**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission : R-2020- 3017206

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Office of Consumer Advocate : C-2020-3019161

Office of Small Business Advocate : C-2020-3019100

Philadelphia Industrial and Commercial :

Gas User Group : C-2020-3019430

 v. :

 :

Philadelphia Gas Works :

**CORRECTED PREHEARING ORDER**

 On February 28, 2020, Philadelphia Gas Works (“PGW”) filed Supplement No. 128 to PGW’s Gas Service Tariff – PA. P.U.C. No. 2 (Supplement No. 128) and Supplement No. 85 to PGW’s Supplier Tariff – Pa. P.U.C. No. 1 (Supplement No. 85) to become effective April 28, 2020, seeking a general rate increase calculated to produce $70 million (10.5%) in additional annual revenues.

On the same date, PGW also filed a Petition for Waiver, docketed at P-2020-3018975, seeking waiver of the application of the statutory definition of the fully projected future test year (FPFTY) so as to permit PGW to use a FPFTY beginning on September 1, 2020 (its fiscal year) in this proceeding.

The Commission’s Bureau of Investigation and Enforcement (“I&E”) filed a Notice of Appearance. Three formal complaints were filed: The Office of Consumer Advocate (“OCA”); the Office of Small Business Advocate (“OSBA”); and the Philadelphia Industrial and Commercial Gas Users Group (“PICGUG”).

In addition, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”), Direct Energy Services, Inc. (“Direct Energy”) and Tenant Union Representative Network (“TURN”) and Action Alliance of Senior Citizens of Greater Philadelphia (“Action Alliance,” together with TURN, “TURN et al.”), filed Petitions seeking to intervene in this proceeding.

By Order entered April 16, 2020 (“Suspension Order”), the Pennsylvania Public Utility Commission (“Commission” or “PUC”) instituted an investigation into the lawfulness, justness, and reasonableness of the proposed rate increase. Supplement No. 128 and Supplement No. 85 were suspended by operation of law until November 28, 2020, unless permitted by Commission Order to become effective at an earlier date. The Suspension Order issued by the Commission on April 28, 2020 did not consider the Petition for Waiver.

The matter was assigned to the Office of Administrative Law Judge (“OALJ”), Administrative Law Judges Darlene Heep and Marta Guhl, to schedule such hearings as necessary to develop a record in this proceeding.

A Prehearing Conference Order was issued on April 16, 2020 scheduling a telephonic prehearing conference on Tuesday, May 5, 2020 at 2:00 p.m.

 On April 29, 2020, I&E filed an Expedited Motion to Extend the Statutory Suspension Period During the Emergency Interruption of Normal Operations of the Pennsylvania Public Utility Commission, seeking to extend the period until January 14, 2021. PGW opposed this extension by Answer to the Motion filed on May 5, 2020.

 On May 5, 2020, the parties emailed the judges to indicate that they had reached a proposed settlement related to I&E’s Motion to Extend the Statutory Period in this case. The parties reached an agreement to extend the end of the suspension period until December 4, 2020. On May 12, 2020, PGW filed a PGW’s Tariff Supplement No. 132 to its Gas Service Tariff– Pa. P.U.C. No. 2 and Tariff Supplement No. 89 to its Gas Supplier Tariff – Pa.P.U.C. No. 1.  The tariff supplements reflect the extension of the suspension period until December 4, 2020.

The Prehearing conference was held as scheduled on May 5, 2020. Participating were:

PGW Daniel Clearfield, Esq, Graciela Christlieb, Esq.,

Sarah Stoner, Esq. Craig Berry, Esq.

OCA Darryl Lawrence, Esq, Laura Antinucci, Esq.

I&E Carrie Wright, Esq

OSBA Sharon E. Webb, Esq.

PICGUG Charis Mincavage, Esq., Jo-Anne Thompson, Esq.

TURN Josie Pickens, Esq.

 Joline Price, Esq.

CAUSE-PA John Sweet, Esq.

 Direct Energy Services, Todd Stewart, Esq.

This order sets forth the procedural matters addressed at the prehearing conference.

THEREFORE,

IT IS ORDERED:

1. That pursuant to 52 Pa. Code §§ 5.32 and 5.61, complaints filed in the instant matter are considered docketed with the proceeding and need not be consolidated with the Commission’s investigation or answered by Respondent. The following Complaints have been filed:
	1. Office of Consumer Advocate C-2020-3019161
	2. Office of Small Business Advocate C-2020-3019100
	3. Philadelphia and Industrial Gas

User Group C-2020-3019430

1. That the Petition to Intervene of CAUSE-PA filed on March 10, 2020 is granted.
2. That the Petition to Intervene of Direct Energy Services filed on March 19, 2020 is granted.
3. That the Petition to Intervene of TURN filed on April 10, 2020 is granted.
4. That the parties of record as of this date are PGW, I&E, OCA, OSBA and PICGUG, CAUSE-PA, Direct Energy Services and TURN.
5. That the Motion to Compel filed by OCA on April 20, 2020 is pending, the parties are attempting to resolve the issues and the parties will notify the judges if and when an Answer is filed, and a ruling is required.
6. That the Motion for *Pro Hac Vice* Admission of Craig Berry, Esquire, filed by PGW on April 23, 2020, is granted.
7. That the Petition docketed at P-2020-3018975 requesting the Commission to waive the application of the statutory definition of the FPFTY so as to permit PGW to use a FPFTY beginning on September 1, 2020 is consolidated with this proceeding,
8. That the Petition requesting the Commission to waive the application of the statutory definition of the FPFTY so as to permit PGW to use a FPFTY beginning on September 1, 2020 is granted.
9. That parties to be officially served are listed on the attached service list. Please direct any changes, corrections or additions to Pamela McNeal, Legal Assistant, at pmcneal@pa.gov.
10. That any Complaints filed by customers and other parties that are not yet docketed as a result of the Governor’s COVID-19 Proclamation of Disaster Emergency will be addressed when those Complaints are docketed and available.
11. That parties may arrange service among themselves as they agree. Pursuant to 52 Pa. Code § 5.154(c), the parties are permitted without further order to limit the service of documents to parties who indicate that they do not wish to be served with such documents. **Parties should review the Pre-hearing Memoranda and comply with the Service of Documents requests therein.**
12. That parties may serve documents electronically by 4:30 p.m. to meet any required due date, with hard copy to follow by regular first-class mail when the Commission resumes normal operations.
13. That pursuant to 52 Pa. Code § 5.342(d), the Commission’s regulations relating to discovery are modified as proposed by OCA and upon agreement of the parties as follows:
	* + 1. Answers to written interrogatories will be served in-hand within ten (10) calendar days of service of the interrogatories except that service of interrogatories served after 12:00 noon on a Friday shall be deemed service on the following business day;
			2. Objections to interrogatories will be communicated orally within three (3) days of service; unresolved objections shall be served to the ALJs in writing within five (5) business days of service of the interrogatories;
			3. Motions to dismiss objections and/or direct the answering of interrogatories will be filed within three (3) business days of service of written interrogatories.
			4. Responses to motions to dismiss objections and/or direct the answering of interrogatories will be filed within three (3) business days of service of such motions;
			5. Responses to requests for document production, entry for inspection, or other purposes will be served in-hand within ten (10) calendar days or objected to within five (5) business days of service;
			6. Requests for admission will be deemed admitted unless answered within ten (10) calendar days or objected to within five (5) business days of service.
			7. Answers to on-the-record data requests will be served in-hand within seven (7) calendar days of request;
			8. Rulings over motions shall be issued, if possible, within seven (7) calendar days of the filing of the motion;
			9. Any discovery or discovery related pleadings such as objections, motions, answers to motions served after 12:00 noon on a Friday or on any business day preceding a state holiday shall be deemed to have been served on the following business day for purposes of tracking responsive due dates; and
			10. That due dates be “in-hand” and that electronic or fax service on the due date will satisfy the “in-hand” requirement, where such service is immediately followed by a hard copy sent by first class mail.
14. The parties are reminded that 52 Pa. Code § 1.35(c)(1) provides that a signature on a document filed with the Commission constitutes a certificate by the individual that the document is “well grounded in fact and is warranted by existing law” and is not “interposed for an improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of litigation,” and that violations are subject to the sanctions listed in 52 Pa. Code § 1.35(c)(2).
15. The parties are directed to cooperate and exchange information on an informal basis. The parties are encouraged to resolve discovery issues among themselves; motions to compel should be filed only after such efforts have failed. All motions to compel must contain a certification of counsel of the informal discovery undertaken and their efforts to resolve their discovery disputes informally. In addition, the parties are urged to use alternative means of discovery such as discovery conferences or depositions. There are limitations on discovery and sanctions for abuse of the discovery process. 52 Pa. Code §§ 5.361, 5.371-5.372.
16. That the following schedule is adopted[[1]](#footnote-2):
17. June 2, 2020, 1pm & 6 pm Public Input Hearings

June 3, 2020, 1pm &6pm

1. June 15, 2020 Non-company written direct testimony
2. July 13, 2020 Written rebuttal testimony
3. July 24, 2020 Written surrebuttal testimony
4. July 28-30, 2020 Hearings (Philadelphia)
5. August 19, 2020 Main Briefs filed and served
6. August 31, 2020 Reply Briefs filed and served
7. That the parties comply with the Commission’s requirements for the preparation and service of written testimony. 52 Pa. Code § 5.412. These include, but are not limited to, the requirement that written testimony must be accompanied by all exhibits to which it relates. Written testimony shall be marked with numerical, sequential statement numbers. Oral direct, rebuttal or surrebuttal testimony or witnesses not identified in a party’s prehearing memorandum shall not be permitted, except by permission for good cause.
8. No Protective Orders are requested at this time. Any Protective Order filed should indicate the agreement or disagreement of the parties.
9. That the parties shall comply with the provisions of 52 Pa. Code § 5.243(e)which prohibit the introduction of evidence during rebuttal which should have been included in the party’s case-in-chief or which substantially varies from the party’s case-in-chief, unless the party is introducing evidence in support of a proposed settlement.
10. That the hearing will be held in Philadelphia if normal proceedings are by then resumed.
11. That the parties shall stipulate to any matters they reasonably can to expedite this proceeding, lessen the burden of time and expenses in litigation on all parties and conserve precious administrative hearing resources. 52 Pa. Code §§ 5.232 and 5.234. All stipulations entered into by the parties shall be reduced to writing, signed by the parties to be bound thereby, and moved into the record during the hearings in this case. An exception to this requirement may occur when circumstances of time and expediency warrant. If so, an oral presentation of a stipulation is permissible, if it is followed by a reduction to writing as herein directed.
12. That the evidentiary hearings in this matter constitute formal legal proceedings and will be conducted in accordance with the Commission’s Rules of Administrative Practice and Procedure, as well as the rules of evidence as applied to administrative hearings.
13. That parties serving pre-served testimony in proceedings pending before the Commission pursuant to 52 Pa. Code § 5.412(f) shall be required, within thirty (30) days after the final hearing in an adjudicatory proceeding to either eFile with or provide to the Secretary’s Bureau a Compact Disc (CD) containing all testimony furnished to the court reporter during the proceeding, consistent with the Commission’s Implementation Order, dated January 10, 2013, at Docket No. M-2012-2331973.
14. Motions with respect to objections to written testimony must be presented in writing no later than three days prior to the date the witness sponsoring the testimony is scheduled to testify. Answers to such motions may be filed within three days or sooner if circumstances warrant. Oral motions other than for good cause will not be accepted.
15. That the parties must comply with 52 Pa. Code §§5.501, *et* *seq*., regarding the preparation and filing of briefs. Service can be made electronically by no later than 4:30 p.m. on the dates listed, with a hard copy received in hand on the next business day. Parties are directed to e-mail to the undersigned a copy of as-filed briefs in ADOBE or other compatible PDF format in addition to a WORD-formatted document. The format of the briefs served electronically on the parties may be as requested by the parties.
16. Rate tables submitted by the parties MUST be in a uniform format consistent with the Commission’s Bureau of Technical Utility Services template tables, which are attached to this Order.
17. That all main briefs, regardless of length, must contain:
	1. A table of contents;[[2]](#footnote-3)
	2. A history of the proceeding;
	3. A discussion;
	4. Proposed findings of facts (with record citations to transcript pages, written testimony pages or exhibits where supporting evidence appears);
	5. Proposed conclusions of law (with citations to supporting statutes, regulations or relevant case law); and
	6. Proposed ordering paragraphs specifically identifying the relief sought.

Note: 52 Pa. Code § 5.501(e) requires that “Briefs shall be as concise as possible.” Page limitations on briefs will be discussed on or before the last day of hearing.

1. That if a party does not file a reply brief, it will be assumed that the party does not dispute the assertions, contentions or arguments made by the other parties in their main briefs. While it is not necessary in a reply brief to repeat a particular argument or discussion contained in the main brief, the reply brief should note where the responsive argument is located in the main brief and how it responds to the other parties’ assertions, contentions or arguments.
2. That any brief not filed and served on or before the date fixed therefore will not be accepted for filing, except by permission for good cause.
3. That the parties are to confer among themselves in an attempt to resolve all or some of the issues associated with these Complaints. The parties are reminded it is the Commission’s policy to encourage settlements. 52 Pa. Code § 5.231(a). The parties are strongly urged to seriously explore this possibility. A joint settlement petition executed by representatives of all parties to be bound thereby, together with statements in support of settlement by all signatory parties, must be filed with the Secretary for the Commission and served on the undersigned.
4. That any provision of this prehearing order may be modified upon motion and good cause shown by any party in interest in accordance with 52 Pa. Code § 5.223(a).

Date: May 15, 2020 /s/

 Marta Guhl

Administrative Law Judge

 /s/

Darlene Heep

 Administrative Law Judge

**R-2020-3017206 - PA PUBLIC UTILITY COMMISSION, et. al. v. PHILADELPHIA GAS WORKS**

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APPENDIX











1. Testimony shall not be filed with the Commission at the time of service, but parties may file a certificate of service. [↑](#footnote-ref-2)
2. In addition, each reply brief must contain a table of contents. [↑](#footnote-ref-3)