

**ECKERT
SEAMANS**
ATTORNEYS AT LAW

Eckert Seamans Cherin & Mellott, LLC
213 Market Street
8th Floor
Harrisburg, PA 17101

TEL 717 237 6000
FAX 717 237 6019
www.eckertseamans.com

Karen O. Moury
717.237.6036
kmoury@eckertseamans.com

June 4, 2018

Via Electronic Filing

Rosemary Chiavetta, Secretary
PA Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265

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

Dear Secretary Chiavetta:

Enclosed for electronic filing please find Philadelphia Gas Works' ("PGW") Petition for Reconsideration of the Commission's May 18, 2018 Order with regard to the above-referenced matter. Copies of the filing are being served in accordance with the attached Certificate of Service.

Sincerely,



Karen O. Moury
KOM/lww

Enclosure

cc: Hon. Christopher Pell
Hon. Marta Guhl
Certificate of Service w/enc.

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of PGW's Petition for Reconsideration of the Commission's May 18, 2018 Order upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

Via Email and/or First Class Mail

Carrie Wright, Esq.
Erika L. McLain, Esq.
Bureau of Investigation and Enforcement
PA Public Utility Commission
Commonwealth Keystone Building
PO Box 3265
400 North Street, 2nd Floor West
Harrisburg, PA 17105-3265
carwright@pa.gov
ermclain@pa.gov

Sharon Webb, Esq.
Office of Small Business Advocate
Commerce Building
300 North Second Street, Suite 202
Harrisburg, PA 17101
swebb@pa.gov

Patrick M. Cicero, Esq.
Elizabeth R. Marx, Esq.
Joline Price, Esq.
The Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101
pulp@palegalaid.net

Mr. Robert D. Knecht
Industrial Economics Incorporated
2067 Massachusetts Ave.
Cambridge, MA 02140
rdk@indecon.com


Harrison Breitman, Esq.
Darryl Lawrence, Esq.
Christy Appleby, Esq.
Office of Consumer Advocate
555 Walnut Street
Forum Place, 5th Floor
Harrisburg, PA 17101-1923
hbreitman@paoca.org
dlawrence@paoca.org
cappleby@paoca.org

Todd S. Stewart, Esq.
Hawke McKeon & Sniscak LLP
100 North Tenth Street
Harrisburg, PA 17101
tsstewart@hmslegal.com

Josie B. H. Pickens, Esq.
Robert W. Ballenger, Esq.
Jennifer Collins, Esq.
Community Legal Services, Inc.
1424 Chestnut Street
Philadelphia, PA 19102
jpickens@clsphila.org
rballenger@clsphila.org
jcollins@clsphila.org

Charis Mincavage, Esq.
Adelou A. Bakare, Esq.
Alessandra L. Hylander, Esq.
McNees Wallace & Nurick, LLC
100 Pine Street
PO Box 1166
Harrisburg, PA 17108-1166
cmincavage@mcneeslaw.com
abakare@mcneeslaw.com
ahylander@mcneeslaw.com

Date: June 4, 2018



Karen O. Moury, Esquire

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

| | | |
|--|---|----------------|
| Pennsylvania Public Utility Commission | : | R-2017-2586783 |
| | : | |
| Office of Consumer Advocate | : | C-2017-2592092 |
| | : | |
| Office of Small Business Advocate | : | C-2017-2593497 |

**PETITION FOR RECONSIDERATION OF PHILADELPHIA GAS WORKS
OF THE COMMISSION'S MAY 18, 2018 ORDER**

Of Counsel:

Brandon J. Pierce, Esq.
Philadelphia Gas Works
800 West Montgomery Ave.
Philadelphia, PA 19122

Daniel Clearfield, Esq., Attorney ID 26183
Karen O. Moury, Esq., Attorney ID 36879
ECKERT SEAMANS CHERIN & MELLOTT, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
717.237.6000
717.237.6019 (fax)
dclearfield@eckertseamans.com
kmoury@eckertseamans.com

Attorneys for Philadelphia Gas Works

TABLE OF CONTENTS

| | | |
|-------------|---|-----------|
| I. | INTRODUCTION AND SUMMARY..... | 1 |
| I. | BACKGROUND | 4 |
| II. | LEGAL STANDARDS FOR RECONSIDERATION..... | 8 |
| III. | RECONSIDERATION IS WARRANTED | 9 |
| | A. No Evidence in the Record, Let Alone Substantial Evidence, Supports the Commission’s Directive for Modifications to be Made Within Ninety Days | 9 |
| | B. The Commission’s May 18 Order Unlawfully Circumvents the Regulatory Review Process and Establishes Binding Norms..... | 10 |
| | C. No Evidence in the Record, Let Alone Substantial Evidence, Supports the Finding that PGW Charges More than 18% Interest on an Annual Basis | 14 |
| | D. The May 18 Order Fails to Consider the Costs of the Required Modifications and Impacts on Customers Who Pay their Bills on Time and In Full..... | 16 |
| IV. | CONCLUSION | 17 |

I. INTRODUCTION AND SUMMARY

Pursuant to Sections 703(f) and 703(g) of the Public Utility Code,¹ and Section 5.572 of the regulations of the Pennsylvania Public Utility Commission (“Commission”),² Philadelphia Gas Works (“PGW” or “Company”) files this Petition for Reconsideration (“Petition”) of the Commission’s Order entered on May 18, 2018 (“May 18 Order”), which modified the Commission’s Order entered on November 8, 2017 (“November 8 Order”) in PGW’s base rate proceeding. In the November 8 Order, the Commission had properly determined that the challenge by the Office of Consumer Advocate (“OCA”) to PGW’s partial payment allocation practices did not relate to the lawfulness, justness or reasonableness of a proposed or an existing rate, rule or regulation of PGW, and dismissed OCA’s claims without prejudice. By the May 18 Order, the Commission granted OCA’s Petition for Reconsideration of the November 8 Order, wrongfully determined that PGW’s partial payment allocation practices are within the proper scope of a base rate proceeding, unlawfully concluded that PGW’s practices violate the Commission’s regulations and, without any supporting evidence in the record, directed that PGW modify such practices within ninety days.

While PGW continues to view its partial payment allocation practices, which are not set forth in its tariff, as beyond the scope of its base rate proceeding, and firmly adheres to the belief that these practices are fully compliant with the Commission’s regulations, the primary focus of this Petition is on the timeframe established by the May 18 Order for implementing the required changes. In unrefuted testimony admitted into the evidentiary record in this proceeding – and in fact the only evidence in the record regarding a timeframe for the proposed modifications – PGW’s witness, Bernard L. Cummings, explained that it would take over a year for PGW to

¹ 66 Pa. Code § 703(f)-(g).

² 52 Pa. Code § 5.572.

develop the code to reprogram the complex changes and undertake the wide-ranging quality assurance and user acceptance testing that such modifications would entail.³ Through the attached Verified Statement of Frank Weigert, Chief Information Officer, PGW provides additional detail about the timeframe and further explains that it would be impossible to properly implement the changes within ninety days without significant risk to the integrity of PGW's billing process as a whole. If the Commission continues to believe that such modifications are necessary, following a review of this Petition, it is imperative that the Commission afford PGW a minimum of fifty weeks to complete this process in order to avoid the significant risk of massive, Company-wide billing errors.⁴

In addition to PGW's significant concerns regarding the real-world issues with the extensive time needed to code and properly and test a large system-wide modification to PGW's customer information system, these changes also do not come without a cost. In unrefuted testimony offered by Mr. Cummings in this proceeding, the recoding and testing costs would exceed \$400,000, and that estimate does not include all costs, such as the costs of training all customer service representatives.⁵ Other financial impacts would include decreased revenues from late payment charges and an increase in PGW's bad debt expense. While these impacts have not been quantified, the fact that they will occur is demonstrated by evidence in the record that has not been refuted by any party. As a municipally-owned cash flow ratemaking company with no shareholders, PGW will have to call upon its customers to absorb these costs in the form

³ PGW St. No. 10-R at 20.

⁴ Alternatively, to the extent that the Commission determines that additional record support is needed for a timeline for the directed modifications, beyond what is in the existing record and the attached Verified Statement, PGW proposes that the Commission reopen the proceeding and remand the matter for further hearings before the Office of Administrative Law Judge.

⁵ PGW St. No. 10-RJ at 10.

of higher rates.⁶ None of these impacts were considered by the May 18 Order, which contains no discussion of whether it is in the public interest to require customers who pay their bills in full and on time to be burdened with higher rates to subsidize late-paying partial-paying customers.

Before burdening ratepayers with these additional costs, the Commission should reconsider whether the modifications directed by the May 18 Order are truly warranted. As PGW's current practices are fully compliant with the language in the Commission's regulations, it is not necessary for them to be modified. In finding that PGW's partial payment allocation practices do not comply with Section 56.24 of the regulations, the Commission has read language into the regulations that is simply not there and unlawfully created a new regulatory requirement. The express language of Section 56.24 of the Commission's regulations only requires that partial payments be allocated to charges for prior basic service, which includes late payment charges, before they are allocated to charges for current basic service. PGW's practices follow that requirement to the letter. Indeed, no evidence was presented to the contrary.

To the extent that the Commission desires to impose industry-wide standards governing the precise manner in which PGW and other public utilities prioritize the posting of partial payments among various components of prior basic service, it is incumbent upon the Commission to initiate a proposed rulemaking proceeding. The Commonwealth Court decision cited by the Commission in the May 18 Order for the proposition that an agency may establish policy through adjudications also makes it clear that an agency must promulgate regulations to establish binding norms.⁷ In fact, in *Rushton Mining*, the Court invalidated standards that had been developed by an administrative agency through an adjudication.⁸

⁶ PGW St. No. 10-R at 16-17; PGW St. No. 10-RJ at 3, 6-7, 10

⁷ *D.E.R. v. Rushton Mining Co.*, 591 A.2d 1168, 1173 (Pa. Cmwlth. 1991).

⁸ *Id.* at 1176 ("Because the standard conditions in the permits issued by the DER were, in fact, regulations, and were not promulgated pursuant to the Commonwealth Documents Law, and the DER did not have

Also, in finding that PGW's partial payment application practices violate Section 56.22 of the Commission's regulations, the May 18 Order points to no evidence in the record to support its finding that PGW "charges interest in excess of the 18% annual limit."⁹ The only way to charge interest in excess of the 18% limit is to charge compound interest, or assess late fees on late fees, which PGW does not do. The lone finding that the record in this proceeding supports is that customers ultimately pay more for their service than they would pay if they paid their bills on time and in full. But, that is also true under the modifications directed by the May 18 Order. When customers make partial payments that do not cover past due consumption charges, the unpaid portion of the charges is subject to the levying of new late payment fees in subsequent months. Therefore, the higher amount of late payment fees that is assessed is the direct result of customers making partial payments.

In further support of this Petition, PGW states as follows:

I. BACKGROUND

1. PGW is a city natural gas distribution operation as defined in the Public Utility Code, 66 Pa.C.S. § 102, that provides natural gas distribution utility service pursuant to Section 2212 of the Code, 66 Pa.C.S. § 2212. It is a municipal utility that is wholly owned by the City of Philadelphia ("City"), and consists only of the real and personal assets that are used to manufacture and deliver natural gas to entities within the City's borders.

statutory authority to insert the standard conditions without first promulgating the conditions as regulations, we find that the EHB did not err in finding that the standard conditions were invalid."

⁹ May 18 Order at 26.

2. On February 28, 2017, PGW filed Supplement No. 100 to Tariff Gas – Pa. P.U.C. No. 2 (“Supplement No. 100”). By 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, approximately an 11.6 percent increase over present rates.

3. PGW did not propose any changes to Rule 4.2 of its tariff, which governs the assessment of late payment charges (or to its long-standing partial payment application method). That tariff provision establishes that PGW will assess a late penalty for any overdue bill in an amount that does not exceed 1.5% interest per month on the full unpaid and overdue balance of the bill. It further states that the interest rate, when annualized, may not exceed 18% simple interest per annum. Rule 4.2 of PGW’s tariff mirrors the language of the Commission’s regulations at 52 Pa. Code §56.22. PGW’s tariff does not contain language addressing the priority for posting partial payments.

4. On March 6, 2017, OCA filed a Formal Complaint against Supplement No. 100. The Formal Complaint did not identify any issues concerning PGW’s partial payment allocation practices. Similarly, OCA’s Prehearing Memorandum filed on March 27, 2017 contained no reference to these practices of PGW.

5. OCA raised issues concerning PGW’s partial payment allocation practices for the first time in Direct Testimony served on May 16, 2017.

6. PGW filed a Motion in Limine on May 22, 2017, seeking to exclude issues and proposals presented by OCA regarding PGW’s application of partial payments to balances for prior basic service.

7. Administrative Law Judges Pell and Guhl issued Prehearing Order #5 on May 26, 2017 denying the Motion in Limine on the basis that PGW's procedures for assessing late payment charges appear in the current tariff, which is within the scope of a base rate proceeding.

8. Through the filing of Rebuttal Testimony and Rejoinder Testimony, PGW addressed OCA's proposals regarding its partial payment allocation practices. PGW did not have an opportunity, as it would have in a separate complaint proceeding, to present Direct Testimony on its partial payment allocation practices.

9. On July 21, 2017, the parties filed a Joint Petition for Partial Settlement, which carved out the partial payment application issue, along with an issue concerning the allocation of universal service costs, for litigation.

10. On July 21, 2017 and August 4, 2017, PGW and OCA submitted Main and Reply Briefs, addressing PGW's partial payment application practices.

11. By the Recommended Decision of Deputy Chief Administrative Law Judge Christopher P. Pell and Administrative Law Judge Marta Guhl ("ALJs") issued on September 8, 2017, the ALJs recommended approval of the Joint Petition for Partial Settlement. As to the partial payment application issue, the ALJs correctly determined that the issue has no relationship to PGW's tariff provisions governing the computation and assessment of late payment charges, which nearly mirror the Commission's regulations, and therefore was not properly before the Commission in this proceeding.¹⁰

12. Following the review of Exceptions filed by OCA on September 25, 2017, and Reply Exceptions filed by PGW on October 2, 2017, the Commission entered the November 8 Order approving the Joint Petition for Partial Settlement.

¹⁰ R.D. at 76.

13. On the issue raised by OCA regarding PGW's partial payment allocation practices, the November 8 Order adopted the ALJs' recommendation to dismiss OCA's claims without prejudice. In so ruling, the Commission correctly recognized that "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."¹¹ As a result, the Commission dismissed OCA's claim without prejudice to OCA's right to file a formal complaint or petition the Commission to initiate an investigation into PGW's partial payment allocation practices.

14. On November 27, 2017, OCA filed a Petition for Reconsideration, to which PGW filed an Answer on December 7, 2017. Also on December 7, 2017, the Commission entered an Order granted OCA's Petition for Reconsideration, pending further review of, and consideration on, the merits.

15. By Order entered on May 18, 2018, the Commission granted OCA's Petition for Reconsideration, sustained OCA's base rate Complaint as to the issues concerning PGW's partial payment allocation practices and directed PGW to make system-wide changes within 90 days. In reaching this conclusion, the Commission determined that the evidentiary record and legal arguments were sufficiently developed in this proceeding to decide the issues here without requiring OCA to pursue its claims in a separate on-the-record proceeding.¹²

16. PGW now files this Petition for Reconsideration primarily focusing on the abbreviated timeframe directed by the Commission for implementing these systematically significant changes but also raising various issues that appear to have been overlooked by the

¹¹ November 8 Order at 46-47.

¹² May 18 Order at 16.

Commission in finding that PGW's partial payment application practices violate the Commission's regulations and should be modified.¹³

II. LEGAL STANDARDS FOR RECONSIDERATION

17. The Public Utility Code establishes a party's right to seek relief following the issuance of a final decision.¹⁴ Such requests for relief must be consistent with Section 5.572 of the Commission's regulations.¹⁵

18. It is well settled that petitions made pursuant to Section 703(g) may properly raise any matters designed to convince the Commission that it should exercise its discretion under the Public Utility Code to rescind or amend a prior order in whole or in part.¹⁶ Parties are not permitted by a second motion to review and reconsider, to raise the same questions which were specifically decided against them. What the Commission expects in petitions for reconsideration are new and novel arguments, not previously heard or considerations which appear to have been overlooked by the Commission. Additionally, a petition for reconsideration is properly before the Commission where it pleads newly discovered evidence, alleges errors of law, or a change in circumstances.¹⁷

19. In addition, the Commission is required to render consistent opinions that must follow, distinguish or overrule its own precedent.¹⁸ An agency abuses its discretion if it fails to

¹³ Although PGW continues to believe that Code Sections 523 and 526 do not allow the Commission to address a quality of service claim if no rate adjustment has been proposed, as argued in its Answer to OCA's Petition for Reconsideration (pages 8-11), it does not expressly seek reconsideration of the May 18 Order on that basis. However, PGW is preserving the issue for appellate review if the May 18 Order is not modified since it involves a question of the Commission's subject matter jurisdiction to consider quality of service issues in a base rate proceeding for which no rate adjustment has been proposed. 66 Pa. C.S. §§ 523 and 526.

¹⁴ 66 Pa.C.S. § 703(f) relating to rehearings and § 703(g), relating to the rescission, clarification and amendment of orders.

¹⁵ 52 Pa. Code § 5.572, relating to petitions for relief following the issuance of a final decision.

¹⁶ *Duick v. Pennsylvania Gas and Water Co.*, Docket No. C-R0597001 et al., Order entered December 17, 1982; 56 Pa. P.U.C. 553 (1982).

¹⁷ *Id.*

¹⁸ *Standard Fire Insurance v. Insurance Department*, 611 A.2d 356, 359 (Pa.Cmwlth. 1992).

interpret statutes, regulations or orders consistent with their clear and plain meaning or when an agency fails to follow its own regulations and procedures.¹⁹

III. RECONSIDERATION IS WARRANTED

A. No Evidence in the Record, Let Alone Substantial Evidence, Supports the Commission's Directive for Modifications to be Made Within Ninety Days

20. It is black letter law that Commission decisions must be based on substantial evidence.²⁰ More information is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.²¹

21. However, no evidence in the record supports the Commission's directive for PGW to make these modifications within 90 days. To the contrary, the unrefuted evidence in the record demonstrates that it would take approximately 33 weeks to recode and 24 weeks to conduct user acceptance and testing of the modifications directed by the May 18 Order, for a total of 57 weeks.

22. This evidence is contained in PGW's Rebuttal Testimony of Mr. Cummings, who explained:²²

The current partial payment allocation practices of PGW have been in place for many years and are embedded in PGW's billing system. Changes to those practices would require system wide modifications of PGW's current payment application and billing process, which include new code development, and wide-ranging quality assurance and user acceptance testing. These measures would be necessary to ensure that the implementation of any new billing practices does not result in massive, Company-wide billing errors.

The timeframe and the costs involved – which will be passed along to customers – are significant. PGW would be required to totally reprogram its bill payment program for hundreds of thousands of customers. I estimate that it would take 33

¹⁹ See *Peoples Natural Gas Company v. Pennsylvania Public Utility Commission*, 542 A.2d 606, 608 (Pa.Cmwlth. 1988), *affirmed*, 567 A.2d 642 (Pa. 1989).

²⁰ *Mill v. Pa. PUC*, 447 A.2d 1100 (Pa. Commw. Ct. 1982); *Edan Transportation Corp. v. Pa. PUC*, 623 A.2d 6 (Pa. Commw. Ct. 1993).

²¹ *Norfolk and Western Ry. v. Pa. PUC*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 166 A.2d 96 (Pa. Super. Ct. 1960); *Murphy v. Commonwealth, Dep't. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Commw. Ct. 1984).

²² PGW St. No. 10-R at 20.

weeks to develop the code to reprogram the complex changes that would be entailed. In addition, it would take another 24 weeks for quality assurance and user acceptance testing.

23. OCA did not refute this testimony or object to this timeframe for implementation.

24. The May 18 Order wholly disregards this evidence and instead selects an arbitrary 90-day implementation period without any basis in the record.

25. If the Commission continues to direct the modifications mandated by the May 18 Order following a review of this Petition, PGW respectfully requests that the Commission reconsider the timeframe set forth in the May 18 Order and establish at least a fifty (50) week implementation period that is consistent with the record developed in this proceeding.²³

26. To further support the timeline for implementation that PGW estimated during the proceeding, PGW is attaching the Verified Statement of Mr. Weigert, which shows additional details of the steps that must be taken. This Verified Statement also explains that it would be impossible to properly implement the directed modifications within ninety days without significant risk to the integrity of PGW's billing process as a whole.

27. As the timeframe directives in the May 18 Order are not based on substantial evidence, they are subject to being reversed on appeal.

B. The Commission's May 18 Order Unlawfully Circumvents the Regulatory Review Process and Establishes Binding Norms

28. Section 56.24 of the Commission's regulations, in its entirety, provides as follows: "[i]n the absence of written instructions, a disputed bill or a payment agreement, payments received by a public utility which are insufficient to pay a balance due both for prior service and for service billed during the current billing period *shall first be applied to the balance due for prior service.*" 52 Pa. Code § 56.24 (emphasis added). The only other Commission regulation addressing the

²³ Because PGW has initiated the project, it is better able to forecast the time needed and has therefore modified its estimate from fifty seven to fifty weeks for implementation.

application of partial payments is Section 56.23, which establishes that partial payments must be applied to basic charges before they are applied to nonbasic charges.²⁴ Nothing in Section 56.24 or in any other provision of the Commission's regulations dictates the manner in which the partial payments should be applied among the components of prior basic service.

29. It is not in dispute that, as required by Section 56.24 of the regulations, PGW first applies partial payments to the balance due for prior basic service before applying them to current charges. It is also not in dispute that security deposits and late payment charges are components of basic service. Therefore, in first applying partial payments to the balance due for prior security deposits and late payment charges, PGW does precisely what Section 56.24 mandates; accordingly, PGW did not violate Section 56.24 of the Commission's regulations.

30. In order to determine that PGW violated Section 56.24, the Commission had to read language into the provision that simply does not exist. While the Commission refers to the new rule as "an interpretation," of the existing regulation, it has not explained how it can interpret the plain language of Section 56.24 of the regulations in the manner that it has without engrafting non-existent verbiage. And, in doing so, the Commission established binding norms through the May 18 Order, which is a clear violation of the Commonwealth Documents Law.²⁵

31. The Commonwealth Court's *Rushton* decision was cited by the May 18 Order for the proposition that an agency may establish binding policy through adjudications.²⁶ However, that characterization of the ruling in *Rushton* is incomplete. Quoting the Pennsylvania Supreme Court's decision in *Pennsylvania Human Relations Commission v. Norristown Area School*,²⁷ the *Rushton* Court noted that an administrative agency may "establish binding policy through rulemaking

²⁴ Late payment charges are considered basic charges. 52 Pa. Code §§ 56.2 and 62.74(b)(3).

²⁵ 45 P.S. §§ 1101-1611.

²⁶ May 18 Order at 23.

²⁷ 473 Pa. 334, 374 A.2d 671 (1977).

procedures by which it promulgates substantive rules or through adjudications which constitute binding precedents.”²⁸ The Court then applied the “binding norm test” established in *Norristown* in making it clear that an administrative agency may not establish enforceable industry standards of conduct through an adjudication, but rather must do so only through a rulemaking.

32. Explaining that an agency may establish policy through an adjudication that announces the course which it intends to follow in future adjudications, the *Rushton* Court noted that such policy does not equate to a “binding norm,” which immediately “establishes a standard of conduct that has the force of law.”²⁹ Indeed, the Court in *Rushton* invalidated the agency’s standards set forth in an adjudication because they should have been promulgated in accordance with the Commonwealth Documents Law.³⁰

33. As further explained by the Court in *Rushton*, “[t]he process by which regulations are issued provides an important safeguard for potentially affected parties against the unwise or improper exercise of discretionary administrative power.” The Court further noted that the process, which includes public notice of a proposed rule, the filing of written comments and holding hearings as appropriate, affords affected parties an opportunity to participate in the “formulation of standards which govern their conduct.”³¹

34. Notably, the Court in *Rushton* also recognized that the regulatory process gives the administrative agency facts and information relevant to the proposed rule, as well as opens up the agency to alternatives, detrimental effects, criticism and advice, thereby contributing to the soundness of the proposed regulation.³² Similarly, here, through a rulemaking proceeding, the Commission would determine the various public utilities’ practices, as well as the rationales for and

²⁸ *Rushton* at 1173.

²⁹ *Id.*

³⁰ *Rushton* at 1171, 1175.

³¹ *Rushton* at 1171.

³² *Id.*

the results of their approaches. In addition, the Commission would become aware of any operational or policy impacts that may be experienced by public utilities as a result of a regulatory requirement for a particular method of applying partial payments to balances for prior service.

35. Since the Commission has not proposed a specific approach through a rulemaking, it has not received comment or feedback from the industry or other stakeholders as to the practical implications of any particular method.³³ The Commission has also not weighed the pros and cons of different ways of applying partial payments to the balance for prior service. For instance, PGW's method makes customers responsible for paying their own late payment charges, thereby reducing uncollectible expenses that are borne by other customers – which is consistent with the intent and procedures set forth in Chapter 14 of the Public Utility Code³⁴ and Chapter 56 of the Commission's regulations.³⁵ By contrast, as previously explained by PGW, but not acknowledged by the Commission's May 18 Order, the newly-created allocation rule for partial payments would permit a customer to indefinitely and forever avoid paying late payment charges.³⁶

36. Under Pennsylvania law cited above, the changes that the Commission desires to make to its regulations regarding the priorities for posting partial payments among components of prior basic service must be proposed and approved through the regulatory review process prior to being imposed on PGW. By circumventing this process through its failure to adhere to the Commonwealth Documents Law and violating the principles established by the Court in *Rushton*, the Commission has committed a clear error of law.

³³ Indeed, it appears that other public utilities could not be expected to modify their systems as a result of the May 18 Order addressing PGW's base rates; however, to the extent such compliance is not required, it appears that PGW is the only regulated utility subjected to this new regulatory requirement.

³⁴ 66 Pa.C.S. Ch. 14.

³⁵ 52 Pa. Code Ch. 56.

³⁶ PGW St. No. 10-R at 19; PGW St. No. 10-RJ at 4-7.

C. No Evidence in the Record, Let Alone Substantial Evidence, Supports the Finding that PGW Charges More than 18% Interest on an Annual Basis

37. Section 56.22 of the Commission's regulations prohibit public utilities from assessing a late payment charge on an overdue public utility bill in an amount that exceeds 1.5% interest per month on the overdue balance of the bill.³⁷ Consistent with those regulations, PGW's tariff permits it to assess a late penalty that does not exceed 1.5% interest per month and provides that the interest rate, when annualized, may not exceed 18% simple interest per annum.³⁸

38. Compound interest occurs when an entity charges interest on interest.³⁹ Here, OCA has not alleged that PGW imposes late fees on late fees, and in fact the record demonstrates that PGW removes unpaid late payment charges before it calculates late payment fees.⁴⁰

39. What OCA has alleged, and the Commission has now found, is that somehow PGW's partial payment application practices have the effect of PGW assessing more than 18% simple interest per annum.⁴¹ However, no evidence has been proffered to show that PGW's partial payment allocation practices actually have this effect.

40. The only "evidence" relied upon by the May 18 Order to find that PGW's practices have the effect of assessing more than 18% simple interest per annum consists of a general calculation and a hypothetical example presented by OCA.⁴² Neither of these items provides the substantial evidence that is needed to support the Commission's finding.

³⁷ 52 Pa. Code § 56.22.

³⁸ PGW St. No. 10-R at 5-6. Since no issues were raised in the base rate proceeding about PGW's calculation and assessment of late payment charges in accordance with the tariff, PGW continues to believe that these issues are beyond the scope of this proceeding. Particularly when coupled with the established law in Pennsylvania that requires administrative agencies to promulgate regulations to establish binding norms, and the compressed timeframe for developing a record on a whole host of base rate-related issues, the Commission should modify its May 18 Order to reflect these circumstances.

³⁹ PGW St. No. 10-R at 13.

⁴⁰ PGW St. No. 10-R at 13.

⁴¹ May 18 Order at 26.

⁴² May 18 Order at 25.

41. The general calculation presented by OCA was nothing more than a mathematical calculation of the annual interest rate that results from charging a 1.5% monthly late fee on a compounded basis.⁴³ This calculation does not even reflect PGW's actual practices since it does not charge late fees on a compounded basis.

42. The hypothetical example presented by OCA in Schedule RDC-1(SR) and relied upon by the May 18 Order shows only that a customer might pay more in late payment fees under PGW's approach than the customer pay would under OCA's proposal. This result potentially occurs because PGW's method holds the customer responsible for his or her own late payment charges and the customer is not able to indefinitely forego payment of them. Merely because the customer is held accountable for payment of late fees does not equate in any way to PGW charging an interest rate that exceeds 18% simple interest per annum. Indeed, nothing in OCA's Schedule RDC-1(SR) shows an interest calculation or suggests that PGW even hypothetically charges more than 18% simple interest per annum.

43. Notably, regardless of the approach that is used, customers who pay their bills late and then make only partial payments ultimately pay more in late payment fees than customers who pay their bills late and then make full payments. The reason for this outcome is that when customers make partial payments that are not sufficient to pay outstanding consumption charges for prior basic service, those unpaid balances are subjected to the assessment of new late fees. Therefore, even if PGW's partial payment application practices are changed as directed by the May 18 Order, customers who pay their bills late and then make partial payments will still incur more late payment fees than they would if they paid their bills in full. While the differences in what customers are assessed will not differ much,⁴⁴ what will dramatically change is the amount that

⁴³

⁴⁴ PGW Exhibit BLC-3.

customers pay of the properly assessed late payment charges. The unrefuted evidence in this record shows that under OCA's proposal that was adopted by the May 18 Order, a customer who is properly assessed late payment fees of \$143.77 over the course of a year would pay only \$5.25 during that time.⁴⁵

44. Since the record is devoid of any evidence that PGW is charging more than 18% interest on an annual basis, substantial evidence does not support the Commission's finding that PGW violated Section 56.22 of the regulations. The lack of substantial evidence to support this conclusion represents a clear error of law. Accordingly, the Commission must reconsider and revise the May 18 Order to reflect the fact that the record in this proceeding does not show any violation of Section 56.22 of the Commission's regulations.

D. The May 18 Order Fails to Consider the Costs of the Required Modifications and Impacts on Customers Who Pay their Bills on Time and In Full

45. In directing system-wide modifications to PGW's partial payment allocation practices, the May 18 Order does not acknowledge the cost estimate or other financial impacts that PGW set forth in this proceeding – costs that would have to be shouldered by other ratepayers who pay their bills on time and in full. The complete disregard of this unrefuted evidence represents an abuse of the Commission's discretion.

46. Specifically, PGW estimated that making the system changes alone would cost at least \$400,000. Further, PGW explained that this estimate does not include all costs such as those that would be incurred to retrain all customer service representatives.⁴⁶

47. Besides the out-of-pocket costs that would be incurred by PGW to make the directed modifications, the unrefuted evidence in this proceeding demonstrates that PGW would also experience a decline in late payment charges and an increase in bad debt expense. As a

⁴⁵ PGW St. No. 10-RJ at 4-6.

⁴⁶ PGW St. No. 10-RJ at 10.

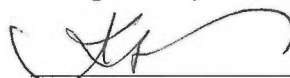
municipally-owned, cash flow ratemaking company with no shareholders, PGW would have nowhere to turn to recover these costs except to other ratepayers.⁴⁷

48. It is difficult to understand why OCA or the Commission prefers a solution for allocating partial payments that would result in rate increases for customers who pay their bills on time and in full. This result is particularly troubling when the record in this proceeding shows that the application of the OCA's proposal results in very little difference on the bills of the late-paying partial-paying customers.⁴⁸

IV. CONCLUSION

WHEREFORE, PGW respectfully requests that the Commission: (1) grant this Petition for Reconsideration; (2) modify the May 18 Order as discussed by this Petition; and (3) grant any other relief in favor of PGW as may be just and proper under the circumstances.

Respectfully submitted,



Brandon J. Pierce, Esq.
Philadelphia Gas Works
800 W. Montgomery Ave.
Philadelphia, PA 19122

Daniel Clearfield, Esquire
Karen O. Moury, Esquire
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
(717) 237-6000 (phone)
(717) 237-6019 (fax)

Date: June 4, 2018

Attorneys for Philadelphia Gas Works

⁴⁷ PGW St. No. 10-RJ at 10.

⁴⁸ OCA Schedule RDC-1(SR); PGW St. No. 10-R at 19.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

| | | |
|--|---|----------------|
| Pennsylvania Public Utility Commission | : | R-2017-2586783 |
| | : | |
| Office of Consumer Advocate | : | C-2017-2592092 |
| | : | |
| Office of Small Business Advocate | : | C-2017-2593497 |

VERIFIED STATEMENT OF FRANK WEIGERT

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:


I, Frank Weigert, declare as follows:

1. My name is Frank Weigert and my business address is 800 West Montgomery Avenue, Philadelphia, PA 19122.
2. I am Chief Information Officer ("CIO") and VP Information Services for the Philadelphia Gas Works ("PGW").
3. As CIO for PGW, I am responsible for the entire technical IT infrastructure, software applications and associated services
4. In this capacity, I am authorized to provide information concerning the timeline directed by the Commission's Order entered on May 18, 2018 in the above-captioned proceeding, for the implementation of system-wide changes to PGW's partial payment application practices.
5. In the Commission's May 18 Order, it directed PGW to make system-wide modifications to its customer information system within ninety days.

6. It would be impossible to properly implement these modifications within ninety days, without significant risk to the integrity of PGW's billing process as a whole.
7. Consistent with the record in this proceeding, the system-wide modifications involve new code development, wide-ranging quality assurance and user acceptance testing, which are necessary to ensure that the implementation of new partial payment application practices does not result in massive, Company-wide billing errors.
8. During the proceeding, PGW estimated that it would take approximately 57 weeks to reprogram its system, including 33 weeks to develop the code and 24 weeks for quality assurance and user acceptance testing.
9. Because PGW has initiated the project and some initial work has been done, PGW is better able to forecast the time needed. PGW now estimates being able to complete the changes within 50 weeks.
10. Further support for the estimated 50-week timeline is set forth in the attachment.

I, Frank Weigert, hereby state that I am the Chief Information Officer and VP Information Services for Philadelphia Gas Works, and am authorized to make this verification on its behalf, and that the facts set forth in the foregoing Verified Statement are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. § 4908 relating to unsworn falsification to authorities.

Dated: June 4, 2018



Frank Weigert

Payment Application Project

This project will modify PGW's systematic processing of arrears and payments. In contrast with how PGW's customer information system (CIS) currently handles such processing, in the future each bill will be tracked individually and have its own distribution hierarchy. As PGW's system has never done such processing, this will require an initial conversion of all related data in PGW's CIS.

PGW has already prepared full business requirements for this project. In addition, PGW developers have been working with the business departments on the technical specifications required to ensure that the coding is technically correct and have started coding. The remaining time required is expected to be approximately 50 weeks starting on June 4th 2017, with a scheduled implementation date of May 17th, 2019.

This CIS modification is not a minor one; it touches a significant number of system modules. For example, system functionality that is impacted by this project includes:

- Down payments on PUC and PGW payment agreements
- Payment application on payment agreements
- Reactivation of an applicant's outstanding arrears
- Payment application on CAP accounts
- Application of monies when a customer is removed from CAP
- Budget billing reconciliations
- Financial adjustments on accounts
- Application of grant monies

In order to ensure that the code will function properly with all previously developed CIS processes, it will need to be regression tested.

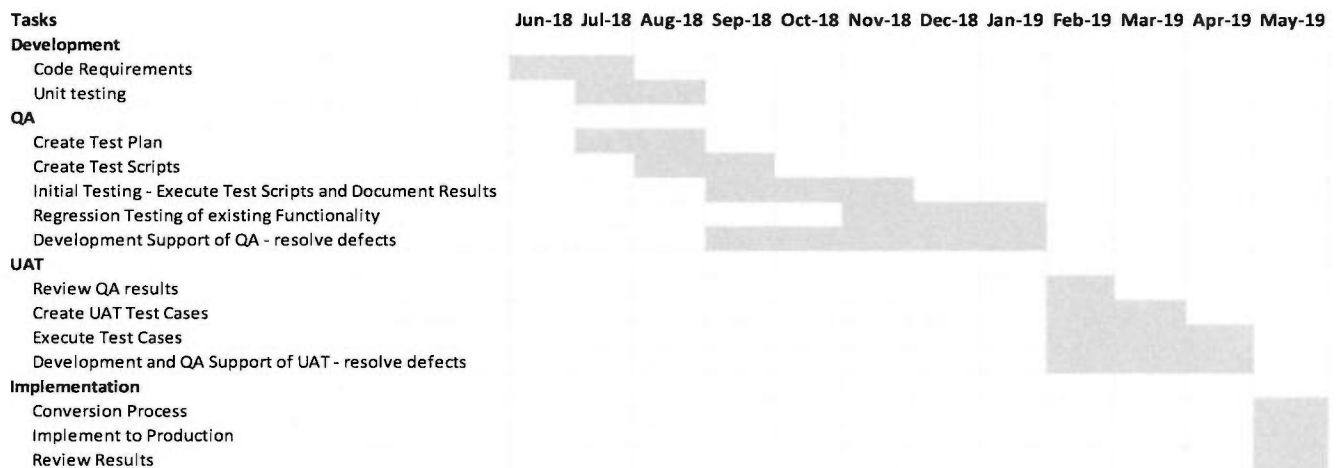
Time Estimate:

- Coding & Unit Testing - 9 weeks. Given the significance of this change, PGW developers are not only coding (in accordance with the technical requirements that are being created) they will also engage in unit testing before turning the code over to Quality Assurance testers. Without unit testing, the likelihood of errors in the code increase significantly. If the Quality Assurance testers find errors, they must be reported back to the coders, corrected and re-tested – thus adding significant time to the project.
- Testing (Quality Assurance) – includes regression testing - 26 weeks. The importance of full and proper Quality Assurance testing cannot be understated on a project of this scope. Failure to properly execute on this testing could lead to significant billing errors that could impact every

PGW customer's bills and could require complicated adjustments to correct. This could create significant customer confusion and complaints. Since the original time quote provided to the PUC, PGW has created business requirements and has almost completed technical requirements. Thus, PGW has been able to more accurately forecast testing timing as set forth herein.¹ Some test "scripts" have already been created for the regression testing that must occur.

- Testing (User Acceptance) – 12 weeks. User acceptance testing will be performed by experts in the Customer Affairs department. This type of testing is common, required practice for every system change; for this project it will ensure that payment application and billing will meet the PUC mandates and that customers will not have errors on their bills.
- Implementation – 3 weeks. This time will include a review by the Quality Assurance and User Acceptance testers of the initial conversion job, which is being performed so that all existing system data has been properly modified for future payment applications. This time also includes verification of the change in CIS production to ensure it is functioning as expected.

High Level Schedule:



¹ With respect to the increase in the Quality Assurance and User Acceptance testing timeline from the rate case estimate, once requirements were drafted and PGW's developers provided feedback regarding the magnitude of code changes, the complexity and risk of the project became clearer. This required PGW to expand its testing efforts (and the related time associated with testing).