

COMMONWEALTH OF PENNSYLVANIA



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July 31, 2020

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

Re: Pennsylvania Public Utility Commission  
v.  
Philadelphia Gas Works  
Docket No. R-2020-3017206

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Brief in Support of its Petition for Interlocutory Review and Answer to Material Question in the above-referenced proceeding.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

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cc: The Honorable Darlene Heep (**email only**)  
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Certificate of Service

\*293334

## CERTIFICATE OF SERVICE

Re: Pennsylvania Public Utility Commission :  
v. : Docket No. R-2020-3017206  
Philadelphia Gas Works :

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Brief in Support of its Petition for Interlocutory Review and Answer to Material Question, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below.

Dated this 31<sup>st</sup> day of July 2020.

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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
	:	
v.	:	Docket No. R-2020-3017206
	:	
Philadelphia Gas Works	:	

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**BRIEF OF THE OFFICE OF CONSUMER  
ADVOCATE IN SUPPORT OF ITS PETITION FOR  
INTERLOCUTORY REVIEW AND ANSWER TO  
MATERIAL QUESTION**

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## TABLE OF CONTENTS

I. INTRODUCTION.....	1
II. STATEMENT OF QUESTION PRESENTED. ....	4
III. LEGAL STANDARD .....	5
IV. DISCUSSION. ....	6
A. The OCA’s Testimony at Issue Is Relevant to This Base Rate Proceeding and Discusses a Relevant Customer Service Matter Under the Commission’s Jurisdiction.....	8
B. Granting the OCA’s Petition for Interlocutory Review and Answer to Material Question Will Prevent Substantial Prejudice. ....	9
V. CONCLUSION .....	11

## I. INTRODUCTION.

AND NOW COMES the Office of Consumer Advocate (OCA), by and through its attorneys, pursuant to Section 5.302 of the Pennsylvania Public Utility Commission's (Commission) regulations, 52 Pa. Code Section 5.302, hereby files this Brief in Support of the Petition for Interlocutory Review and Answer to Material Question (Petition) filed by the OCA on July 21, 2020. The OCA avers that the Administrative Law Judges (ALJs) Darlene Heep and Marta Guhl erred in the Order on PGW's Motions In Limine Regarding Testimony on Behalf of OCA and TURN, dated July 8, 2020, which excluded the Direct Testimony of OCA witness Roger Colton regarding the quality of PGW's customer service in regard to language access plans for Limited English Proficiency (LEP) customers.<sup>1</sup>

The July 8, 2020 Order on PGW's Motions In Limine Regarding Testimony on Behalf of OCA and TURN<sup>2</sup> determined that portions of OCA witness Roger Colton's Direct Testimony<sup>3</sup> relating to language access needs in Philadelphia Gas Works' (PGW) service territory would be

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<sup>1</sup> Also stricken in the July 8th Order was a portion of the direct testimony of TURN et al. witness Harry Geller which similarly addressed the quality of PGW's customer service to its customers of Limited English Proficiency in the context of a general base rate proceeding. See Petition of Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia for Interlocutory Review and Answer to Material Question, Docket R-2020-3017206, (Petition filed July 15, 2020). In its petition for interlocutory review, TURN et al. raised, in support, that its witness Mr. Geller's testimony responded to PGW's claim of improved customer service, the Commission's recognition of language access as a matter of customer service, and that nearly a quarter of PGW's customers speak a language other than English at home (and of that number, more than half of those households speak Spanish). Id.

<sup>2</sup> See Order on PGW's Motions In Limine Regarding Testimony on Behalf of OCA and TURN, Docket No. R-2020-3017206 (Order entered July 8, 2020) (July 8<sup>th</sup> Order).

<sup>3</sup> The July 8<sup>th</sup> Order specifically strikes the following portions of Mr. Colton's Direct Testimony: Page 3, line 26 through and including page 3, line 27; Page 4, line 31 through and including page 5, line 18; and Page 65, line 16 through and including page 73, line 20. Id. at 7.

stricken from the record in this matter. Specifically, the ALJs struck Mr. Colton's testimony on the following basis:

However, a base rate matter is not the appropriate proceeding to consider language access considerations. The Commission must act within, and cannot exceed, its jurisdiction. *See Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791, 795 (Pa. 1977); *Tod and Lisa Shedlosky v. Pennsylvania Electric Co.*, Docket No. C-20066937 (Order entered May 28, 2008). This forum and, particularly, this base rate matter, is not the place to address the Civil Rights Act of 1964 or the Philadelphia Home Rule Charter compliance issues with respect to CRP language access program design. As such, this direct testimony from OCA and TURN, et al. regarding language access issues will be stricken from the testimony and will not be considered in this proceeding.<sup>4</sup>

In the July 8<sup>th</sup> Order, the language access testimony of Mr. Colton was, erroneously, not considered in the realm of quality of service and, more specifically, customer service—which is appropriately considered in a base rate proceeding—and therefore determined to be not relevant.<sup>5</sup> The Commission has previously considered language needs accommodations to LEP customers to be part of the public utility's quality of service.<sup>6</sup> Mr. Colton's stricken testimony evaluates language access needs in PGW's service territory, PGW's lack of policies and practices that meet those needs, and provides recommendations on how PGW should improve this area of customer service in the future.

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<sup>4</sup> Id. at 6.

<sup>5</sup> See PA P.U.C. et al. v. Pennsylvania Gas and Water Company, Docket No. R-00922482 et al., 1993 Pa. PUC LEXIS 61 at \*23 (Opinion and Order entered. June 23, 1993).

<sup>6</sup> PA P.U.C. v. PECO – Electric, Docket No. R-2018-3000164 (Opinion and Order entered Dec. 20, 2018) at 29-30, (Recommended Decision entered Oct. 18, 2018) at 57-58 (PA P.U.C. v. PECO – Electric).

The testimony regarding language access issues is relevant to PGW's quality of service which is within the Commission's jurisdiction under 66 Pa C.S. Sections 526 and 1501 and Section 69.2703(a)(7) of the Commission's Policy Statement regarding PGW ratemaking, and a significant factor that the Presiding Officers and the Commission must address in disposing of this case and arriving at a just and reasonable level of rates.<sup>7</sup> In support of its Petition, the OCA submits as follows:

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<sup>7</sup> See 66 Pa C.S. §§ 526 (relating to the Commission's power to deny, in whole or in part, the public utility's request for rate increase if quantity or quality of service are lacking) and 1501 (service requirements of a public utility); see also, 52 Pa. Code § 69.2703 (relating to the ratemaking considerations for PGW).



## **II. STATEMENT OF QUESTION PRESENTED.**

Does the July 8, 2020 Order on PGW's Motions In Limine Regarding Testimony on Behalf of OCA and TURN err in finding that language access considerations are not relevant to quality of service and not within the Commission's jurisdiction in a base rate proceeding and, therefore, excluding the direct testimony of OCA Witness Roger Colton regarding language access considerations?

*Suggested answer in the affirmative.*

### III. LEGAL STANDARD.

Under 66 Pa C.S. Section 1501,<sup>8</sup> every public utility shall provide adequate and reasonable service and make all changes and improvements to such service as necessary or proper for the accommodation and convenience of its patrons and the public. Section 69.2703(a)(7) of the Commission's regulations, the Commission's Policy Statement regarding PGW ratemaking, identifies the importance of quality of service issues in assessing PGW's rate request.<sup>9</sup> Quality of service is always reviewed in a base rate case and ultimately has some bearing on the amount of the rate increase eventually granted.<sup>10</sup> If the Commission concludes that the service rendered by the public utility is inadequate in that it fails to meet either quantity of service or quality of service, the Commission may reject, in whole or in part, the request of the public utility to increase rates.<sup>11</sup> Further, in the context of a base rate case, the development of a language needs assessment and a written policy statement regarding LEP customers were considered to enable a utility "to ensure that the quality of service to LEP households across its service territory is adequate."<sup>12</sup>

The standard for interlocutory review of a material question, as set forth in the Commission's regulations at 52 Pa. Code Section 5.302(a), requires that the petitioning party

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<sup>8</sup> "Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public..." 66 Pa C.S. Section 1501.

<sup>9</sup> See 52 Pa. Code Section 69.2703(a)(7).

<sup>10</sup> See PA P.U.C. et al. v. Pennsylvania Gas and Water Company, Docket No. R-00922482 et al., 1993 Pa. PUC LEXIS 61 at \*23 (Opinion and Order entered. June 23, 1993) (PUC v. PG&W).

<sup>11</sup> See 66 Pa C.S. Section 526.

<sup>12</sup> See PA P.U.C. v. PECO – Electric, Recommended Decision at 57-58.

"state ... the compelling reasons why interlocutory review will prevent substantial prejudice or expedite the conduct of the proceeding." To determine if substantial prejudice would be prevented, the Commission shall consider whether the alleged error, and resulting prejudice, could not be cured during the normal Commission review process.<sup>13</sup>

#### **IV. DISCUSSION.**

The OCA submits that the testimony of OCA witness Roger Colton regarding how PGW serves the language access needs of its customers is relevant to PGW's quality of service and, is therefore, under the Commission's jurisdiction. In a base rate case, the Commission routinely examines the quality of service of the public utility.<sup>14</sup> In the testimony stricken by the June 8<sup>th</sup> Order, Mr. Colton discusses PGW's lack of website publication of its Language Access Plan,<sup>15</sup> lack of translation services for LEP customers who contact PGW's staff,<sup>16</sup> and the importance of language access in the ability for LEP customers to be informed about critical utility services and programs which may facilitate service affordability in certain cases.<sup>17</sup> For example, Mr. Colton states, "...negotiating a payment plan can be critical to retaining access to service. Providing income information may gain a customer access to winter shutoff protections. CRP [Customer Responsibility Program] is a major "City service" which LEP customers need to be able to gain

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<sup>13</sup> See Petitions of Interlocutory Review and Answer to Material Question of Citizen's Power, Inc. and Energy Cooperation Association of Pennsylvania, Docket No. P-00021980, 2003 Pa. PUC LEXIS 43 at \*4 (Opinion and Order entered Aug. 7, 2003).

<sup>14</sup> See PUC v. PG&W; see also, PA P.U.C. v. Twin Lakes Utilities, Inc., Docket No. R-2019-3010958 et al., 2020 Pa. PUC LEXIS 54, (Order and Opinion entered March 26, 2020) at p. 47.

<sup>15</sup> See OCA St. 5 at 65.

<sup>16</sup> Id. at 66.

<sup>17</sup> Id. at 68-69.

access to in the event that they may be income-qualified.”<sup>18</sup> Further, the discussion provided by Mr. Colton in his stricken testimony on PGW’s compliance with the relevant language access laws and regulations of its service territory,<sup>19</sup> along with the demographic statistics which demonstrate the volume of LEP customers in PGW’s service territory<sup>20</sup> evidence the existence of a need for PGW to make accommodations for its LEP customers in order to provide adequate service to its entire customer population. Additionally, Mr. Colton’s stricken testimony provides appropriate remedies to the suggested shortfalls of PGW’s customer service to its LEP customers in accordance with the City of Philadelphia’s Home Rule Charter on language access, relevant federal law, and the Commission’s own policies on language access.<sup>21</sup> Striking the aforementioned testimony of the OCA’s witness will prevent the Commission from considering relevant testimony related to PGW’s customer service which ultimately affects the Commission’s final decision on PGW’s base rate increase request under 66 Pa C.S. Section 526 and Section 69.2703(a)(7) of the Commission’s regulations, the Commission’s Policy Statement regarding PGW ratemaking.<sup>22</sup> This, in turn, would cause substantial prejudice in this base rate proceeding if Mr. Colton’s testimony, pertaining to relevant quality of service issues, is stricken from the record in this proceeding.

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<sup>18</sup> Id.

<sup>19</sup> Id. at 67-69.

<sup>20</sup> Id. at 70.

<sup>21</sup> Id. at 70-71.

<sup>22</sup> 66 Pa C.S. Section 526; See also, 52 Pa. Code Section 69.2703(a)(7).

A. The OCA's Testimony at Issue Is Relevant to This Base Rate Proceeding and Discusses a Relevant Customer Service Matter Under the Commission's Jurisdiction.

Mr. Colton's direct testimony regarding the language access plans, the language demographics of PGW's service territory, the requirements of the Philadelphia Home Rule Charter and Title VI, and the recommendations on improving PGW's customer service to LEP customers fall squarely within the rubric of customer service that is within the Commission's jurisdiction and should be assessed in this proceeding. The testimony of Mr. Colton is related to the necessity of and quality of PGW's service to LEP customers and is directly responsive to PGW's claim of improved customer service satisfaction and improved operations at its customer call centers.<sup>23</sup> Testimony describing customer service to LEP customers is a part of quality of service considerations and falls under the Commission's jurisdiction in a base rate proceeding. The mention of Title VI of the Civil Rights Act of 1964 and the Philadelphia Home Rule Charter in regard to PGW's language access compliance obligations does not remove the relevant LEP customer service issues described in Mr. Colton's direct testimony—including the current language needs of PGW's customers, an examination of PGW's current quality of service provided to LEP customers, and recommendations for PGW's customer service improvements in the future—from the Commission's jurisdiction.

As stated before, quality of service is routinely examined in a base rate proceeding and, within that, customer service to LEP customers has also been considered by the Commission in a base rate proceedings.<sup>24</sup> In the PECO – Electric 2018 Base Rate Proceeding Settlement, the Commission recognized the development of a written policy regarding service to customers with

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<sup>23</sup> See Direct Testimony of Douglas A. Moser at p. 13-18.

<sup>24</sup> See PA P.U.C. v. PECO – Electric, Recommended Decision at 57-58 and Order and Opinion at 29-30.

LEP was one of several significant resolutions for residential and low-income customers.<sup>25</sup> The Recommended Decision adopted by the Commission in the PECO – Electric proceeding stated, “[b]y conducting a language needs assessment and drafting a written policy statement regarding LEP [Limited English Proficiency] customers, PECO will be able to ensure that the quality of service to LEP households across its service territory is adequate.”<sup>26</sup>

Mr. Colton’s testimony goes directly to quality of service and to the importance of the local ordinance given to the local citizenry, and the need to assure that all customers can receive necessary information in their language. PGW’s quality of service to all of its customers, including the LEP customers, is a component of a general base rate proceeding that is well under the Commission’s jurisdiction and the OCA submits that Mr. Colton’s testimony examining such quality of service should not have been struck from the recording in this proceeding.

B. Granting the OCA’s Petition for Interlocutory Review and Answer to Material Question Will Prevent Substantial Prejudice.

The OCA submits that there will be substantial and irreparable prejudice if Mr. Colton’s relevant testimony remains erroneously stricken from record in this proceeding and, thus, prevented from being presented before the Commission to be considered in its final decision on the justness and reasonableness of PGW’s base rate increase request.

The need to have understandable information conveyed to consumers is an important issue when considering the quality of service provided by PGW. As stated in the OCA’s Petition, Mr. Colton’s testimony is responsive to PGW’s assertions in its base rate increase filing of

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<sup>25</sup> Id. Opinion and Order at 29-30.

<sup>26</sup> Id. Recommended Decision at 57-58.

improved customer service.<sup>27</sup> The OCA further asserts that, in his direct testimony, Mr. Colton recommends that PGW develop and file a language access plan—one that aligns with the laws and suggestions of the City of Philadelphia, relevant federal laws, and the Commission’s own policies—to guide PGW in the direction of improved customer service to LEP customers.<sup>28</sup> If PGW is not providing information about critical programs to a significant portion of its customers in an understandable manner, this goes to PGW’s quality of service.<sup>29</sup> If Mr. Colton’s testimony is stricken from the record, there will be irreparable prejudice as this material and relevant testimony regarding quality of service will not go before the Commission for its final determination of just and reasonable rates in this proceeding. Therefore, the OCA’s witness Colton’s testimony, as filed, is material, relevant, and needs to be included to guarantee the Commission has a full and complete record upon which to render its decision.

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<sup>27</sup> See Direct Testimony of Douglas A. Moser at p. 13-18.

<sup>28</sup> See OCA St. 1-5 at 70-71.

<sup>29</sup> Mr. Colton discusses, in a portion of his stricken testimony, recommendations related to providing universal service applications in different languages. The CAP Policy Statement, at 52 Pa. Code Section 69.265(8) (iv) requires that the Company provide “[a] complete and thorough explanation of the CAP components should be provided to participants.” The language barrier prevents the customer from receiving that explanation of the benefits and components of the program and allowing the customer to apply for the program. See OCA St. 5 at 69.

## V. CONCLUSION.

For the reasons discussed herein, Mr. Colton's testimony is material, relevant, and needs to be included so the Commission has a full and complete record upon which to render its decision in this matter. Accordingly, the Office of Consumer Advocate respectfully requests that the Commission grant the Petition for Interlocutory Review of a Material Question regarding the testimony of Mr. Colton stricken in the July 8<sup>th</sup> Order and answer the question in the affirmative.

Respectfully submitted,

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DATED: July 31, 2020

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