other action such that the customer’s meter does not get gas through it to record gas consumption.

*Budget Billing Modifications*

35. PGW will put customers entering into a new payment arrangement (“PAR”) into budget billing at the time they enter the PAR, unless the customer requests or the PUC requires that the customer not be entered into budget billing. PGW will not remove customers from Budget Billing upon completion of their PAR without an explicit request from the customer (or a directive from the PUC) to be removed from Budget Billing.

36. PGW will modify its year-end Budget Billing processes in two ways. First, if year-end balances are greater than $100 but less than $300, PGW will spread that balance over the next six months. Second, underpayments of $300 or more will be spread over 24 months.

*CRP Offset*

37. PGW shall implement a 7.5 % Bad Debt Offset which will offset CAP credit amounts (i.e. reported as “CRP Discount” in PGW’s quarterly filings) related to average annual CAP participants exceeding 60,000 customers. The offset will be calculated as follows: (1) average annual CAP credit amount; multiplied by (2) average annual number of CAP participants exceeding 60,000 customers; multiplied by (3) 7.5%. The offset will only be effective during the effective period of the distribution base rates established in this proceeding.

**NATURAL GAS SUPPLIER ISSUES**

38. PGW will reduce the Purchase of Receivables (“POR”) Administrative adder to 0.5% from its current 2%.

39. PGW will retain the Gas Procurement Charge (“GPC”) at the current level of $0.04/mcf.

40. PGW will eliminate its $10 switching fee.

41. PGW will adopt a new price structure for monthly cash out imbalances in excess of 3.5% (the current methodology will continue to be used for imbalances up to 3.5%).

a. Shortages in that range would be priced at the higher of: (i) 125% of the average of the five (5) highest Daily Market Index Prices for the monthly period beginning on the first day of the month; or (ii) 150% of the Company’s highest incremental supply cost for the month.

1. Overages would be purchased at the lower of: (i) 75% of the average of the five (5) lowest Daily Market Index Price for the monthly period beginning on the first day of the month; or (ii) 75% of the Company’s lowest incremental supply cost for the month.

42. PGW will convene a stakeholder collaborative to address competition and billing issues.

Joint Petition at 4-13.

The Partial Settlement is conditioned upon the Commission’s approval of the terms and conditions contained therein without modification. The Joint Petitioners agree that if the Commission disapproves the Partial Settlement or modifies any terms and conditions therein, then any Joint Petitioner may elect to withdraw from the Joint Petition and may proceed with litigation and, in such event, the Partial Settlement shall be void and of no force and effect. The Joint Petitioners acknowledge and agree that the Partial Settlement is presented without prejudice to any position which any of the Joint Petitioners may have advanced and without prejudice to the position any of the Joint Petitioners may advance in the future on the merits of the issues in future proceedings. *Id.* at 14.

The Joint Petitioners agree that if the Commission does not approve the Partial Settlement and the proceedings continue, the Joint Petitioners reserve their respective rights to fully litigate this case, including, but not limited to, presentation of witnesses, cross-examination and legal argument through submission of Briefs, Exceptions and Replies to Exceptions. *Id*. at 14-15.

The Joint Petitioners acknowledge that the Settlement reflects a compromise of competing positions and does not necessarily reflect any Joint Petitioner’s position with respect to any issues raised in this proceeding. They acknowledge and agree that this Settlement, if approved, shall have the same force and effect as if the Joint Petitioners had fully litigated these proceedings. Finally, they agree that if the ALJs recommend that the Commission adopt the Settlement without modification, the Joint Petitioners waive their right to file Exceptions with respect to any issues addressed by the Settlement. *Id*. at 14-15.

### **2. Statements in Support of the Partial Settlement**

As previously mentioned, each of the eight Joint Petitioners filed individual Statements in Support of the Partial Settlement. Each of the Joint Petitioners submits that the Partial Settlement is in the best interest of the Company and its customers, that the Partial Settlement is in the public interest and that the Partial Settlement should be approved without modification. In its Statement in Support, PGW states that the Partial Settlement was reached after considerable review of the Company’s operations and the submission of extensive testimony by the active Parties, and after a series of negotiations and discussions concerning all the issues raised by PGW’s filing, including the appropriate level and allocation of the proposed rate increase, rate design and new or enhanced programs to benefit low-income and other customers. PGW claims that, therefore, the Partial Settlement represents a reasonable resolution of the rate case. PGW St. at 2.

In their Recommended Decision, the ALJs provided an extensive summary and analysis of the various Statements in Support and that discussion will not be repeated here. For a detailed summary of each Parties’ positions on the settled issues please refer to the ALJs’ Recommended Decision at pages 29 through 69.

### **3. ALJs’ Recommendation**

In their Recommended Decision, the ALJs provided an extensive discussion of the issues addressed by the terms and conditions of the Partial Settlement, as well as the positions of the Joint Petitioners regarding the Partial Settlement, as set forth in the individual Statements in Support of the Settlement. R.D. at 29-69. The ALJs concluded that the proposed Partial Settlement is just and reasonable and in the public interest. As such, they recommended approval of the Partial Settlement without modification. The ALJs stated that the Partial Settlement represents a just and fair compromise of the issues raised in this proceeding. The ALJs further noted that this Partial Settlement represents a “black box” settlement meaning that the Parties could not agree as to every element of the revenue requirement calculations. R.D. at 69.

The ALJs further noted that the individual Complainant was served with a copy of the Partial Settlement and was offered an opportunity to comment or object to the terms and demonstrate why the case should be litigated rather than settled. The ALJs noted that since no response was submitted by the Complainant, his due process rights have been fully protected and his Formal Complaint must be dismissed for lack of prosecution. R.D. at 71-72.

**4. Clarification Request of PICGUG**

In its September 25, 2017, Letter stating it will not be filing Exceptions to the ALJs’ Recommended Decision, PICGUG requested clarification of two items for the record. First, PICGUG stated that on page six of the Recommended Decision, the ALJs indicated that PICGUG only served one piece of surrebuttal testimony in this proceeding. However, PICGUG asserts that in addition to the testimony noted therein, PICGUG also served two other pieces of surrebuttal testimony: (1) PICGUG Statement No. 1-SR; and (2) PICGUG Statement No. 2-SR.

Second, PICGUG notes that on pages 49 to 50 of the Recommended Decision, the ALJs stated that “[t]he newly proposed LT service will be available only to new IT load or existing IT customers and will be set at an increment higher than the existing IT rates to recognize that an LT customer will not be subject to potential interruption except in highly unusual circumstances and only with significant notice (the exact rate and the terms and conditions will be determined after meeting with PICGUG and other interested parties).” PICGUG states that although the term “higher” was referenced in PGW’s Statement in Support and may have been the intent of the parties, PICGUG avers that the language of the Joint Petition does not actually contain the word “higher.” PICGUG Letter at 1, citing Joint Petition at ¶ 23(b)(ii) which provides “The LT rates will be an increment of the IT rates established in this case.” PICGUG reiterates that the exact rate and the terms and conditions will be determined after the Parties meet to discuss further. PICGUG Letter at 1.

In its cover Letter to its Replies to Exceptions, PGW stated that it was also compelled to respond to the comments contained in PICGUG’s Letter. PGW submits that the word “increment” has only one accepted definition: “the action or process of increasing especially in quantity or value: enlargement.” PGW Letter at 2, citing the Merriam-Webster dictionary web address at <https://www.merriam-webster.com/dictionary/increment>. Thus, PGW asserts that the Partial Settlement logically may only be read as to authorize the Parties to negotiate and/or propose an LT rate that is an “increment,” *i.e*., higher, than the customer’s comparable IT rate. PGW maintains that is certainly what it intends to do. PGW Letter at 1-2.

**5. Disposition**

As noted above, a Partial Settlement in principle of many issues was reached prior to the hearing dates, thereby negating the need for the scheduled evidentiary hearings on the settled issues. Although the Parties had not achieved an agreement on all the issues raised in this proceeding, all Parties agreed to waive the cross-examination of witnesses. As such, during the scheduled hearing, the Parties’ respective written testimony and exhibits were admitted into the record. The Partial Settlement was not opposed by any of the Parties. The Partial Settlement also was served on the individual Complainant who was not a signatory to the Settlement, but no response or objection to the Settlement was received.

As noted previously, it is in the public interest to provide a public utility with the financial ability to proffer safe, efficient, and adequate service to its customers. In terms of revenue requirement, as originally filed, PGW’s Supplement No. 100 sought an increase in revenues of $70.03 million per year, or an approximate 11.6 percent increase over its present rates. Under the terms of the Partial Settlement, the amount of the increase has been reduced to $42 million per year, or approximately 6.8 percent, over present rates. This negotiated increase in revenues represents approximately sixty percent of the Company’s initially requested rate increase.

Based on our review of the Partial Settlement, we find that there are several settled issues within the Partial Settlement that are beneficial to customers. Among these provisions are: (1) the reduced rate increase as compared to the originally proposed rates; (2) the compromise on the revenue allocations to the various rate classes; (3) the reduction in the proposed residential customer charges of $18.00 per month to $13.75 per month; (4) the agreed upon stay-out provision until December 1, 2019; (5) the tracking of cash payments for health insurance; (6) the approval of the Technology and Economic Development Rider as a three-year pilot program; (7) the agreement of the Company to withdraw its “value based” Rate IT rate proposal, without prejudice; (8) the agreement of the Company to file a proposed Large Customer Transportation Service Tariff within 120 days of the entry of a Commission order approving the Partial Settlement; (9) the implementation of a hazardous heating remediation pilot for at least two years; (10) the agreement of the Company to hold a credit and collection collaborative and a low income issue collaborative with interested stakeholders; and (11) the agreement of PGW to reduce the Purchase of Receivables Administrative adder to 0.5% from its current 2%.

We find that these many beneficial aspects within the Partial Settlement all support a finding that the Joint Petition for Partial Settlement is in the public interest. The Partial Settlement resolves the majority of the issues impacting residential consumers, small business, large business customers and the public interest at large. The benefits of the Partial Settlement are numerous and will result in significant savings of time and expenses for all Parties involved by avoiding the necessity of further administrative proceedings, as well as possible appellate court proceedings. For the reasons stated herein and in the Joint Petitioners’ Statements in Support, we agree with the ALJs’ conclusion that the Joint Petition for Partial Settlement is in the public interest. Accordingly, we shall adopt the ALJ’s recommendation to grant the Joint Petition for Partial Settlement and approve the Partial Settlement without modification.

Regarding the PICGUG Letter requesting clarification, we shall adopt its first clarification request to clarify the record as to the totality of its surrebuttal testimony submitted during this proceeding. However, based on the response of PGW to PICGUG’s second clarification request, we shall deny the requested clarification as we are convinced by the Company that “increment” means increasing in value.

## **C. Litigated Issue No. 1 – Partial Payment Allocation Process**

### **1. Positions of the Parties**

The OCA asserted that PGW should be applying partial payments to the oldest balances first. The OCA maintained that the Company’s methodology allows interest to be assessed on balances that have already been assessed interest. The OCA argued that PGW’s application of its tariff language regarding the sequencing of residential customer payments violates Sections 56.1, 56.22, 56.23, and 56.24 of the Commission’s Regulations and Sections 1301 and 1303 of the Code. OCA M.B. at 11‑12.

Additionally, the OCA asserted that the order of the sequencing of the partial payments results in annual interest on arrearages that exceeds the maximum amount of interest allowed to be charged to customers and increases the overall amount the consumers must pay. The OCA further asserted that PGW does not apply the payments to the older balances first, so therefore, the amount of interest charged to the customer is increased. OCA M.B. at 11-12.

To address the problem created by PGW’s payment sequencing methodology, the OCA asserted that PGW should be required to change its payment prioritization process to comply with the Commission mandate set forth in Section 56.22 of the Commission’s Regulations that late fees represent annual simple interest rather than posting payments to generate the same effect as compound interest. The OCA also contended that the Commission should require PGW to apply payments against bills in the order and timing in which they occurred. OCA M.B. at 13.

PGW asserted that its partial payment allocation practices are consistent with Section 56.24 of the Commission’s Regulations, 52 Pa. Code § 56.24. PGW stated that when it receives a partial payment from a customer that is not sufficient to pay a balance due both for prior service and for service billed during the current billing period, the Company follows the requirements of Section 56.24. PGW indicated that it first applies the partial payment to the balance due for prior service before applying it to the balance due for the current billing periods, and, thus, PGW averred that it does precisely what Section 56.24 mandates. PGW M.B. at 20-21.

PGW maintained that Section 56.24 is silent with respect to the application of partial payments among outstanding charges for the various components of prior service, including security deposits, late payment fees and charges for gas service. Per PGW, it is not currently bound to follow any particular method so long as it applies the payment to prior service charges. PGW indicated that it first zeroes out any outstanding security deposit and late payment charges and then applies the remainder of a partial payment to charges for gas service, starting with the oldest charges. PGW M.B. at 21-22.

Next, PGW pointed out that the OCA’s persistent reliance on the Commission’s Order in *SBG Management Services, Inc./Colonial Garden Realty Co., L.P. v. Philadelphia Gas Works*,Docket Nos. C-2012-2304183 and C-2012-2304324 (Order entered December 8, 2016) (*SBG Order*)for its characterization of PGW’s partial payment allocation practices as “unlawful” is unfounded. PGW noted that although the Commission found in the *SBG Order* that its process for posting partial payments violates Section 56.24 of the Regulations, the Commission subsequently issued an order on December 28, 2016, granting PGW’s Petition for Reconsideration, pending a further review of the merits. PGW asserted that as the *SBG Order* is not a final, appealable order, it is without effect. PGW M.B. at 22.

PGW also claimed that its partial payment allocation practices do not violate its existing tariff provision addressing the calculation and assessment of late payment charges or the applicable Commission Regulations. PGW noted that its tariff permits it to assess a late payment charge of 1.5% on a customer’s unpaid balance. PGW M.B. at 23-25; PGW R.B. at 7-8.

### **2. ALJs’ Recommendation**

In their Recommended Decision, the ALJs stated that regarding finance charges on late payment charges, Section 4.2 of PGW’s current tariff provides as follows:

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

unable to access the affected premises to obtain an Actual Meter Reading.

R.D. at 75, citing Section 4.2, Supplement No. 84, Gas Service Tariff – Pa. P.U.C. No. 2, Second Revised Page No. 26.

The ALJs noted that the language in PGW’s tariff closely mirrors the language set out in the Commission’s Regulations:

1. Every public utility subject to this chapter is prohibited from levying or assessing a late charge or penalty on any overdue public utility bill, as defined in § 56.21 (relating to payment), in an amount which exceeds 1.5% interest per month on the overdue balance of the bill. These charges are to be calculated on the overdue portions of the bill only. The interest rate, when annualized, may not exceed 18% simple interest per annum.

(c) Late payment charges may not be imposed on disputed estimated bills, unless the estimated bill was required because public utility personnel were willfully denied access to the affected premises to obtain an actual meter reading.

52 Pa. Code §§ 56.22(a) and (c). The ALJs found that since the language in PGW’s tariff closely mirrors this Regulation, the language of PGW’s tariff was not at issue here. Rather, the ALJs concluded that PGW’s process of applying partial payments to customers’ outstanding balances, and the effect that procedure has on the amount of annual late payment charges assessed against these customers, was the issue. R.D. at 75‑76.

The ALJs noted that the record in this proceeding contained the OCA’s hypothetical scenarios as to how PGW’s partial payment allocation practices may result in the assessment of late payment charges in excess of 18% per year, which would be a direct violation of the Commission’s Regulations at 52 Pa. Code § 56.22(a). However, the ALJs stated that the record does not contain any actual billing data reflecting how PGW’s partial payment allocation practices have affected its customers. The ALJs pointed out that the record in the *SBG* cases contained actual billing data that the Commission relied upon in its assessment of the repercussions of PGW’s partial payment allocation practices. R.D. at 76.

Thus, the ALJs found that the challenge raised by the OCA in this case regarding partial payment allocation can be effectively pursued in a complaint proceeding, particularly since the Commission is already considering this exact issue in its review of its Order in the *SBG* cases. The ALJs opined that although that case deals with a commercial customer rather than a residential customer, the result of the Commission’s forthcoming order in that case will affect all PGW’s customers. Accordingly, the ALJs recommended that the OCA’s claim regarding PGW’s partial payment allocation be dismissed without prejudice. Per the ALJs, this dismissal was not intended to make any decision or recommendation regarding the substance of the OCA’s position or PGW’s argument in opposition to the OCA’s position. R.D. at 77.

### **3. Exceptions and Replies**

The OCA filed three Exceptions to the ALJs’ recommendation on this issue. In its Exceptions, the OCA submits that the ALJs erred in dismissing the OCA’s claim regarding PGW’s partial payment allocation. The OCA claims that its challenges to PGW’s partial payment allocation are properly before the ALJs and the Commission in this proceeding, as they directly relate to PGW’s existing tariff and have a direct effect on the rates charged to PGW’s customers. Furthermore, the OCA claims that the ALJs erred by not applying the appropriate burden of proof to PGW to demonstrate that all aspects of its existing tariff, including the application thereof, are consistent with Commission Regulations and the Code. Finally, the OCA claims that PGW failed to meet its burden of proof and demonstrate that Section 4.2 of its Tariff is reasonable and consistent with Commission Regulations and the Code. OCA Exc. at 3-4.

In its Exception No. 1, the OCA submits that the issues pertaining to PGW’s partial payment allocation are appropriately addressed in this proceeding, as they are directly related to a provision of the Company’s existing tariff, Section 4.2, and must be considered to determine whether PGW is charging rates that are just and reasonable and in compliance with the Commission’s Regulations and the Code. The OCA claims that it has specifically challenged the lawfulness of PGW’s existing Tariff and makes two essential claims related to PGW’s partial payment allocation: (1) PGW’s tariff and practices do not comply with the Commission’s Regulations that provide that late fees must represent annual simple interest, rather than, effectually, a compounded interest,and (2) PGW’s payment posting practices are unreasonable and serve to maximize late payment charges for residential customers. OCA M.B. at 11-22; OCA R.B. at 6-21. In support of its claims, the OCA notes that it has presented evidence and legal arguments demonstrating that Section 4.2 of PGW’s existing Tariff, as applied to residential customers, is inconsistent with Sections 56.22 (relating to the accrual of late payment charges), 56.23 (relating to the application of partial payments between a public utility and another service), and 56.24 (relating to the application of partial payments among several bills for public utility service) of the Commission’s Regulations, 52 Pa. Code Sections 56.22, 56.23, and 56.24, and Sections 1301 (relating to the requirement that rates be just and reasonable) and 1303 (relating to the requirement that a utility must charge rates that adhere to its tariff) of the Code, 66 Pa. C.S. Sections 1301, 1303. Per the OCA, it has demonstrated that PGW’s payment prioritization practices have a direct effect on the rates paid by PGW’s residential customers. As such, the OCA asserts that issues pertaining to PGW’s partial payment allocation are appropriately before the ALJs and the Commission in this proceeding. OCA Exc. at 4-6.

Next, the OCA asserts that to the extent the ALJs dismissed the OCA’s claims regarding PGW’s partial payment allocation on the basis that the OCA challenged the application, rather than the language, of an existing tariff provision, such a consideration is inconsistent with Pennsylvania law. The OCA points out that in its Suspension Order, the Commission did not place any such limitation on its directive to investigate the lawfulness, justness, and reasonableness of PGW’s existing rates, rules, and regulations. Furthermore, the OCA avers that a requirement that the language, rather than the application, of an existing tariff provision must be at issue to be considered in a base rate proceeding would essentially prevent the ALJs and the Commission from investigating the actions of a utility in a base rate case.The OCAmaintains that Section 526(a) of the Code specifically authorizes the Commission to reject a public utility’s request for a rate increase if the Commission determines that the utility is providing inadequate quantity or quality of service. 66 Pa. C.S. § 526(a). Furthermore, even if the Commission was to agree with the ALJs’ determination that the language, rather than the application, of an existing tariff provision must be at issue to be considered in a base rate proceeding, the OCA notes that it has challenged the language in Section 4.2 of PGW’s existing tariff. Specifically, the OCA points out that it has recommended that PGW be required to revise the language in its tariff to explain its payment posting prioritization practices. OCA Exc. at 7-8.

Next, the OCA states that the fact that the ALJs considered the evidence presented by the OCA as a basis for dismissing the OCA’s claims regarding PGW’s partial payment allocation raises several legal concerns. First, the OCA states that the evidence presented by a party to support a claim in a base rate proceeding is not determinative of whether the issue is appropriately before the ALJs and the Commission in that proceeding. The OCA opines that issues related to any provision of PGW’s existing tariff are appropriately pursued in this proceeding. As such, the OCA posits that the issues pertaining to PGW’s partial payment allocation are appropriately addressed in this proceeding, as they are directly related to a provision of the Company’s existing Tariff, Section 4.2, and must be considered in order to determine whether PGW is charging rates that are just and reasonable and in compliance with the Commission’s Regulations and the Code. OCA Exc. at 8-9.

Next, the OCA submits that it has presented substantial evidence to demonstrate that Section 4.2 of PGW’s Tariff is inconsistent with the Commission’s Regulations and the Code. See OCA St. No. 4 at 35-43 (Revised); see also OCA St. No. 4-S at 13-23 and Exh. RDC-1SR. According to the OCA, there is no dispute as to PGW’s partial payment allocation practices. The OCA points out that the ALJs acknowledged that the record contains evidence that “PGW’s partial payment allocation practices may result in the assessment of late payment charges in excess of 18% per year, which would be a direct violation of the Commission’s Regulations at 52 Pa. Code § 56.22(a).” See R.D. at 76. As such, the OCA submits that the evidence it has presented in this case is sufficient to arrive at a decision on the merits. OCA Exc. at 9.

Moreover, to the extent the ALJs have dismissed the OCA’s partial payment allocation claims in this proceeding on the basis that the issues raised by the OCA will be fully addressed in the *SBG* case, the OCA submits that the resolution of that matter may not provide any final determination that is applicable to the residential customers that the OCA represents here. The OCA asserts that while the issue of late payment charges is currently being addressed in the *SBG* case, the complainants in that case are individual commercial landlords, the OCA is not a party, and the issues raised in that case relate to PGW’s partial payment allocation for commercial customers. The OCA explains that in this proceeding, it has challenged PGW’s partial payment allocation and tariff provisions as they relate to residential customers.Per the OCA,the *SBG* case outcome may not provide a remedy for all residential ratepayers or address the needed modifications to PGW’s tariff.The OCA posits thatthe Commission has held that class actions are not permitted under the Code, and, as such, individual complainants do not have standing to represent the interests of others “similarly situated” before the Commission. OCA Exc. at 9-10, citing *C* *Leslie Pettko v. Pennsylvania Water Company*, Docket No. C‑2011-2226096, Order Granting in Part and Denying in Part Motion for Judgment on the Pleadings at 6 (Order entered Oct. 5, 2011).

In response to the ALJs’ finding that the OCA’s challenge on this issue can be pursued in a complaint proceeding, the OCA submits that it did file a Formal Complaint in this base rate proceeding. Throughout this proceeding, the OCA claims that it has challenged the lawfulness of PGW’s existing tariff and application thereof, and presented substantial record evidence to support a finding that PGW’s tariff and practices are in violation of the Commission’s Regulations and the Code. OCA M.B. 11-22; OCA R.B. at 7-21. The OCA opines that to now require the OCA to file another complaint raising the same claims against PGW related to PGW’s partial payment allocation, present its evidence again, and argue the merits of its claim again would not promote judicial efficiency. As such, the OCA’s posits that its claims regarding PGW’s partial payment allocation should be considered in this proceeding. OCA Exc. at 10-11.

In its Exception No. 2, the OCA states that the ALJs do not apply their burden of proof discussion directly to either of the two litigated issues in this proceeding. As discussed in Exception No. 1, the OCA maintains that the ALJs should have considered the merits of the OCA’s payment posting claims. Per the OCA, the ALJs erred by not considering the merits and not applying the appropriate burden of proof to PGW to demonstrate that all aspects of its existing tariff are just and reasonable. In a base rate proceeding, the OCA opines that the affirmative burden of proving the justness and reasonableness of the tariff provision remains on the utility, PGW, and not the OCA. As to the payment posting issue here, the OCA avers that it only bears “the burden of going forward” and not the burden of proof. OCA Exc. at 11.

In this proceeding, the OCA asserts that PGW has the burden of proof to demonstrate that every element of its rate increase request is just and reasonable. The OCA notes that in this matter, consistent with *S**haron Steel*, the Commission directed that an investigation be instituted to determine the lawfulness, justness and reasonableness of the rates, rules and regulations. The OCA explains that the *Suspension Order* suspends all aspects of the Company’s rates, including the Company’s existing and proposed rates. *S**uspension Order* at 3. The OCA notes that, in its *Suspension Order*, the Commission states that this investigation “shall include consideration of the lawfulness, justness, and reasonableness of the Philadelphia Gas Works’ existing rates, rules, and regulations.” *I**d.* OCA Exc. at 13-14.

Next, the OCA submits that PGW has the burden of proof in this proceeding to prove that all provisions of its existing tariff are just and reasonable and consistent with the Commission’s Regulations and the Code. As to the payment posting issue in this proceeding, the OCA explains that since PGW’s payment allocation practice is identified in Section 4.2 of the Company’s existing tariff, and the Commission has instituted an investigation into the existing “rates, rules and regulations,” the burden of proof is on the Company to show the reasonableness of this tariff provision and its application thereof. OCA Exc. at 14.

The OCA maintains that the ALJs should have considered the merits of the OCA’s payment posting challenges and, in doing so, should have put the burden of proof on PGW to demonstrate that Section 4.2 of its existing tariff is just and reasonable and consistent with the Commission’s Regulations and the Code. According to the OCA, the evidence it has presented demonstrates that Section 4.2 of PGW’s existing Tariff and PGW’s payment posting practices are inconsistent with the Commission’s Regulations and the Code. OCA Exc. at 14, citing OCA St. No. 4 at 35-43 (Revised); OCA St. No. 4‑S at 13-23 and Exh. RDC-1SR; OCA M.B. at 11-22; OCA R.B. at 6-21. The OCA asserts that, to the contrary, PGW has failed to satisfy its burden of proof to demonstrate that Section 4.2 of its existing tariff is just and reasonable and consistent with the Commission’s Regulations and the Code. OCA Exc. at 14-15.

In its Exception No. 3, the OCA asserts that it has demonstrated that PGW sequences its payments to apply partial payments against newer, non-interest-bearing late charges before applying the payments against older, interest-bearing principal amounts contrary to the requirements of the Commission’s Regulations and the Code. OCA Exc. at 15-16, citing OCA St. 4 (Revised) at 37-38. Thus, the OCA avers that PGW’s posting practices result in an interest rate of 19.562%, which exceeds the 18% limit in the Commission’s Regulations. 52 Pa. Code § 56.22(a). Accordingly, the OCA opines that it has met its burden of going forward to demonstrate that the Company’s practices are resulting in rates that violate the Commission’s Regulations. The OCA maintains that the sufficient factual information has been presented in this proceeding. OCA Exc. at 15‑16.

The OCA points out that there are several important facts that are not disputed in this proceeding. The OCA notes that Section 56.22(a) limits the amount of interest that PGW can charge to a customer per simple annum to 18%. See 52 Pa. Code § 56.22(a). Also, the OCA claims that PGW agrees with it on how the partial payments are allocated by PGW. The OCA explains that the partial payments are posted to a hierarchy: (1) deposit, if required, is posted first; (2) late payment charges are then paid; and (3) finally the “remaining balance of the payment is posted to the oldest money.” OCA Exc. at 16, citing PGW St. 10-R at 7. Moreover, the OCA opines that PGW acknowledged in its Reply Brief that “the Company allows interest to be assessed on balances that have already been assessed interest.” OCA Exc. at 16, citing PGW R.B. at 19. While PGW provides policy rationalizations for allowing its rates to exceed the maximums set forth in the Commission’s Regulations, the OCA maintains that those rationalizations do not change the fact that PGW’s payment prioritization can result in a compound interest that exceeds 18% per simple annum. OCA Exc. at 16.

In response to the ALJs’ concerns that actual billings are necessary to demonstrate that the Company has violated Section 56.22(a) per the *SBG* case, the OCA explains that in that case, an actual accounting was necessary because SBG was seeking a refund. Per the OCA, an actual accounting is not needed in this case because unlike with the SBG case, the OCA is not requesting that PGW provide a refund as that would require an actual accounting. In this proceeding, the OCA asserts that the question is whether the Company’s payment prioritization practices are consistent with the law. The OCA avers that the basic facts regarding how payment prioritization occurs are not disputed in this case and avers that its exhibits provide an illustration of the effects of the payment hierarchy used and how it results in a violation of Section 56.22 of the Commission’s Regulations. OCA Exc. at 17.

The OCA submits that the Company cannot be permitted to continue a practice that violates the Commission’s Regulations and the Code. The OCA reiterates that the Company’s payment posting practices are wholly inconsistent with the Commission’s Regulations and the Code. As such, the OCA recommends that PGW be required to change its payment posting methodology and provide customers with effective notice of that payment posting methodology in the Company’s Tariff. OCA Exc. at 17-18.

In its Replies to Exceptions, PGW states that the ALJs rightly concluded that issues regarding PGW’s partial payment allocation practices should be addressed outside of this rate case. PGW R. Exc. at 5-6. PGW asserts that Rule 4.2 of its Tariff, which the OCA has relied upon to pursue the Company’s partial payment allocation practices, parrots the requirements of Section 56.22 of the Commission’s regulations governing the computation and assessment of late payment charges and has no language relating to the application of customers’ partial payments. PGW R. Exc. at 5-6. Therefore, PGW avers that the ALJs correctly concluded that “the language of PGW’s tariff is not at issue here.” PGW R. Exc. at 6, citing R.D. at 75-76. PGW maintains that the result recommended by the ALJs is consistent with the ALJ’s interim order in *Pa. P.U.C. v. PPL Electric Utilities Corp*., Docket No. R‑2015-2469275 (Sixth Prehearing Order dated July 14, 2015) (*PPL*). PGW R. Exc. at 6. PGW states that as in *PPL*, the challenges raised by the OCA are not related to either base rates or to PGW’s existing or proposed tariffs and thus are beyond the proper scope of this base rate proceeding. PGW R. Exc. at 6.

In response to the OCA’s statement that the ALJs may have dismissed its proposal on the basis that the OCA challenged the application, rather than the language, of an existing tariff provision, PGW claims that the Recommended Decision contains no such discussion but rather appropriately recognizes that the issue raised by the OCA simply does not relate to the tariff. PGW asserts that the OCA did not challenge the application of Rule 4.2 of PGW’s tariff. PGW asserts that the OCA made no claims that PGW improperly calculated late penalties or improperly imposed them on customers’ bills. Per PGW, merely because the OCA’s issue focuses on the Company’s method for applying partial payments to previously imposed late payment charges does not bring PGW’s partial payment allocation practices within the scope of Rule 4.2 of its tariff, which only addresses the initial assessment of late payment charges and is silent on the posting of partial payments to those charges for prior basic service. PGW R. Exc. at 6.

Next, PGW states that while the OCA has proposed that the Company include its partial payment allocation practices in its tariff, that proposal cannot authorize a review of the Company’s practices in this base rate proceeding. PGW avers that it would be inappropriate to allow a party to bring any unrelated issue into a base rate proceeding by simply proposing that the practice in question be incorporated in the tariff. PGW claims that nothing in the Commission’s Regulations requires public utilities to incorporate their practices for complying with Sections 56.23 and 56.24 in their tariffs. PGW asserts that although it has indicated a willingness to also include language in its tariff reflecting the requirements of the regulations, nothing has been presented in this case to show why PGW should be required to do anything more. PGW R. Exc. at 6-7.

PGW states that rather than permitting the OCA to challenge its partial payment allocation practices in this base rate proceeding, the ALJs appropriately observed that the OCA is free to raise these issues in a complaint proceeding. PGW notes that while the OCA claims that it already filed a Formal Complaint in this base rate proceeding and argues that it should not be required to file another complaint to pursue the same claims, the fact remains that the issues were never properly before the Commission as part of this proceeding. The Company asserts that merely because the OCA elected to raise the issue here does not negate the fact that PGW’s partial payment allocation practices are not part of its tariff and are therefore well outside the proper scope of this base rate proceeding. According to PGW, in addition to pursuing these issues in a separate complaint proceeding, the OCA could likewise petition the Commission to initiate a generic investigation into public utilities’ partial payment allocation practices and/or launch a proposed rulemaking proceeding proposing modifications to the methods followed by various public utilities. In fact, PGW maintains that it has argued that a proposed rulemaking is the lawful and appropriate way for the Commission to examine system-wide modifications to the Company’s and other utilities’ partial payment practices. PGW R. Exc. at 7-8, citing PGW M.B. at 36-39 and PGW R.B. at 9.

Next, PGW asserts that the OCA’s argument regarding the burden of proof fails as it is well-settled that a party alleging a violation of the Commission’s Regulations bears the burden of proof under Section 332(a) of the Code. 66 Pa. C.S. § 332(a). PGW notes that it has not disputed that it carries the burden of proof for the issues related to the base rate increase, the existing tariff and the proposed tariff. However, PGW opines that the OCA’s proposal does not relate to PGW’s tariff and as such, the OCA has the burden of establishing that PGW’s partial payment allocation practices are unlawful, unjust and unreasonable and should be modified. PGW R. Exc. at 8.

PGW next states that if the merits of the OCA’s claims are considered, the Company requests that the Commission should conclude that the OCA has not carried its burden of proof to show that the Company’s partial payment allocation practices violate the Commission’s regulations. PGW avers that its practices are consistent with the mandate in the Commission’s Regulations that require public utilities to first apply partial payments to prior basic service before applying them to current basic service. PGW explains that partial payment allocation practices are governed by the Commission’s Regulations at Sections 56.23 and 56.24. PGW notes that Section 56.23 addresses the application of partial payments as between nonbasic and basic charges for residential public utility service, with basic charges established as the priority. PGW further explains that Section 56.24 governs the posting of partial payments as between charges for prior basic service and current basic service, with priority given to prior basic service. PGW asserts that it follows these requirements to the letter. Therefore, PGW opines that by first applying partial payments to the late payment charges for prior basic service before applying them to charges for current basic service, the Company is fully compliant with the Regulations. PGW R. Exc. at 8-10.

PGW asserts that the OCA has cobbled together a flawed legal argument using bits and pieces of various provisions of the regulations and statute to argue that PGW is required to apply partial payments in a manner that is simply not mandated by law. PGW states that the underpinning of this legal theory is that somehow by applying partial payments first to outstanding late payment charges, the Company effectively charges more than 18% simple interest. PGW opines that the ALJs properly rejected the OCA’s claims that its practices have the effect of imposing compound interest. Per PGW, it is undisputed that the Company does not charge interest on interest, which is the definition of compound interest, and that it in fact subtracts prior unpaid late payment charges before assessing late payment charges on overdue balances. Further, PGW notes that the record developed by the OCA in this proceeding does not contain any actual billing data reflecting how PGW’s partial payment allocation practices have affected PGW’s customers. PGW explains that the OCA’s only support for its claim that “PGW’s posting practices result in an interest rate of 19.562 percent” is the calculation of its witness which is nothing more than the mathematical outcome of charging 18% annual interest on a compounded basis. PGW maintains that this calculation has no basis in reality in terms of the interest rate that PGW customers are actually assessed or that they ultimately pay. PGW R. Exc. at 10-11.

PGW asserts that each of the OCA’s contentions of alleged violations rests on the flawed premise that PGW is “effectively” charging customers more than eighteen percent on an annual basis. PGW claims that the fact that “PGW sequences its payments to apply partial payments against newer, non-interest-bearing late charges before applying the payments before applying the payments against older, interest-bearing principal amounts” is not evidence of charging or effectively charging customers more than eighteen percent interest. PGW R. Exc. at 11, citing OCA Exc. at 15-16. Rather, PGW opines that this evidence shows that the Company applies partial payments in a manner that incentivizes customers to timely pay their bills in full and reduces uncollectible expenses and bad debt costs. Also, PGW claims that evidence that a customer may ultimately pay more for services when partial payments are first applied to late payment charges is not evidence that PGW is charging or effectively charging customers more than 18% interest. PGW R. Exc. at 11. According to PGW, this is evidence that the Company is applying partial payments in a way that results in customers who are responsible for incurring late payment charges being the ones who pay those penalties instead of shifting those costs to other paying customers. PGW R. Exc. at 11-12.

Finally, PGW explains that under the OCA’s preferred approach, a customer who is properly assessed $143.77 in late payment charges over the course of the year would only pay $5.25 during that year. PGW maintains that evidence that it imposes interest on balances for prior service that has already been assessed interest is not evidence that the Company is charging or effectively charging customers more than 18% interest. Rather, PGW opines that this is evidence that PGW is recovering the costs to carry unpaid balances; whether an unpaid balance has existed for ten months or two months, the costs continue to accrue and need to be recovered. PGW opines that even under the OCA’s preferred approach, the Company would assess late payment charges on prior unpaid balances multiple times if they continue to be unpaid. PGW maintains that the OCA has not carried its burden of demonstrating that modifications are warranted to PGW’s partial payment allocation practices. PGW R. Exc. at 12.

### **4. Disposition**

Upon our review of the evidence of record, the Recommended Decision, the Exceptions and Replies, thereto, in this proceeding, we will adopt the ALJs’ recommendation to dismiss OCA’s claim without prejudice and deny the OCA’s Exceptions.

The OCA has presented evidence in this proceeding related to the OCA’s allegation that PGW’s partial payment allocation practices are inconsistent with and in violation of PGW’s existing tariff and the Commission’s Regulations. The OCA has proposed tariff language to be added to PGW’s tariff to correct PGW’s current partial payment allocation practices going forward.

As for the OCA’s Exception No. 1, we find the OCA’s claim regarding PGW’s partial payment allocation practices is not a challenge regarding the lawfulness, justness or reasonableness of a proposed or an existing rate, rule or regulation of PGW’s, but rather it is a challenge related to PGW’s historical and current processes and practices. Indeed, as the ALJs pointed out, the existing tariff language in question – Section 4.2 of PGW’s tariff – closely mirrors our Regulations at 56.22(a) and (c), and such language has not been challenged by the OCA as being unlawful, unjust or unreasonable. Rather, the claim is that PGW’s partial payment allocation practices are inconsistent with and in violation of PGW’s existing tariff and the Commission’s Regulations. Thus, the OCA’s claim regarding PGW’s partial payment allocation practices appears to be related to PGW’s quality of service to its customers.

Because the OCA’s claim relates to PGW’s quality of service, we acknowledge the relevance of the issue to our consideration of this proceeding under Sections 523 and 526 of the Code, 66 Pa. C.S. §§ 523, 526. However, we find that the burden of proof on this *complainant-initiated* claim squarely resides with the OCA under Section 332(a) of the Code, and not with PGW under Section 315(a) of the Code. The OCA has argued otherwise in its Exception No. 2, which we deny, and by extension, we deny OCA’s Exception No. 3. We are persuaded by PGW’s Replies to Exceptions that simply because a party proposes certain language to be added to a utility’s tariff, whether as new language or as a modification to existing language, does not automatically make the issue(s) addressed by such language the utility’s burden to carry. We believe it would be improper burden shifting in a general rate proceeding to allow a party to bring forth an issue that does not challenge a proposed or existing rate, rule or regulation, and then require the utility to carry the burden of proof with respect to that issue. Here, the OCA proposed language to be added to PGW’s tariff to correct PGW’s practices that are alleged to violate PGW’s existing tariff and our Regulations, but the issue to be examined is PGW’s alleged wrongful practices. Had the burden of proof been properly placed with the OCA on this issue as the proponent of a Commission order finding the alleged violations and ordering the tariff modifications, the OCA’s claim regarding PGW’s partial payment allocation practices likely would be properly before us now for a decision on the merits. It is not, however.

Moreover, we note that the Joint Petitioners have presented a Partial Settlement for our approval in this proceeding that establishes, within the context of a “black box” settlement, PGW’s overall allowed revenue requirement and the rates that will go into effect for customers following the Commission’s order in this proceeding. To address its claim regarding PGW’s practices that are alleged to violate PGW’s tariff and our Regulations, we note the OCA has not proposed or presented evidence regarding any specific adjustments to the Company’s cost of service claim for the Commission to adopt under Section 523(a) of the Code; nor has the OCA proposed under Section 526(a) that the Commission reject, in whole or in part, PGW’s revenue requirement as set forth in the Joint Petition. Thus, we agree with the ALJs that the OCA’s claim can be effectively pursued in a separate complaint or petition proceeding. In a separate complaint proceeding, for example, the OCA may request that the Commission provide any of the following forms of relief, for example: that the Commission make a finding of violation(s) of our Regulations; that the Commission impose penalties against PGW for such violations; that the Commission order PGW’s existing practices and processes cease and desist; that the Commission order PGW’s existing tariff be modified to add new language specifying the practices PGW is to follow going forward; and/or that the Commission order customer refunds, as may be appropriate.[[3]](#footnote-3)

Therefore, because of our finding regarding the burden of proof on this issue and its potential impact to the due process rights of the parties in this case, and because of the potential significance of the OCA’s claim on PGW’s system-wide billing practices for residential customers as well as on similarly-situated jurisdictional utilities, we are compelled to dismiss the OCA’s claim without prejudice to OCA’s future right to separately file a formal complaint on this matter, or to petition this Commission to initiate an investigation into PGW’s partial payment allocation practices.

## **D. Litigated Issue No. 2 - Allocation of Universal Service Costs**

### **1. Positions of the Parties**

The OSBA noted that, since before PGW came under the Commission’s authority, PGW’s universal service costs have been recovered from all classes of customers although only residential customers are permitted to participate in the Company’s universal service programs. However, the OSBA pointed out that PGW did not allocate any universal service costs to either PGW’s interruptible sales service rate classes or to PGW’s large volume transportation service rate classes (GTS/IT). The OSBA explained that under Commission policy and the precedent regarding other utilities, non-residential customers are not required to contribute toward universal service costs. The OSBA further asserted that until now, the only rationale provided by the Commission for continuing to recover universal service costs in this manner was that rate shock precluded the application of standard Commission policy to PGW. The OSBA maintained that under its proposal in this proceeding, there is no net impact on the Residential class revenue requirement associated with moving cost responsibility for universal services costs to the Residential class, and thus there is no rate shock issue. Therefore, the OSBA recommended that the requirement that PGW’s non-residential firm service customers contribute toward universal service costs should be eliminated in this proceeding. OSBA M.B. at 11; OSBA R.B. at 6.

PGW maintained that the continuation of PGW’s allocation of universal service costs is just and reasonable and should be approved. PGW asserted that there is nothing in PGW’s allocation of universal service costs to all firm customers that violates the Code or the Commission’s Regulations. PGW asserted that under Section 2212(e) of the Code, 66 Pa. C.S. § 2212(e), the Commission is required to follow the same ratemaking methodology and requirements that were applicable to PGW prior to the Commission assuming jurisdiction over PGW. Furthermore, PGW averred that PGW’s allocation of universal service costs and related rate design has been found to be just, reasonable and in the public interest.[[4]](#footnote-4) PGW explained that the Commission has consistently determined that, because PGW has followed this allocation policy prior to and at the time it came under the regulatory authority of the Commission, PGW is an exception to the general policy applied to other Commission regulated companies that all the universal service costs should be allocated to residential customers. PGW M.B. at 39-40; PGW R.B. at 27-28.

PGW asserted that continuation of PGW’s allocation of universal service costs is consistent with cost causation principles, and therefore all firm customers should contribute toward them, as non-residential customers benefit from PGW’s universal service programs. PGW noted that, generally, cost causation provides that ratepayers should pay for programs that benefit them. Per PGW, while the USEC recovers the costs of programs designed specifically to benefit low-income residential customers, customers in all classes benefit by programs that support and enable a community in which low-income customers can maintain utility service at an affordable cost. PGW pointed out that non-residential customers that own or operate residential master-metered multi-family buildings benefit from universal service programs such as the Low-Income Multifamily (LIME) program. Beyond that, PGW claimed that all non-residential customers indirectly benefit from keeping the residents of Philadelphia in their homes as the residents contribute to the well-being and economic vibrancy of Philadelphia’s business community. PGW opined that without residents living in the City, businesses may lose their workforce and customers. PGW further opined that keeping people living and working in the City will help businesses avoid financial losses, increase employee productivity, and retain viable consumers. Thus, PGW asserted that the portion of universal service costs paid by non-residential customers is offset by the substantial positive economic impact in Philadelphia on those non-residential customers created by PGW’s universal service programs. PGW M.B. at 40‑41; PGW R.B. at 29.

The OCA agreed with PGW’s recommendation to continue the allocation of the USEC to all firm service customers. The OCA noted that the continuation of this allocation is fully in accord with the Commission’s decisions over the last seventeen years in every PGW proceeding to continue the traditional recovery of these universal service costs from all firm service customers. The OCA asserted that the OSBA has not presented any compelling evidence to establish that twenty-five years of practice for PGW should be altered in this proceeding. OCA M.B. at 22-23; OCA M.B. at 22-23.

The OCA pointed out that the OSBA’s proposal would shift approximately $11.6 million on to the residential class in addition to the rate increase that residential customers will experience because of this case. The OCA asserted that PGW’s residential ratepayers are not able to absorb these additional costs of the CRP program. Further, the OCA explained that 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. OCA M.B. at 32.

TURN *et al.* and CAUSE-PA argued that the OSBA’s proposal to allocate universal service costs to only residential customers should be rejected for each of the following reasons: (1) Allocating the total cost solely to residential customers would result in an additional $11.6 million in costs borne by this customer class, which would violate the principles of gradualism and result in rate shock; (2) this rate shock would overburden the majority of PGW’s low income customers, who do not participate in PGW’s CRP program; (3) as a municipal utility, PGW’s differences from other utility service territories continue to justify maintaining the bargain made as to the allocation of costs; (4) the current allocation furthers the priorities of the Gas Choice Act and continues the status quo as it has existed for the last twenty-five years; and (5) the Commission’s currently pending universal service review necessitates that the Commission not make changes in any one utility service territory at this time until it has thoroughly reviewed the record developed concerning, among other things, the appropriate cost allocation of universal service programs as a state-wide policy matter. Joint M.B. at 7-8.

### **2. ALJs’ Recommendation**

The ALJs agreed with the arguments advanced in this proceeding by PGW, the OCA, TURN *et al.* and CAUSE-PA. The ALJs found that there was nothing in PGW’s allocation of universal service costs to all firm customers that violates the Code or the Commission’s Regulations. Moreover, the ALJs concluded that 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. R.D. at 110.

The ALJs found that 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 USEC costs to the residential rate class, together with the $42 million rate increase under the Partial Settlement, is not appropriate at this time. The ALJs noted that the Parties that oppose reallocation of the universal services cost 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%. The ALJs noted that this would result in an overall increase for residential customers of about 8.6% (2.3% plus 6.3%). R.D. at 110.

Based on the evidence presented in this proceeding, the ALJs further found that low-income customers will be disproportionately impacted by the OSBA’s proposed shift of costs to residential customers. The ALJs next noted that there is the issue of the Commission approved LIME program that benefits tenant buildings that are commercial accounts. In approving the LIME program, the ALJs asserted that 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. As the Commission specifically carved out within the LIME program as a benefit to these small business customers, the ALJs agreed that this new benefit to small business customers must also be considered in light of the OSBA’s proposal. R.D. at 111.

The ALJs explained that while it is true that Section 2212(e) of the 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, they noted 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.” The ALJs further explained that although they were declining to impose a new cost allocation in this proceeding, the Code does not prohibit such a reallocation. The ALJs pointed out that PGW is the only NGDC that does not allocate costs for universal service programs to only residential customers. R.D. at 111.

The ALJs concluded that 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 universal service costs should be allocated to residential customers. Thus, the ALJs recommended approval of the cost allocation advanced in this proceeding by PGW, the 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,” the ALJs also recommended 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. With this information, the ALJs opined that 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. Additionally, the ALJs opined that 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 of PGW. R.D. at 111-112.

Accordingly, the ALJs recommended that PGW maintain its current universal services cost allocation with the requirement that PGW submit the ALJs’ requested data regarding adjustments to its universal service cost allocation in its next rate proceeding. R.D. at 112.

### **3. Exceptions and Replies**

In its Exceptions, the OSBA states that the ALJs erred in concluding that PGW’s current allocation of universal service costs, which includes recovery from the commercial and industrial classes, should be retained. The OSBA first notes that it sensitive to the concerns of low income customers. However, the OSBA states that it is also particularly concerned that some of the small business owners it represents are paying the USEC in their homes, and then a second time in their businesses. Thus, the OSBA asserts that its proposal shifts USEC costs with no impact to residential or low-income customers. The OSBA avers that the ALJs seem to be incorrectly inferring that the OSBA’s proposal instead somehow runs afoul of the principles of rate shock and gradualism. However, the OSBA maintains that the impact of both rate shock and gradualism, while moving rate responsibility for universal service costs to the residential class, are considered in the overall revenue allocation for the proceeding. OSBA Exc. at 3‑5.

Per the OSBA, its proposal results in the same overall increase for all rate classes as agreed to in the Joint Petition. Unfortunately, the OSBA claims that the ALJs simply have their facts wrong. The OSBA opines that there is no $11.6 million incremental impact and there is no 2.3 percent incremental impact from its proposal. The OSBA claims that there is no additional revenue burden for residential customers, be they low-income or non-low-income customers, and therefore there is no basis for the ALJs’ speculations that this change will increase disconnections for non-payment. Per the OSBA, rate shock cannot be a reason not to adopt the OSBA’s recommendation in this proceeding because all Parties have agreed that the revenue allocation in the Joint Petition is reasonable. OSBA Exc. at 5-6.

Next the OSBA notes that the ALJs also appear to erroneously rely on the fact that a tiny portion of universal service costs serve to benefit some non-residential rate classes. While the OSBA fully agrees that any universal service costs that benefit non-residential customer classes should be allocated to and recovered from those rate classes, it claims that its witness explicitly addressed this issue in his surrebuttal testimony, in a manner consistent with an earlier recommendation from the OCA witness. OSBA Exc. at 6, citing OSBA St. No. 1-SR at 3. Per the OSBA, this change can be easily accomplished by shifting these costs to the EE&C programs, and recovering them from the charges to the appropriate classes. The OSBA opines that this issue is simply a red herring, and has no material impact on the OSBA’s proposal. OSBA Exc. at 6-7.

Next, the OSBA asserts that, contrary to the ALJs’ implication, the its proposal for the USEC is revenue neutral within the context of this proceeding. The OSBA explains that its proposal to shift the cost of the USEC to the residential class on a revenue neutral basis would require the following process:

[T]he Commission would start with the proof of revenues as presented in the Partial Settlement in Exhibit 2. The Commission 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, R.D. at 83, *citing* OSBA M.B. at 15-16. *See also*, OSBA St. No. 1 at 36

The OSBA states that the Commission has declined to harmonize PGW’s treatment of the USEC with the practices of other Pennsylvania utilities because the impact on the residential class would violate the principles of gradualism and the avoidance of rate shock. However, in this proceeding, the OSBA recommended simply accepting the Company’s overall revenue allocation proposal for the residential class, thereby rendering any claims of rate shock moot. OSBA Exc. at 8, citing OSBA M.B. at 14-15; *See also* St. No. 1 at 48. The OSBA opines that unless the Company’s revenue allocation proposal were determined to violate the rate gradualism principle, its proposal necessarily passes that test. OSBA Exc. at 7-8.

The OSBA explains that both the Company and its witness proposed to assign an increase of $59.0 million to the residential rate class. While PGW proposed to do so in a rate design with a USEC of $1.1335 per mcf, a delivery charge of $6.7275 per mcf, and MFC/GPC charges of $0.2393, or a combined volumetric rate of $8.1003 per mcf, the OSBA proposed to achieve the $59 million with a USEC of $1.5597 per mcf, a delivery charge of $6.3645 per mcf, and MFC/GPC charges of $0.1761 per mcf, or the identical combined rate of $8.1003 per mcf. The OSBA notes that it also proposed that USEC revenues for the other firm service classes be set to zero, but with offsetting large percentage increases to the volumetric delivery charges. OSBA Exc. at 8.

Per the OSBA, the revenue allocation in the Joint Petition for Partial Settlement now supersedes the Company’s original revenue allocation proposal. Nevertheless, the OSBA proposes that, if the Commission adopts its proposal to recover all USEC costs from the residential class, it could do so on a revenue neutral basis consistent with the mechanism laid out by its witness. OSBA Exc. at 8. Thus, the OSBA maintains that 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. OSBA Exc. at 8-9, citing OSBA M.B. at 11.

Next, the OSBA notes that prior to becoming subject to the Commission’s jurisdiction, PGW allocated its universal service costs to all firm sales service rate classes. OSBA Exc. at 9-12. The OSBA points out that PGW did not allocate any universal service costs to either PGW’s interruptible sales service rate classes or to PGW’s large volume transportation service rate classes (GTS/IT). The OSBA asserts that the ALJs recommended the continuation of the recovery of universal service costs from non-residential firm customer in the present proceeding in part because, “ . . . []PGW’s allocation of universal service costs has been found to be just, reasonable and in the public interest in several past proceedings.” OSBA Exc. at 11-12, citing R.D. at 110. However, per the OSBA, the first base rates case, and thus the first opportunity that the OSBA had to address the recovery of universal service charges from non-residential firm customers was in the 2006 extraordinary rate relief proceeding. OSBA Exc. at 12, citing *PA PUC v. Philadelphia Gas Works*, Docket No. R-00061931 (Order entered September 28, 2007) at 88.

The OSBA claims that in the 2006 rate proceeding, while ALJs and the Commission found that the issue of shifting the cost responsibility for the PGWs universal service programs was ripe for disposition since the record included a cost of service study (COSS), the ALJs declined to make changes to the allocation of USEC cost recover based on rate shock and gradualism. The OSBA notes that the ALJs found, and the Commission agreed as follows:

We agree with the ALJs’ reasoning that a realignment of the costs in this proceeding would simply overburden the residential classes given that we are adopting the ALJs’ recommendation regarding allocation of the $25 million increase. Because that substantial realignment goes far to bring all rate classes closer to a cost of service basis, we find that our decision on this one issue is consistent with the principles enunciated in *Lloyd*. As we have noted, *Lloyd* has not eliminated the principles of rate shock and gradualism, but it has required that we be guided primarily by cost of service. In the over-all context of this proceeding, one can hardly argue that application of the principles of gradualism and rate shock concerns to this one issue depart from *Lloyd* given the revenue allocation approach adopted for the primary $25 million increase.

OSBA Exc. at 12, citing *PA PUC v. Philadelphia Gas Works*, Docket No. R-00061931 (Order entered September 28, 2007) at 88.

Following the 2006 emergency rate relief proceeding, the OSBA explains that PGW filed a follow-up base rate proceeding in 2009. However, the 2009 base rates case was resolved via settlement.As part of the settlement of the 2009 case, the OSBA agreed not to pursue the argument that universal service costs should not be borne by non-residential firm service customers any further in that proceeding. The OSBA avers that the 2009 settlement specifically provided that the withdrawal of any argument by a party to the Settlement, *e.g.*, the OSBA’s argument against non-residential customers’ paying for universal service, is without prejudice and allowed the OSBA to raise its argument about the allocation of universal service costs in a future proceeding. OSBA Exc. at 13, citing *PA PUC v. Philadelphia Gas Works*, Docket No. R-2009-2139884, Settlement at Paragraph 38.

The OSBA reiterates that PGW has been under the Commission’s jurisdiction for seventeen years, since July 1, 2000. Per the OSBA, it should be subject to the Commission’s generic policy notably because in numerous proceedings, the Commission has affirmed that universal service cost recovery should be restricted only to the residential class. OSBA Exc. at 13-14 (citations omitted). The OSBA maintains that the ALJs in the extraordinary relief case even agreed that the Commission is moving towards having the costs of universal service programs assigned only to residential customers. OSBA Exc. at 14, citing *PA PUC v. Philadelphia Gas Works*, Docket No. R‑00061931, R.D. at 80.

The OSBA opines that the issue of the allocation of universal service program costs is ripe and should be addressed based on the merits of this case. The OSBA claims that it does not dispute PGW’s status as a municipally owned natural gas distribution company. However, the OSBA posits that the only relevant issue in this proceeding is whether PGW’s distinction as a municipally owned utility provides justification for a significant continued departure from Commission policy and precedent. According to the OSBA, PGW offers no argument whatsoever, nor does the Recommended Decision provide justification, as to why PGW’s status as a municipally-owned utility justifies a cost allocation which violates the basic principles of cost causation as determined by the Commission in a wide variety of cases. Furthermore, the OSBA maintains that the instant proceeding is PGW’s third base rate case after its Restructuring Proceeding. Thus, the OSBA submits that the issue as to whether universal service costs should be borne by non-residential customers can and should be evaluated on its merits in this proceeding, and should not be constrained by non-existent gradualism and rate shock concerns. OSBA Exc. at 14-15.

Finally, the OSBA explains that the ALJs apparently gave some consideration to the fact that a very small portion of the universal service costs relate to the Company’s LIME program, which provides a benefit to master-metered multi-family residences which take service under a non-residential rate schedule. First, the OSBA points out that the costs for this program are tiny as the annual costs are some $250,000, compared to overall universal service costs of $55 million. The OSBA posits that it is simply nonsensical to establish a policy for allocating this vast sum based on a minor cost item. Second, the OSBA alleges that it fully agrees that these costs should be considered and should be allocated directly to the classes which benefit. Per the OSBA, these costs could easily be assigned to and recovered from the appropriate energy efficiency and conservation (EE&C) program charge to the non-residential customer classes. Third, the OSBA claims that its proposed treatment of these costs is, in fact, consistent with a position advanced by the OCA witness in an earlier proceeding. Thus, the OSBA opines that this issue is nothing but a red herring, its impact is *de minimis*, and the specific costs can be easily recovered directly from the customer classes which benefits, consistent with the long-standing policy that costs be assigned to and recovered from the classes that cause the costs to be incurred. As such, the OSBA avers that there is no need to throw the Commission’s entire regulatory policy “under the bus” for this very small cost item. OSBA Exc. at 15-16.

In its Replies to Exceptions, PGW asserts that the record fully supports the continuation of its long-standing universal services cost allocation. Preliminarily, PGW states that this is a base rate proceeding and it will set PGW’s delivery rates until the Company’s next base rate proceeding. PGW points out that it recovers its universal service costs including, but not limited to, costs related to the Company’s Customer Assistance program (CAP), which it calls the Customer Responsibility Program (CRP), through a reconcilable surcharge, the USEC. PGW explains that the USEC is adjusted quarterly, when rates change. PGW states that it did not propose any changes to the allocation of costs of its universal service programs in its filing and that continuation of this allocation to all firm service customer classes is supported by the OCA, TURN and CAUSE-PA. As such, PGW submits that the OSBA has the burden of proof on this proposal and that it failed to carry it for the reasons stated in its Replies to Exceptions, Main Brief and Reply Brief. PGW R. Exc. at 13-14.

PGW claims that the OSBA’s suggestion that the only reason the ALJs rejected its cost allocation proposal was because of a concern about rate shock is simply not true. PGW asserts that its allocation policy is longstanding and has been approved by the Commission on numerous occasions. PGW notes that prior to the Commission assuming jurisdiction over it in 2000, PGW recovered the cost of its CRP and other low income customer programs from all firm customers. PGW maintains that since that time, its allocation of universal service costs and related rate design has been found to be just, reasonable and in the public interest in almost every Commission proceeding involving the Company. In fact, PGW avers that the Commission has consistently determined that, because PGW has followed this allocation policy prior to and at the time it came under the regulatory authority of the Commission, PGW is an exception to the general policy that is applied to other Commission regulated companies that all the universal service costs should be allocated to residential customers. PGW opines that the Commission followed this policy not because it is a municipal utility but because it was a municipal utility that followed a specific policy, and the Commission determined that it was reasonable to continue that policy. PGW R. Exc. at 14-15.

Next, PGW asserts that the reason the Company allocated universal service costs to all firm customers prior to Commission regulation, and the reason its allocation of universal service costs continues to make sense for PGW includes the fact that such allocation is consistent with cost causation principles. PGW opines that cost causation generally provides that ratepayers should pay for activities and programs that benefit them. PGW avers that while the USEC recovers the costs of programs designed to benefit low-income residential customers, customers in all classes benefit by programs that support and enable a community in which low-income customers can maintain utility service at an affordable cost. Also, PGW claims that all non-residential customers indirectly benefit from keeping the residents of Philadelphia in their homes, as these residents contribute to the well-being and economic vibrancy of the City’s business community. PGW states that without residents living in the City, businesses may lose their workforce and customers. Thus, PGW opines that the portion of universal service costs paid by non-residential customers is offset by the substantial positive economic impact in Philadelphia on those non-residential customers created by PGW’s universal service programs. Also, PGW notes that its LIME program directly benefits at least one portion of the commercial and industrial rate classes, those that own or operate residential master-metered multi-family buildings. Per PGW, the costs of the LIME program are recovered in its USEC. PGW R. Exc. at 15-16.

Next, PGW asserts that the OSBA’s “Base Rate Offset” proposal it has proposed simply delays the rate shock associated with its allocation proposal, not eliminate it. PGW explains that to make its major policy shift it has recommended more palatable to the Commission, the OSBA has put forward an implementation plan that would provide some initial mitigation of the large residential rate increases that would otherwise be required if the USEC was simply modified to be solely the responsibility of residential customers. Per PGW, the OSBA’s proposal would simply offset any increase in the USEC because of allocating all responsibility for the charges to residential customers by decreasing the residential delivery rate. However, PGW opines that the OSBA’s offset proposal is a “shell game.” PGW explains that to generate a “revenue neutral” effect, the OSBA would modify the delivery rates established by the Settlement to offset the increased USEC charges that the OSBA would impose on residential customers. PGW explains that the result coming out of this case only would be that the overall rates, including USEC charges, for the residential, commercial and industrial firm customer classes would be the same as if the USEC reallocation had not been implemented. However, PGW notes that this effect in the long run would be just as bad, if not worse than merely modifying the USEC to impose all costs on residential customers. PGW R. Exc. at 16-17.

PGW asserts that under the OSBA’s plan, revenue neutrality will last only until the next USEC change. PGW claims that the OSBA is proposing that, once its plan is put into effect, on a going forward basis: (1) the USEC would only be charged to residential customers; and (2) there would be no corresponding increase or decrease in a class’s delivery service rates to offset such future changes in the USEC. Per PGW, this means that while residential customers would not have to solely contribute to the increase in universal service costs because of this case, all future increases will be 100 percent their responsibility. PGW explains that its USEC changes each time the rates, whether the Gas Cost Rate or the delivery charge, changes. Therefore, PGW opines that if natural gas costs go up in 2018, the Company will be required to modify its USEC to recover that incremental amount of charge, and, under the OSBA proposal, residential customers would be responsible for 11 percent of the increase. Thus, PGW states that it should be clear that the OSBA’s proposal does not eliminate rate shock on residential customers, it simply “pushes it slightly down the road.” PGW R. Exc. at 17-18.

PGW explains that the OSBA’s scheme would distort the cost of service delivery rates being charged to various classes merely to achieve the OSBA’s mistaken view of appropriate cost responsibility. PGW claims that the Company would be left with delivery rates that do not reflect cost causation principles for all firm rate classes, something that would add complexity and controversy in the Company’s next rate case. PGW states that the bottom line is that there are compelling policy reasons for the Company to assign cost responsibility for universal service costs to all firm customers. PGW asserts that the Company’s relatively large level of universal service charges, as well as the fact that it has been allocating these costs to all firm customers for years, fully justifies a continuation of this practice for PGW and a rejection of the OSBA’s proposal. PGW R. Exc. at 18-19.

The OCA also filed Replies to Exceptions on this issue stating that the ALJs correctly concluded that PGW’s current allocation of universal service costs should be maintained. The OCA asserts that 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. OCA R. Exc. at 2-3, citing 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, the OCA points out that PGW’s commercial customers receive a direct benefit from the universal service program through PGW’s LIME program. The OCA opined that the ALJs correctly understood the impact of a shift in costs on PGW’s residential customers, and their Recommended Decision should be adopted. OCA R. Exc. at 2-3.

Next, the OCA states that the OSBA’s proposal to shift the costs from firm service customers to only residential customers will not be revenue-neutral. The OCA asserts that 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 OCA notes that the Settlement in this proceeding provides for a $42 million rate increase, $33 million of which will be borne by the residential customers. OCA R. Exc. at 4, citing Partial Settlement at 17. The OCA explains that under the 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. The OCA opines that while the OSBA proposes to lower the $33 million increase in distribution revenue to be collected from the residential class to $21.4 million, the OSBA’s proposal misses two key points. First, the OCA notes that 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. OCA R. Exc. at 4-5.

Second, the OCA explains that the OSBA proposal makes an artificial adjustment to distribution rates that, if the OSBA’s allocation proposals are adopted, would have to be made up in a future rate case. The OCA submits that if the 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 the OSBA. In a future base proceeding, under OSBA’s analysis, the OCA claims that 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. OCA R. Exc. at 5.

The OCA asserts that 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. Per the OCA, 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. The OCA opines that this fact has not changed in the decade since the 2006 base rate proceeding. As such, 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 the OSBA’s proposal. OCA R. Exc. at 5-7.

Next, the OCA asserts that the OSBA’s reliance on past Commission decisions is unpersuasive. While the OSBA argued that Commission precedent provides no basis for treating PGW differently, the OCA submits 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. In fact, the OCA points out that, historically, PGW’s universal service costs have been allocated to all firm service customers since its CRP program was first created in 1993. The OCA states that even since the regulation of PGW was transferred to the Commission, the Commission 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 OCA notes that the last time this cost allocation decision was raised, which was in PGW’s 2010 base rate case, the case was resolved by settlement. As the ALJs determined, the OCA avers that the allocation of universal service costs to PGW customers is supported in the law. OCA R. Exc. at 7‑8.

The OCA points out that 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. OCA R. Exc. at 9. Importantly, however, per the OCA, in those cases, the Commission was continuing the existing practice of each utility of allocating universal service costs to only residential customers. OCA R. Exc. at 9-10. The OCA asserts that 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. OCA R. Exc. at 10. The OCA submits that PGW’s historic allocation for the past twenty-five years, seventeen 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. The OCA opines that there are a multitude of factors as discussed in the Parties’ briefs that support PGW’s practice. OCA R. Exc. at 11, citing OCA M.B. at 23-36; PGW M.B. at 38-41; TURN *et al.* M.B. at 8‑16. Per the OCA, the ALJs correctly applied these factors, the law, and the ALJs’ recommendation to maintain the historic allocation of universal service costs. OCA R. Exc. at 11.

In response to the OSBA argument that only the residential customer class should pay for universal service costs since it is residential customers that cause those costs to be incurred, the OCA submits that this argument is incorrect. Initially, the OCA asserts that residential customers do not “cause” these costs, and cost causation taken to its logical conclusion as the OSBA states it, would mean that only CAP customers would pay for universal service costs. Further, the OCA notes that as the ALJs correctly identified, commercial customers are provided a benefit through the LIME program. The 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. The OCA claims that the 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 OCA submits that the ALJs correctly considered this new benefit when they considered the historic allocation of universal service costs. OCA R. Exc. at 15-17.

TURN *et al* and CAUSE-PA (collectively, Joint Parties) filed Joint Replies to Exceptions in response to the OSBA’s Exceptions on this issue stating that the ALJs’ conclusion on this issue was correct as to both fact and law and that the OSBA’s Exception is fatally flawed. The Joint Parties assert that the Recommended Decision simply maintains and continues decades of preexisting policy, seventeen years of which has been Commission policy, regarding the recovery of PGW’s universal service program costs from all PGW firm customers. The Joint Parties explain that this policy has been periodically reviewed and maintained in each instance and the ALJs made no changes to Commission policy; rather, they reaffirmed the *status quo*. While the OSBA seeks to have the Commission believe that the ALJs’ recommendation somehow violated Commission policy for the allocation of responsibility for Universal Service cost recovery in PGW’s service territory, in fact it is the OSBA that is attempting to dramatically change policy. Joint Parties R. Exc. at 3-5.

Next, the Joint Parties assert that the thrust of the OSBA’s Exception appears to be built upon a fundamentally incorrect understanding of the basis of the ALJ’s recommendation. The Joint Parties aver that the OSBA essentially argues that the ALJs erred in that they “seem to be inferring that the OSBA’s proposal runs afoul of the principles of rate shock and gradualism.” Joint Parties R. Exc. at 8, citing OSBA Exception at 5. In fact, the Joint Parties state that a close reading of the Recommended Decision shows that the ALJs do not actually base their ultimate determination on rate shock and gradualism. Per the Joint Parties, the OSBA’s Exception is directed at a non-existent Finding of Fact, Conclusion of Law, or basis of the ultimate determination. The Joint Parties opine that the basis of the ALJs’ determination need not be inferred, as it is based upon specific findings of facts and conclusions of law for which there was substantial support in the record. Joint Parties R. Exc. at 8.

Next, the Joint Parties reiterate that PGW’s present method of universal service cost allocation has been in place for the last twenty-five years. The Joint Parties note that 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. Joint Parties R. Exc. at 9 (citations omitted). Per the Joint Parties, this cost allocation policy has been maintained by the Commission throughout at least seven separate proceedings since the regulation of PGW rates was transferred to the Commission, and was explicitly affirmed by the Commission in PGW’s 2003 restructuring proceeding. Joint Parties R. Exc. at 9 (citations omitted). The Joint Parties note that 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 Commission jurisdiction, which was conferred via the Natural Gas Choice and Competition Act, 66 Pa. C.S. §§ 2201-2212 (hereinafter, Gas Choice Act). Joint Parties R. Exc. at 9 (citations omitted).

## Next, the Joint Parties assert that the Commission cannot grant the OSBA’s revenue neutral proposal without upending the Joint Settlement to which the OSBA was a party. The Joint Parties note that in its Main Brief, the OSBA acknowledged that its purportedly revenue neutral proposal was based on PGW’s original rate proposal. Joint Parties R. Exc. at 10, citing OSBA M.B. at 15-16. However, the Joint Parties point out that in its Exception, the OSBA acknowledges that the revenue allocation contained in the Joint Petition for Partial Settlement now supersedes the original revenue allocation proposal. Joint Parties R. Exc. at 10, citing OSBA Exception at 8. Per the Joint Parties, the 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 Partial Settlement should be rejected. The Joint Parties opine that the OSBA proposal would fundamentally alter the settlement allocation agreed to by all Parties, including the OSBA, in the Joint Petition. Joint Parties R. Exc. at 10, citing OSBA M.B. at 15. The Joint Parties maintain that the Partial Settlement has been recommended to be approved without modification by the ALJs in and no Party has taken exception to that recommendation. Joint Parties R. Exc. at 10. As such, the Joint Parties opine that it is not possible for the Commission to effectuate the OSBA’s new proposal in a way that is fair to all the participants in this proceeding. The Joint Parties aver that as set forth in the Joint Petition, all Parties, including the OSBA, agreed to the revenue allocation set forth in Paragraph 17 of the Joint Petition. Joint Parties R. Exc. at 10. The Joint Parties assert that the 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 Joint Parties explain that for the Commission to approve the Joint Petition, and adopt OSBA’s Exception based upon its revised proposal, the Commission would have to also reject the ALJs’ recommendation 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. Joint Parties R. Exc. at 11. According to the Joint Parties, the OSBA Exception would ask the Commission to undermine the certainty regarding cost allocation set forth in the Joint Petition for results which the OSBA could not clearly identify or articulate, and was not accepted by the ALJs in their comprehensive analysis of the facts and law. Joint Parties R. Exc. at 10-11.

Next, the Joint Parties stated that the record evidence in this proceeding sufficiently demonstrated that if the OSBA’s proposal were adopted, residential ratepayers would be significantly harmed and that he OSBA’s argument to the contrary is misplaced and disingenuous. Joint Parties R. Exc. at 12, citing OSBA St. 1 at 36, OSBA Exceptions at 3. Per the Joint Parties, the record demonstrates that if the OSBA’s proposal were adopted, it would effectively increase residential customer bills by $11.6 million while ignoring the benefits that universal service programs provide to all customers, including commercial and industrial ratepayers. Joint Parties R. Exc. at 12, citing PGW St. 6-R at 4-5. Also, the Joint Parties opine that 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. The Joint Parties assert that the fact remains that PGW’s status as the utility with the most confirmed low-income customers in Pennsylvania means that rate shock will ultimately impact an overwhelming number of low-income PGW customers. Per the Joint Parties, 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. Joint Parties R. Exc. at 12-13.

Next, the Joint Parties assert that there is ample justification for continuing PGW’s long standing universal service costs rate allocation model. According to the Joint Parties, it is OSBA’s burden to show that its proposal to dramatically modify PGW’s long standing and current structure of universal service costs rate allocation, and the structure proposed to be continued in this case by PGW, is supported by a preponderance of substantial evidence. The Joint Parties posit that the OSBA simply failed to meet that burden as it presented no new evidence and no new facts to support why a change should be made now, in this proceeding. In fact, the Joint Parties opine that all the reasons the Commission has provided in the past for continuing to allocate these costs across all firm customer classes remain applicable. The Joint Parties believe that the Recommended Decision should be affirmed simply on that basis. Joint Parties R. Exc. at 15.

Finally, regarding the OSBA’s Exceptions discussing the ALJs’ finding that some non-residential customers benefit directly from the LIME Program, the Joint Parties state that it is clear from a thorough review of the Recommended Decision that the ALJs did not base the entirety of their decision on this fact. However, the Joint Parties opine that 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 Joint Parties aver that within PGW’s service territory, universal service programs do not only benefit low-income customers, rather, all customer classes benefit from these costs. Per the Joint Parties, some of these benefits are direct, such as PGW’s LIME program that is designed to target master-metered, low-income multifamily housing. The Joint Parties opine that 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. Joint Parties R. Exc. at 18-19.

As to direct benefits, the Joint Parties maintain that 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, there is nothing to guarantee that this program, or others like it, won’t increase in the future. Joint Parties R. Exc. at 19, citing OSBA St. 1-SR at 3, n.3. The Joint Parties noted that when approving this program the Commission specifically cited the fact that some portion of universal service funding comes from commercial customers. Joint Parties R. Exc. at 19, citing *Philadelphia Gas Works Universal Service and Energy Conservation Plan for 2014-2016*, Docket No. M-2013-2366301 (Order entered August 22, 2014). Joint Parties R. Exc. at 19.

Finally, because 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, the Joint Parties opine that the Commission should not change its longstanding policy of allocating universal service costs to all PGW firm customers in this proceeding. Joint Parties R. Exc. at 19, citing 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). Per the Joint Parties, 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. Joint Parties R. Exc. at 20, citing Philadelphia Gas Works Universal Service and Energy Conservation Plan for 2014-2016, Docket No. M-2013-2366301 (Order entered August 22, 2014).

### **4. Disposition**

Upon our review of the record evidence, we are persuaded by the joint position of PGW, the OCA, TURN, *et al.* and CAUSE-PA that PGW has a long and continuous history of allocating its extensive universal service costs over all firm customers and that there is insufficient evidence in this proceeding to convince us to alter this allocation at this time. We agree with the conclusion of the ALJs that there is nothing within PGW’s allocation of universal service costs to all firm customers that violates the Code or our Regulations. In reaching this conclusion, we recognize that PGW was, and will continue to be, the only Pennsylvania jurisdictional gas distribution company that does not allocate costs of universal service programs to strictly the residential class. As this Commission has previously determined in prior proceedings involving PGW, this Company has followed this allocation procedure prior to coming under our regulatory authority and our approval of this allocation for this Company represents an exception to our general policy as applied to other jurisdictional utilities that such costs are only allocated to the residential customer class.

There are several reasons why we shall continue to approve PGW’s unique allocation of universal service costs. PGW is unique in that it is a large, municipal natural gas utility situated within the City of Philadelphia and serves more low-income customers than any other jurisdictional gas utility. As pointed out by the ALJs, several Parties cited that participation in PGW’s CRP program has declined by 24,262 customers from 2010 to 2015 even though the number of confirmed low-income customers served by PGW has increased by more than 22,000 customers. It is most significant to consider that the Parties opposing the reallocation of universal service costs in this proceeding estimated that the OSBA proposal would result in the transfer of an additional $11.6 million in universal service costs to the residential class, which would be in addition to the $33 million base rate increase established by the Partial Settlement. Such a result is simply not reasonable, could potentially result in rate shock to this class and would exacerbate the problems PGW experiences with the low-income customer population’s inability to pay issues. Also, as several of the Parties pointed out, the Commission approved LIME program provides benefits to a small, designated segment of the small business community and, as such, the universal service costs are not exclusively expensed to only benefit the residential class. We also find merit in the argument of the opposing Parties that all firm customers, including commercial and industrial customers, benefit indirectly from PGW’s extensive low-income assistance programs.

Regarding the OSBA’s recommended scheme under which the OSBA claimed its reallocation proposal would be revenue neutral, we agree with the position of PGW, the OCA, TURN *et al.* and CAUSE-PA that this proposal would merely serve to delay the inevitable increase upon the residential class until a future change in the universal service surcharge. We also conclude that the OSBA’s offset proposal would artificially modify the delivery rates agreed upon by the Parties to the Partial Settlement, which includes the OSBA. This is simply unacceptable as it distorts the cost of service delivery rates and adds a layer of complexity to the ratemaking process that is unnecessary.

We shall also adopt the recommendation of the ALJs 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. We agree with the ALJs that this will enable the Parties to assess the full impact that would result from shifting the universal service cost allocation fully to the residential class.

Accordingly, we shall deny the Exceptions of the OSBA on this issue and adopt the well-reasoned recommendation of the ALJs that PGW maintain its existing universal services cost allocation procedure.

# **IV. Conclusion**

Based upon our review of the record in this proceeding, the Joint Petition, the Joint Petitioners’ Statements in Support of the Settlement, the Recommended Decision, and the applicable law, we shall: (1) deny the Exceptions of the OCA and the OSBA; (2) deny PPLICA’s request for clarification of the Recommended Decision, as set forth in its Letter; (3) adopt the ALJs’ Recommended Decision, consistent with this Opinion and Order; (4) approve the Joint Petition for Partial Settlement, without modification; (5) mark the Formal Complaints of the OCA, OSBA, and PPLICA, as satisfied, in part, and dismissed, in part, consistent with this Opinion and Order; and (6) dismiss the Formal Complaint of D. Wintermeyer; **THEREFORE,**

# **V. Order**

**IT IS ORDERED:**

1. That the Exceptions filed by the Office of Consumer Advocate and the Office of Small Business Advocate on September 25, 2017, to the Recommended Decision of Administrative Law Judges Christopher P. Pell and Marta Guhl, are denied, consistent with this Opinion and Order.

2. That the Recommended Decision of Administrative Law Judges Christopher P. Pell and Marta Guhl, issued on September 8, 2017, is adopted, consistent with this Opinion and Order.

3. That the Joint Petition for Partial Settlement filed July 21, 2017, by Philadelphia Gas Works, the Commission’s Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate, the Retail Energy Supply Association, the Philadelphia Industrial and Commercial Gas Users Group, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania and Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia, is approved, without modification.

4. That Philadelphia Gas Works shall not place into effect the rates, rules and regulations contained in Supplement No. 100 to Gas Service Tariff – Pa. P.U.C. No. 2.

5. That Philadelphia Gas Works shall be permitted to file a tariff supplement to its Gas Service Tariff – Pa. P.U.C. No. 2, incorporating the terms of the Joint Petition for Approval of Partial Settlement and changes to rates, rules and regulations to increase annual operating revenues in the total amount of $41,998,117 consistent with Exhibit 1 (proposed tariff modifications) and Exhibit 2 (proof of revenues) to the Joint Petition for Partial Settlement.

6. That upon entry of the Commission’s Order approving the Joint Petition for Partial Settlement, Philadelphia Gas Works shall be permitted to file tariff supplements in the form set forth in Exhibit 1 to the Joint Petition for Partial Settlement, which may be filed on at least one day’s notice to be effective for service rendered on and after November 28, 2017.

7. That the Office of Consumer Advocate’s proposals regarding the Philadelphia Gas Works’ partial payment allocation practices be denied.

8. That the Office of Small Business Advocate’s proposals regarding the Philadelphia Gas Works’ allocation of universal service costs be denied.

9. That Philadelphia Gas Works shall file detailed calculations with its tariff supplement, which shall demonstrate to the Parties’ satisfaction that the filed tariffs with the adjustments comply with the provisions of this Opinion and Order.

10. That the Formal Complaint of the Office of Consumer Advocate, filed at Docket No. C-2017-2592092, be dismissed, without prejudice, regarding the issue of partial payment allocation. The Formal Complaint is otherwise satisfied as to all other issues and shall be marked closed.

11. That the Formal Complaint of the Office of Small Business Advocate, filed at Docket No. C-2017-2593497, be dismissed regarding the issue of universal service cost allocation. The Formal Complaint is otherwise satisfied as to all other issues and shall be marked closed.

12. That the Formal Complaint of the Philadelphia Industrial and Commercial Gas Users Group, filed at Docket No. C-2017-2595147, be deemed satisfied and marked closed.

13. That the Formal Complaint of William Dingfelder, filed at Docket No. C-2017-2593903, be dismissed and marked closed.

14. That the Philadelphia Gas Works shall be required to submit data in conjunction with its next base rate increase request to adjust the universal service cost allocations for the removal of all non-residential customer classes.

15. That Philadelphia Gas Works shall comply with all directives, conclusions and recommendations contained in the Commission’s Opinion and Order that are not the subject of individual ordering paragraphs as fully as if they were the subject of specific ordering paragraphs.

16. That upon acceptance and approval by the Commission of the tariff supplements and proof of revenues filed by the Philadelphia Gas Works in compliance with this Opinion and Order, the investigation at R-2017-2586783 be marked closed.

 **BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: November 8, 2017

ORDER ENTERED: November 8, 2017

1. Pursuant to these provisions, the Company filed Supplement No. 100 on February 28, 2017, with the requisite sixty days’ notice of a proposed effective date of April 28, 2017. Since the April 28, 2017 effective date was suspended for a period not to exceed seven months, this results in a cumulative period of approximately nine months within which this proceeding must be concluded. [↑](#footnote-ref-1)
2. In contrast, when the general rate increase proceeding is not being investigated on motion of the Commission, and the complaint does not challenge a proposed rate increase but rather an existing rate of the utility, the complainant is shouldered with the burden of establishing that the existing rate is unjust or unreasonable. *See* 66 Pa. C.S. 315(a); *see* 66 Pa. C.S. § 332(a); *see also Sharon Steel Corp. v. Pa. PUC*, 468 A.2d 860, 862 (Pa. Cmwlth. 1986); *see also Zucker v. Pa. PUC*, 401 A.2d 1377, 1379 (Pa. Cmwlth. 1979). [↑](#footnote-ref-2)
3. Additionally, we acknowledge the OCA’s arguments raised in its Exception No. 1 regarding the ongoing proceeding before this Commission, *SBG Management Services, Inc./Colonial Garden Realty et al. v. Philadelphia Gas Works*, at Docket Nos. C-2012-2304183 and C-2012-2304324 (*SBG*), which addresses, *inter alia*, PGW’s partial payment allocation practices. As the OCA noted, the ALJs opined in the Recommended Decision that although the *SBG* case deals with commercial customers rather than residential customers, the result of the Commission’s forthcoming order in that case will affect all PGW’s customers. R.D. at 77. The OCA expressed concern, however, that the final determination in *SBG*, which will apply directly to two commercial customer complainants of PGW, will not automatically apply to PGW’s residential customers, unless a separate Commission decision is entered in a separate complaint or petition proceeding. OCA Exc. at 8-10. We tend to agree with the OCA’s concerns in this regard, but at the same time we acknowledge the potential shared identity of issues in both cases and the potential for the doctrine of collateral estoppel to apply in a separate complaint proceeding initiated against PGW with respect to residential customers, depending on the Commission’s decision on the merits of PGW’s currently-pending petition for reconsideration in the *SBG* case. [↑](#footnote-ref-3)
4. In PGW’s 2000 Rate Proceeding, the Commission agreed that PGW’s universal service costs should continue to be allocated to all firm sales service rate classes. *Pa. P.U.C. v. Philadelphia Gas Works*, Docket No. R-00005654 (Order entered November 22, 2000). Subsequently, in PGW’s 2002 Restructuring Proceeding, the Commission again ruled that universal service costs should be borne by all firm sales customers, and not just residential customers. *Pa. P.U.C. v. Philadelphia Gas Works*, Docket No. M-00021612 (Order entered March 21, 2003). In PGW’s 2006-2007 base rate proceeding, the Commission again determined that PGW should continue its historic allocation of universal service costs to both residential and non-residential customers. *Pa. P.U.C. v. Philadelphia Gas Works*, Docket No. R-00061931 (Order entered September 28, 2007). Finally, in PGW’s most recent base rate proceeding in 2009, the Commission approved a settlement that maintained PGW’s method of allocating universal service costs. *Pa. P.U.C. v. Philadelphia Gas Works*, Docket No. R-2009-2139884 (Order entered July 29, 2010). [↑](#footnote-ref-4)