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May 30, 2012

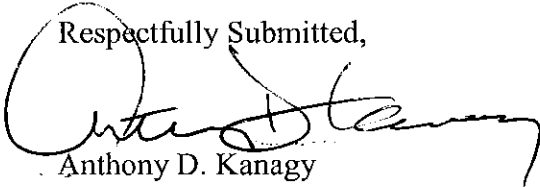
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Commonwealth Keystone Building
400 North Street, 2nd Floor North
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**RE: Kathleen Moran-Roberto, et al. v. UGI Penn Natural Gas, Inc.
Docket Nos. C-2011-2251178, C-2011-2253878, C-2011-2254311, C-2011-2258722, C-
2011-2262771, C-2011-2266076, C-2011-2267370, C-2011-2272802 and C-2012-
2281722**

Dear Secretary Chiavetta:

Enclosed please find the Response Brief of UGI Penn Natural Gas, Inc. in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully Submitted,



Anthony D. Kanagy

ADK/skr

Enclosure

cc: Honorable Ember Jandebour
Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served upon the following persons, in the manner indicated, in accordance with the requirements of § 1.54 (relating to service by a participant).

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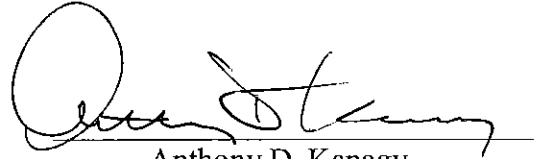
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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Kathleen Moran-Roberto,	:	Docket Nos. C-2011-2251178
John Calafut,	:	C-2011-2253878
Jerome Fuhr,	:	C-2011-2254311
John Hennigan,	:	C-2011-2262771
Dolores Alar,	:	C-2011-2266076
Daniel L. Pope,	:	C-2011-2258722
Charles E. Schulz,	:	C-2011-2267370
Robert M. Rowlands,	:	C-2011-2272802
Stephanie and Alfred Donnelly,	:	C-2012-2281722
Joseph Michaels,	:	
Fred Linbuchler,	:	
Office of Consumer Advocate,	:	
Bureau of Investigation and Enforcement	:	
	:	
	:	
v.	:	
	:	
	:	
UGI Penn Natural Gas, Inc.	:	

**RESPONSE BRIEF OF
UGI PENN NATURAL GAS, INC.**

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I. INTRODUCTION

UGI Penn Natural Gas, Inc. (“PNG” or the “Company”) herein files this Brief in response to the Main Brief filed by the Office of Consumer Advocate (“OCA”) in the above-captioned, consolidated proceedings. The OCA advocates on behalf of eleven Gas Beyond the Mains (“GBM”) customers who filed formal complaints challenging the Commission-approved continuation of PNG’s GBM service with a phase-in to market-based propane rates. On behalf of the GBM Complainants, OCA asserts that PNG is required to extend natural gas distribution mains to the GBM Complainants without any customer Contributions In Aid of Construction (“CIAC”). As explained below, OCA’s unprecedented arguments are not supported by the facts, are contrary to law, and should be rejected.

II. STATEMENT OF QUESTIONS INVOLVED

1. Whether PNG should be required to make uneconomic main extensions to serve the GBM complainants without any contribution from the GBM complainants and without full rate recovery from other PNG customers?

Suggested answer: *in the negative.*

2. If PNG were required to make uneconomic main extensions to the GBM complainants, should the full cost of such investments be recovered from PNG’s remaining customers.

Suggested answer: *in the positive.*

III. STATEMENT OF THE CASE

A. Procedural History

On August 27, 2009, the Commission entered a unanimous order in PNG's 2009 base rate case, Docket No. R-2008-2079660, that provided for the elimination of the GBM service by 2014. On October 14, 2011, the Commission entered a unanimous order in PNG's 2011 PGC proceeding, Docket No. R-2011-2238943, that provided for the continuation of the GBM service with a phase-in to market-based propane rates. This settlement provision was designed to eliminate the substantial subsidy received by GBM customers, but still allow them to receive regulated utility service from PNG, inclusive of related consumer protections.

The following formal complaints were filed challenging these changes to the GBM tariff service: On July 12, 2011, PNG was served with a Formal Complaint filed by Kathleen Moran-Roberto at Docket No. C-2011-2251178; on July 26, 2011, PNG was served with a Formal Complaint filed by John Calafut at Docket No C-2011-2253878; on July 29, 2011, PNG was served with a Formal Complaint filed by Jerome Fuhr at Docket No. C-2011-2254311; on August 24, 2011, PNG was served with a Formal Complaint filed by Daniel L. Pope at Docket No C-2011-2258722; on October 6, 2011, PNG was served with a Formal Complaint filed by Dolores Alar at Docket No. C-2011-2266076; on October 14, 2011, PNG was served with a Formal Complaint filed by Charles Schulz at Docket No. C-2011-2267370; on October 18, PNG was served with a Formal Complaint filed by John Hennigan at Docket No. C-2011-2262771;¹ on November 14, 2011, PNG was served with a Formal Complaint filed by Robert Rowlands at Docket No. C-2011-2272802; and on January 5, 2012, PNG was served with the Formal

¹ Mr. Hennigan's Complaint was initially served on September 16, 2011. However, the Complaint was not sent to the correct address for PNG and, consequently, was re-served at the proper address on October 18, 2011.

Complaint filed by Alfred and Stephanie Donnelly at Docket No. C-2012-2281722. Complainants Joseph Michaels and Fred Linbuchler joined in the Donnelly Complaint at Docket No. C-2011-2281722 through a notice of joinder filed pursuant to 52 Pa. Code § 5.23.² Each of the Formal Complaints asserted that PNG's predecessor in interest entered an agreement over 40 years ago that obligated Pennsylvania Gas and Water Company ("PG&W") and its successor companies to extend natural gas distribution mains to the GBM Complainants or continue to provide propane at natural gas rates indefinitely. PNG filed answers to each of the Formal Complaints.

The Bureau of Investigation & Enforcement ("I&E") entered a Notice of Appearance in each of the above-described Complaints. The Office of Consumer Advocate ("OCA") filed Notices of Intervention and Public Statements in each of the above-described Complaints.

On October 13, 2011, the OCA filed an unopposed Motion to Consolidate the above-described complaints. The Motion to Consolidate was granted by Interim Order issued on January 11, 2012.

On October 19, 2011, a Notice of Hearing in the above referenced matters was issued. The Initial Hearing was scheduled for November 28, 2011, before Administrative Law Judge Ember S. Jandebour ("ALJ"). On October 26, 2011, the OCA requested that the Initial Hearing be converted to a Prehearing Conference, and that the Evidentiary Hearing be postponed. PNG did not object to the postponement of the Evidentiary Hearing. On November 19, 2011, the ALJ issued an electronic communication advising that the November 28, 2011 Initial Hearing would

² The aforementioned Complainants will, hereinafter, collectively be referred to as the "GBM Complainants."

be a Prehearing Conference. The Prehearing Conference was held as scheduled and a litigation schedule was adopted.

The OCA served written direct testimony on January 20, 2012 (OCA Statement No. 1, Direct Testimony of Marilyn J. Kraus). Written rebuttal testimony in response to OCA Statement No. 1 was served by PNG on February 10, 2012 (PNG Statement No. 1-R, Rebuttal Testimony of David E. Lahoff). On February 17, 2012, the OCA served written surrebuttal testimony (OCA Statement No. 1-S, Surrebuttal Testimony of Marilyn J. Kraus).

Evidentiary hearings were held on April 5 and 6, 2012. At the hearings, the OCA assisted the GBM Complainants. Each of the GBM Complainants testified at the evidentiary hearing on April 5, 2012. In response to the testimony of the GBM Complainants, PNG prepared and submitted written rebuttal testimony (PNG Statement No. 2-R, Rebuttal Testimony of David E. Lahoff). PNG and OCA moved their respective testimonies and exhibits into the record.³ The witnesses of PNG and OCA were cross-examined and presented rejoinder testimony.

On May 10, 2012, the OCA submitted its Main Brief in support of the GBM Complaints. Pursuant to the litigation schedule established in this matter and Sections 5.501 and 5.502 of the Commission's regulations, 52 Pa. Code §§ 5.501, 5.502, PNG herein submits this Response Brief. For the reasons set forth herein, the relief requested by the Complaints and advocated by the OCA should be denied.

B. Factual Background

PNG, like other utilities, is obligated to provide utility service to customers in its service territory under reasonable terms and condition. However, this obligation to serve is not

³ I&E did not serve testimony in this proceeding.

unlimited, and PNG is not required to extend mains to all customers in its service territory free of charge as this would impose a significant and unreasonable cost burden on other customers and/or deny the utility a fair return on its investment to serve the public. The Commission and the courts have recognized that the obligation of a utility to serve its customers must be balanced against the impact on other customers and a utility's right to earn a fair rate of return. To achieve this balance, the Commission, pursuant to Section 1501 of the Public Utility Code, has promulgated regulations that require gas utilities, such as PNG, to file tariff rules setting forth the conditions under which mains will be extended to supply service. Such main extension rules balance the utility's obligation to serve and its obligation/right to charge just and reasonable rates.

PNG, in compliance with the Commission's regulation, has adopted main extension rules, which are part of its Commission-approved tariff. PNG's main extension rules, which on their face apply to all main extensions, provide that the Company will extend its facilities provided that: (a) the requested extension will not adversely affect gas supply to existing customers, and (b) the Company's investment is warranted by the anticipated revenue to be derived from the extension. (PNG Exhibit DEL 3.) It is undisputed that none of the GBM complainants meet the requirements of this tariff, and that PNG cannot, under its Commission-approved tariff, extend service to these customers without a very substantial CIAC. As it is clear from the record that none of the GBM Complainants are willing to pay a CIAC, each of the extensions would be uneconomic for PNG.

In certain areas of a utility's service territory, it is sometimes uneconomic to extend natural gas service. As a result, a number of utilities, including PNG, established GBM programs, under which an NGDC can provide a temporary mechanism, the GBM program, to

bridge the gap between economic and uneconomic service extensions where it is anticipated that a main extension will become economic at some future point. Here, GBM service began in or about 1963, when PNG's predecessor in interest, PG&W, began offering propane gas in lieu of natural gas to certain customers that were beyond the territory supplied by PG&W's distribution mains. The rate charged to these customers was the prevailing rate charged for natural gas service, which generally was lower than the cost of supplying propane. PG&W's propane service was offered where the extension of natural gas facilities was, at the time, uneconomic but anticipated, but not guaranteed, to be economic in the near future. (PNG Statement No. 1-R, p. 4.) As PNG explained in this proceeding, GBM customers have received very substantial subsidies over the years on the GBM program. When looking at the difference between what a customer paid as a GBM customer and what they likely would have paid as a propane customer for the period between 1990 and 2012, the average annual savings for GBM customers was approximately \$1,093 per year, assuming an average annual usage of 100 Mcf. Consequently, for that 22 year period the total subsidy per GBM customer would have been approximately \$24,024. (PNG Statement No. 2-R, pp. 5-6; PNG Hearing Exhibit 1.)

Over the years, a number of the areas where GBM customers were located did not develop sufficient customer density to economically justify the construction of distribution mains to serve the GBM customers. Due to a gas supply shortage, on February 1, 1972 and March 12, 1973, the Commission entered orders that placed restrictions on gas utilities, including PG&W, with respect to new gas sales. The gas shortage further affected PG&W's ability to extend distribution mains to serve the propane customers. (OCA Statement No. 1, Appendix A, p. 4; *Morgan, et al. v. Pennsylvania Gas and Water Company*, Docket No. C-19852, I.D. 166 (Jan. 30, 1974)).

On or about January 15, 1973, PG&W notified its GBM customers, in writing, that PG&W would not be extending natural gas service to GBM customers, and that PG&W would no longer provide liquid propane at natural gas tariff rates. (PNG Statement No. 1-R, p. 5; Pope Exhibit No. 1.) In an order entered January 30, 1974, the Commission found that PG&W did not have the capability to expand its distribution mains to serve all of its propane customers, and that PG&W was incurring substantial losses as a result of its GBM propane service. The Commission therefore directed PG&W to extend its distribution mains to such customers under a “reasonable main extension policy.” (OCA Statement No. 1, Appendix II, p. 5; *Morgan, et al. v. Pennsylvania Gas and Water Company*, Docket No. C-19852, I.D. 166 (Jan. 30, 1974)). However, the Commission recognized that it might be uneconomic to extend distribution mains to serve some propane customers and, therefore, further directed PG&W to continue to provide propane service to these customers at natural gas rates. The Commission held that PG&W could address cost recovery issues in its next rate case. (*Id.*, pp. 5-6.) Consequently, PG&W did not extend distribution mains to serve all propane customers at that time because it was not economic and, instead, continued to provide propane service at the prevailing rate charged for natural gas. (PNG Statement No. 1-R, pp. 5-6.)

In 2006, PG&W’s successor, Southern Union Company,⁴ was involved in a base rate proceeding at Docket No. R-00061365. In this base rate proceeding, Southern Union Company proposed the creation of Rate Schedule GBM, under which service would be provided to GBM

⁴ On December 14, 1995, the Commission approved the transfer of PG&W’s water utility assets, properties, and rights to Pennsylvania American Water Company through an asset purchase agreement. *See Joint Application of Pennsylvania-American Water Company*, Docket No. A-212285F2002, 1995 Pa. PUC LEXIS 124 (December 14, 1995). On or about January 11, 1996, PG&W changed its name to PG Energy Inc. to more accurately describe its natural gas operations. On October 15, 1999, the Commission approved the merger of PG Energy Inc. and its corporate parent, Pennsylvania Enterprises, Inc., with and into Southern Union Company, which was the surviving corporation after the mergers. *See Joint Application of PG Energy, Inc.*, Docket No. A-120011, *et. al.* (October 15, 1999).

customers. Prior to the 2006 base rate case, propane customers were served under either Rate RS - Residential Service or Rate G - General Service and propane costs were recovered through base rates. Rate GBM became effective December 2, 2006, following an Order by the Commission entered November 30, 2006, approving the joint settlement reached by all parties in the base rate case. After the effective date of the 2006 base rate case, all propane costs were recovered through the Purchase Gas Cost ("PGC") mechanism. (PNG Statement No. 1-R, p. 8.)

On January 8, 2009, the Commission issued an order at Docket No. M-2008-2072850 that initiated a non-prosecutory staff investigation of all issues related to the GBM program and other propane distribution systems. In its Order, the Commission identified specific issues and concerns about GBM service that required further investigation. This on-going investigation is still pending before the Commission.

As part of its 2009 base rate case at Docket No. R-2008-2079660, PNG proposed, among other things, to continue its GBM tariff service. PNG provided notice to customers of the base rate case filing by bill insert in accordance with the Commission's notice requirements. During the base rate proceeding, the Commission's Office of Trial Staff ("OTS"), now I&E, recommended the discontinuance of Rate GBM to eliminate the continued subsidy of propane costs to long-term GBM customers by all other PGC customers.⁵ The Company's rebuttal response recommended that the GBM program not be eliminated as part of the base rate proceeding but, instead, be allowed to continue pending the outcome of the Commission's investigation into GBM programs statewide. (PNG Statement No. 1-R, p. 9.)

⁵ See PNG St. No. 1-R, p. 9.

The active parties to the 2009 base rate case ultimately reached a comprehensive settlement of all issues in the proceeding, which was adopted by Commission in an Order entered on August 27, 2009. With respect to the GBM issue, the settlement provided as follows:

Regarding the Gas Beyond the Mains (“GBM”) tariff service: PNG’s tariff will be amended to (1) allow continued service to existing customers, (2) preclude the addition of any new “gas beyond the mains” customers after January 1, 2010, and (3) provide that the GBM tariff service will be eliminated no later than five (5) years from the date of Commission acceptance of this Settlement. However, PNG will be permitted to continue its GBM tariff service if the Commission issues an order upon investigation allowing PNG specifically, or NGDCs generally, to continue propane service programs.

All parties in the base rate case, *including the OCA*, were signatories to the Commission-approved settlement of the 2009 base rate case. Pursuant to the Commission-approved settlement, PNG’s tariff was amended to incorporate the terms and conditions of the settlement. (PNG Statement No. 1-R, p. 10.) Of note, this settlement did not require PNG to extend mains to, or seek abandonment of, GBM customers.

In its 2011 PGC proceeding at Docket No. R-2011-2238943, PNG proposed to implement the GBM terms of the 2009 base rate case settlement by transitioning existing GBM customers to market based rates for propane in such a way that long-term PNG GBM customers would be paying the full market rate for propane by August 27, 2014, five years after the date of entry of the Commission’s base rate case order. The active parties to the 2011 PGC proceeding, *including the OCA*, ultimately reached a settlement of all issues, which was adopted by the Commission in an Order entered on October 14, 2011. With respect to the GBM service, the settlement provided that GBM customers shall be transitioned to market-based propane rates in the following steps:

Effective Date	PGC Pricing Percentage	Market Propane Percentage
12/01/2011	85%	15%
12/01/2012	60%	40%
12/01/2013	35%	65%
8/27/2014	0%	100%

Pursuant to the Commission-approved settlement, PNG's tariff was amended to incorporate the terms and conditions of the settlement. (PNG Statement No. 1-R, pp. 10-11.) This settlement clearly provided that GBM customers would be fully transitioned to market-based propane rates by August 27, 2014, and would continue to receive regulated utility service, along with all of the associated consumer protections. In addition, this settlement did not require PNG to extend mains to, or seek abandonment of, GBM customers.

This 2011 PGC settlement provision, as adopted by the Commission, addresses the concerns about the continued recovery of propane costs associated with Rate GBM service through PGC rates for GBM customers. Further, this settlement provision ameliorates the potential rate effects for current Rate GBM customers as they transition to market propane rates. (PNG Statement No. 1-R, p. 11.) Notably, the 2009 base rate case and 2011 PGC settlements do not provide that the GBM customers will be converted to natural gas service. Rather, they simply state that they service will end and that the rate difference will be phased out.

The GBM Complainants filed Formal Complaints challenging the Commission-approved continuation of the GBM service with a phase-in to market based propane rates. Specifically, each of the Complaints alleged that PG&W, PNG's predecessor, entered into an agreement with the GBM customers that obligates PNG to extend natural gas distribution mains to the GBM Complainants or to continue to provide propane at natural gas rates indefinitely. The OCA and Complainants further contend that PNG should be required to extend natural gas mains to the GBM Complainants without requiring any CIAC in violation of PNG's Commission-approved

line extension tariff provisions. The OCA recommends that the “economic” portion of the proposed main extensions should be included in PNG’s rate base, and that the “uneconomic” portion of those main extensions should be paid for by PNG until some undefined time period, if ever, where additional customers are connected to the mains and justify commensurate amounts of main costs in base rates. For the reasons explained below, these arguments should be denied and the relief requested in the Complaints and advocated by the OCA should be denied.

IV. SUMMARY OF ARGUMENT

The fundamental issue presented in this case is whether PNG should be required to make uneconomic main extensions to the GBM complainants without any contribution from the customer.⁶ The answer to this question is clearly no.

The OCA contends that requiring the GBM complainants to pay a CIAC constitutes unreasonable service in violation of Section 1501 of the Public Utility Code. This is clearly not the case. It is well established that a utility's obligation to serve is not unlimited. Indeed, Section 1501 of the Code, on its face, requires utilities to serve as "necessary or proper" and under "reasonable rules and conditions." The Commission has implemented this statutory provision through regulations which require gas utilities to include main extension rules in their tariffs, which set forth the terms and conditions under which service will be extended. PNG's Commission-approved main extension rules establish these terms and conditions and plainly require a CIAC for all uneconomic main extensions. All aspects of PNG's provision of GBM service have been in strict accordance with Commission regulations and orders. The OCA does not and presumably cannot explain how such actions can constitute unreasonable service.

The OCA's argument also has been previously rejected by the Commission and the appellate courts. In *Popowsky v. Pa. P.U.C.*, 589 Pa. 605, 910 A.2d 38 (2006), the Presiding Administrative Law Judge, the Commission, the Commonwealth Court, and the Supreme Court of Pennsylvania all rejected OCA's argument that Pennsylvania American Water Company should be required to bear the cost of line extensions under Section 1501 upon a showing of public need. Indeed, the Supreme Court specifically held that Section 1501 provides that a

⁶ It is undisputed that all of the requested service extensions are uneconomic. *See* Section VI.A.2, *infra*.

utility may establish “reasonable conditions” for extending service recognized, and that a public utility is not obligated to make line extensions that are uneconomic or unreasonable.

Seeking to avoid this controlling legal precedent, the OCA argues that PNG’s main extension rules do not apply to GBM customers. This argument is contrary to the plain language of PNG’s main extension rule, which on their face, apply to all main extensions without limitation or exception. The Company applies these rules uniformly to all individuals who request a main extension whether or not they are current customers. There is no logical or factual basis to exclude GBM customers from these main extension rules. Not surprisingly, the Commission has already rejected the OCA’s position and has recently held that a gas utility’s line extension rules apply to GBM customers. *Adams v. UGI Utilities, Inc. – Gas Division*, Docket No. C-2010-2182016 (October 31, 2011)

The OCA next argues that PNG should make uneconomical main extensions because PNG’s predecessor, PG&W, allegedly promised the GBM customers that they would receive propane service at natural gas rates until gas mains were extended. This argument is both factually and legally flawed and should be rejected. As explained below, PNG has no record of any such agreement, promise, or representation being made by PG&W, and the GBM Complainants were unable to produce any such alleged agreement or promise. Further, 9 of the 11 Complainants are not the original home owners and, as such, obviously were never personally promised that they would receive GBM service at propane rates until mains were extended. Moreover, none of the GBM Complainants were promised that PG&W or PNG would make uneconomic main extensions.

In any event, even if there were agreement guaranteeing a rate or service outside of tariff rules, it would be unenforceable and void as against public policy. Under well-established case

law, a customer cannot enter into a valid contract with a utility regarding rates or service that is contrary to the utility's tariff. Any such contract is void as a matter of law because a utility can only charge its tariffed rates and can only provide service, including main extensions, pursuant to the provisions of its tariff.

In an effort to demonstrate that there was an alleged promise between PG&W and the GBM customer Complainants, OCA points out that some of the GBM Complainants have made substantial investments in reliance on the purported agreement. However, the fact that the GBM Complainants made investments based on the GBM tariff service is legally irrelevant. As explained above, an alleged promise to provide propane service at natural gas rates forever cannot trump PNG's tariff or justify uneconomic main extensions. Moreover, the fact that GBM customers made investments in their furnaces or other equipment is no different than the investment other customers make to maintain their equipment or appliances. In addition, nothing the Company has proposed or the Commission has approved will prevent the GBM customers from continuing to use their propane equipment because PNG is continuing to provide them with propane service. Finally, as explained below, the GBM customers have received very substantial subsidies through GBM service, which, have either fully or substantially offset any investments made in propane equipment.

Perhaps recognizing the lack of any factual or legal basis for its position, the OCA focuses heavily on the fact that GBM customers' rates will increase substantially as the current subsidy is phased out. PNG acknowledges that GBM customers rates will increase with the phase out of the current subsidy. However, this phase out was specifically and unanimously approved by the Commission in PNG's 2009 PGC proceeding. All customers, including all

GBM customers, received specific notice of this proposal, and all active parties to the proceeding, including OCA, agreed to and supported this position on settlement.

Moreover, the OCA's focus on the elimination of the subsidy tells only half the story. Any fair analysis of the GBM customer complaints must also consider the very substantial benefits received by the GBM customers in the form of reduced propane rates for many years, in some cases more than 40 years. Over the past 22 years, the average subsidy received by GBM customers has been over \$1000 per year. In addition, GBM customers, on average, saved over \$2000 per year as compared to rates for electric service. These substantial subsidies have been paid for by other PNG customers. The Commission has determined that it is time for these subsidies to end. However, PNG is not ending them immediately, but rather, is transitioning the GBM customers to full propane rates over a four-year period. This will help ameliorate rate impacts for GBM customers. In addition, under the current GBM program, GBM customers are afforded the benefit of receiving propane pricing based on a request for proposal process aimed at obtaining the best pricing available and presumably lower than they might otherwise pay as an individual propane customer. It also provides for a continuation of regulated utility service to the GBM customers along with all of the associated benefits of regulated service.

On balance, PNG believes that the GBM customers have been treated more than fairly through the substantial subsidies paid for by other customers, the planned phase out of those subsidies and continued service as utility customers. The OCA, however, wants more and would now require PNG to provide GBM customers with grossly uneconomic main extensions at no cost to the GBM customers to be paid for by PNG and its customers. Given the significant subsidies previously received by the GBM customers, forcing other customers to continue to

subsidize the GBM customers through uneconomic main extension would be unfair and contrary to the Commission's conclusion that the subsidies for GBM customers should end.

Finally, in an effort to demonstrate that PNG has violated Sections 1501 and 1502 of the Public Utility Code, 66 Pa.C.S. § 1501, and Chapter 56 of the Commission's regulations, the OCA raises numerous service-related issues in its brief. However, these issues are completely unrelated to and have no affect on the primary issue in this case. Moreover, PNG fully addressed these issues in its rebuttal testimony and has taken steps to correct any service-related issues. The OCA simply ignores this unrefuted testimony.

For the reasons explained herein, the above-captioned consolidated complaints should be dismissed.

V. **BURDEN OF PROOF**

Section 332(a) of the Public Utility Code, 66 Pa.C.S. § 332(a), provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding. It is well established that "[a] litigant's burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible." *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990); *see also In Re: Pa. PUC v. Jackson Sewer Corporation*, Docket Nos. R-00005997, et al., 2001 Pa. PUC LEXIS 53 at *9 (September 28, 2001) The preponderance of evidence standard requires proof by a greater weight of the evidence. *Commonwealth v. Williams*, 557 Pa. 207, 732 A.2d 1167 (1999). However, the Commonwealth Court has explained that:

Once it is determined that the complainant has made out his *prima facie* case, the burden of going forward shifts to the utility, but the ultimate burden of persuasion remains with the complainant. The

Commission must measure the weight and credibility of all the evidence, and simply because the ratepayer has presented a *prima facie* case does not obligate the Commission to credit this evidence or to give it any special weight. If the utility presents evidence found to be of co-equal (or greater) weight with that of the complainant, the complainant will not have met his burden of proof.

Millie v. Pa. PUC, 768 A.2d 1217, 1220 (Pa. Cmwlth. 2001). Thus, in the context of a formal complaint proceeding, the complainant bears the ultimate burden of persuasion, which must be satisfied by a preponderance of the evidence.

Tariff provisions previously approved by the Commission are deemed just and reasonable and, therefore, a party challenging a previously-approved tariff provision bears the burden to demonstrate that the Commission's prior approval is no longer justified. *See, e.g., Pa.P.U.C. v. Philadelphia Gas Works*, Docket Nos. R-00061931, *et al.*, 2007 Pa. PUC LEXIS 45 at *165-68 (September 28, 2007) (adopting the ALJ's discussion on burden of proof); *Brockway Glass Co. v. Pa. PUC*, 437 A.2d 1067, 1070 (Pa Cmwlth. 1981). To meet this burden, the party challenging a previously-approved tariff provision must demonstrate that the "facts and circumstances have changed so drastically as to render the application of the tariff provision unreasonable." *Kanowicz v. PPL Electric Utilities Corporation*, Docket No. C-20043915, (Order entered November 1, 2005) (citing *Brockway Glass Co. v. Pa. PUC*, 437 A.2d 1067 (Pa. Cmwlth. 1981)).

In this case, *sub judice*, the GBM Complainants allege that PNG is obligated to extend natural gas service to the GBM Complainants or to continue to provide propane at natural gas rates indefinitely. The OCA and Complainants both contend that PNG should extend natural gas mains to the GBM Complainants without requiring any CIACs. To meet their burden of proof, the OCA and Complainants must demonstrate, by a preponderance of the evidence, that the facts and circumstances have changed so drastically as to render the Commission's prior approval of

line extension and GBM service provisions of PNG's tariff unreasonable. However, as explained below, the OCA and Complainants have failed to meet their burden of proof. There is simply nothing in the record, Public Utility Code, case law, settlements, or PNG's tariff that: (1) requires PNG to extend natural gas service to the GBM Complainants or to continue to provide propane at natural gas rates; or (2) requires PNG to extend mains to the GBM Complainants in violation of the line extension provisions of its tariff. Furthermore, the OCA and GBM Complainants have failed to identify any drastic change in facts or circumstances since the Commission's approval of these tariff provisions that would render them unreasonable.

VI. ARGUMENT

A. PNG Should Not Be Required To Make Uneconomic Main Extensions To The GBM Complainants.

The OCA argues that by not extending natural gas mains to the GBM Complainants, PNG is in violation of Section 1501 of the Public Utility Code and is not furnishing and maintaining adequate and reasonable service and facilities to its customers. Specifically, the OCA argues that Section 1501 requires PNG to make uneconomic main extensions to the GBM complainants without any CIAC. (OCA Main Brief, p. 42.) The OCA further argues that PNG's line extension rules do not apply to GBM customers. (OCA Main Brief, pp. 46-47.)

The OCA's arguments are without merit and should be rejected for several reasons. First, public utilities are not required to make uneconomic line extensions under Section 1501. Second, it is undisputed that the requested main extensions to the GBM Complainants would be uneconomical and require CIACs. Third, PNG's main extension tariff provisions apply to the GBM customers. And fourth, OCA's reasons for requiring uneconomic main extensions are not persuasive. For these reasons, as explained below, the OCA arguments should be rejected.

1. Utilities Are Not Required To Make Uneconomic Line Extensions Under Section 1501.

Under Section 1501 of the Public Utility Code, utilities are obligated to provide service to customers in their service territories. However, it is well established that a utility's obligation to serve is not unlimited. Under Section 1501, public utility service must be "necessary or proper" consistent with the regulations and orders of the Commission, and "every public utility may have reasonable rules and regulations governing the conditions under which it shall be required to render service." 66 Pa.C.S. §1501. Therefore, under Section 1501, utilities are only required to extend service to customers requires "under reasonable conditions" subject to the regulations and orders of the Commission. *Fayette County Gas Co. v. Pa. PUC*, 33 A.2d 761 (Pa. Super. 1943).

With respect to the extension of natural gas facilities, the Commission has implemented this statutory provision through regulations, which provide as follows:

Each public utility shall file with the Commission, as part of its tariff, a rule setting forth the conditions under which facilities will be extended to supply service to an applicant within all, or designated portions, of its service area. *The utility may, upon proper cause shown, refuse or condition the acceptance of a particular application of extension of facilities.*

52 Pa. Code § 59.27 (emphasis added). The Commission requires NGDCs to have line extension rules in order to protect existing customers from bearing unreasonable costs and to maintain reasonable rates. The competing policy interests of extending service and maintaining reasonable costs are addressed through line extension rules which describe the terms and conditions under which a utility is required to extend service and what level of customer contribution may be required.

Pursuant to Section 59.27, the Commission requires gas utilities to include main extension rules in their tariffs, which set forth the terms and conditions under which service will be extended. PNG's Commission-approved main extension rules establish these terms and

conditions and plainly require a CIAC for all uneconomic main extensions. (PNG Exhibit DEL 3, PNG Gas – Pa. P.U.C. No. 8, Original Pages 19 through 21). All aspects of PNG’s provision of GBM service has been in strict accordance with the Commission’s regulations and orders. The OCA does not, and presumably cannot, explain how such actions can constitute unreasonable service.

The OCA’s central argument -- that PNG is required to make uneconomic line extensions under Section 1501 -- has been previously rejected by the Commission and the appellate courts. In *Popowsky v. Pa. P.U.C.*, 589 Pa. 605, 910 A.2d 38 (2006), the OCA argued that Pennsylvania American Water Company’s (“PAWC”) line extension regulations violated Section 1501 of the Public Utility Code and that PAWC should make uneconomic line extensions. The OCA initially intervened in a complaint case before the Commission arguing that PAWC should be required to extend water service to a Township at PAWC’s sole expense. In support, the OCA argued that Section 1501 required public utilities to extend water lines “as shall be necessary for the accommodation, convenience and safety of its patrons, employees and the public.” *See id. at* 605, 611, 910 A.2d at 41 (2006). The presiding ALJ rejected the OCA’s argument and dismissed the complaint, finding that the line extension provisions of PAWC’s tariff applied and did not violate Section 1501. Likewise, the Commission also held that PAWC’s line extension provisions applied and that the line extension provisions did not violate Section 1501. *Township of Collier v. Pennsylvania-American Water Company*, Docket No. C-20016207, 2004 Pa. PUC LEXIS 26 (May 3, 2004).

After losing its argument before the ALJ and the Commission, the OCA appealed to the Commonwealth Court. Like the ALJ and the Commission, the Commonwealth Court held that PAWC’s line extension rules, and the Commission’s line extension regulations, were lawful and

did not violate Section 1501. *Popowsky v. Pa. P.U.C.*, 853 A.2d 1097 (Pa. Cmwlth. 2004).

Therein, the Commonwealth Court stated as follows:

The regulations promulgated by the PUC establish a workable and practical standard for line extensions. It establishes the maximum investment that the PUC can require a utility to invest in an extension. The regulations may generate factual disputes regarding the application of the regulation in a particular case and that, in turn, will generate the need for an adjudicatory action by the PUC. The fact that the PUC has established standards that give meaning to the requirement in Section 1501 that a utility establish “reasonable conditions” for extending service is not an abdication of responsibility. To the contrary, giving precision to what otherwise may be characterized as an open-ended statute is a proper exercise of the PUC’s responsibility.

Id. at 1107 (footnotes omitted).

After losing the argument at the Commonwealth Court, the OCA appealed to the Supreme Court of Pennsylvania. Like the ALJ, the Commission, and the Commonwealth Court, the Supreme Court of Pennsylvania held that PAWC’s line extension rules did not violate Section 1501. *Popowsky v. Pa. P.U.C.*, 589 Pa. 605, 910 A.2d 38 (2006). With respect to Section 1501, the Supreme Court of Pennsylvania held that “... the statute affirmatively recognizes that reasonable conditions may attach to the rendering of mandated service.” *Id.* at 632.

Further, the Commission has recently addressed main extension issues for GBM customers. Similar to PNG, UGI has a GBM tariff provision that transitions GBM customers to full propane rates over a multi-year period. This market based rate phase-in was approved in a settlement of UGI’s 2009 PGC proceeding.⁷ On June 15, 2010, a formal complaint was filed by Mr. Richard Adams against UGI alleging that the GBM rate was going to change and requesting

⁷ See *Pa. PUC v. UGI Utilities, Inc. -- Gas Division 1307(f)*, Docket Nos. R-2009-2105911, et al., 2009 Pa. PUC LEXIS 2329 (September 23, 2009).

that UGI provide natural gas to his street. *Adams v. UGI Utilities, Inc. – Gas Division*, Docket No. C-2010-2182016 (October 31, 2011). In his complaint, Mr. Adams alleged that GBM customers were promised propane service at natural gas rates until gas mains were extended. In an Order entered on October 31, 2011, the Commission affirmed Your Honor’s decision to dismiss a complaint because the complainant failed to meet his burden to establish that UGI agreed to provide him with natural gas distribution service. The Commission went on to note as follows:

Similarly, we are of the opinion that UGI does not have any obligation under the 2009 PGC Settlement to convert the Complainant’s propane service to natural gas distribution service. We note that the starting point in an “obligation to serve” case is typically the utility’s tariff, which in this case involves UGI’s Rule 5 – Extension Regulation and, more specifically, Rule 5.2 – Obligation to Extend. *See UGI Utilities, Inc. Tariff-Gas Pa. P.U.C. No. 5 (Tariff No. 5)*, Original Pages 16-18.

Id. at p. 6 (footnote omitted). However, the Commission found that UGI failed to consider the complainant’s request for service in accordance with its line extension rules and regulations and, therefore, directed UGI to treat the formal complainant as a written application for a line extension under Rule 5 of UGI’s Tariff No. 5. *Id.* at p. 7. The Commission further ordered that:

In treating the Complainant’s request as such, UGI should follow its usual line extension process, including formally informing the Complainant whether the requested extension will adversely impact service reliability to existing customers and if not, providing an estimate to Complainant for the total costs to extend UGI’s facilities to his home *and what portion would have to be borne by the Complainant.*

Id. (emphasis added).⁸ Thus, the Commission clearly recognized that, under UGI's main extension tariff provisions, the complainant in *Adams* may be required to pay a CIAC if the requested extension is uneconomical.

2. It Is Undisputed That Main Extensions To The GBM Customers Would Be Uneconomic.

As explained by the Commission in *Adams*, the starting point in an "obligation to serve" case is the utility's tariff. The Commission-approved line extension provisions of PNG's tariff provide that *if the investment in facilities is not warranted by the anticipated revenue to be derived from the extension*, customers are entitled to a line extension only with a customer contribution. (PNG Exhibit DEL 3, PNG Gas – Pa. P.U.C. No. 8, Original Pages 19 through 21). These Commission-approved line extension tariff provisions are binding on PNG and its customers.⁹ As explained below, applying these tariff provisions clearly indicates that service should be not be extended in this case without major customer contributions.

The Company consistently applies the line extension provisions of its tariff when determining the required CIAC for all new extensions and upgrades for existing customers. The Company uses 5.5 times the annual margin to calculate the allowance and the predetermined rate of return. (PNG Statement No. 2-R, p. 9; April 6 Tr. pp. 16, 19.) Here, PNG applied the tariff provisions and estimated that the cost to extend mains to serve the 11 Complainants would be

⁸ The Commission's holding in *Adams* clearly is dispositive of the pending Complaints. OCA attempts to distinguish *Adams* from the pending matter on the basis that the complainant in *Adams* was *pro se*, and suggests that had the complainant been represented by legal counsel the Commission would have reached an entirely different result. (OCA Main Brief, pp. 45-46, n. 13.) However, there is no basis in law or fact to support OCA's contention. Clearly, the Commission carefully considered the sole legal issue before it -- whether UGI was obligated to convert the complainant's propane service to natural gas distribution service -- regardless of whether the complainant was *pro se* or represented by legal counsel.

⁹ PNG's line extension provisions have been approved by the Commission as part of PNG's tariff and, therefore, have the force and effect of law. *Pennsylvania Electric Co. v. Pa. PUC*, 663 A.2d 281 (Pa. Cmwlth. 1995); *Brockway Glass Co. v. Pa. PUC*, 437 A.2d 1067 (Pa. Cmwlth. 1981); *Siteler v. Bell Telephone Co. of Pa.*, 379 A.2d 339 (Pa. Cmwlth. 1977).

\$1.8 million. (PNG Statement 1-R, pp. 26-27; PNG Exhibit DEL 2.) However, all of the GBM Complainants asserted that PNG should extend natural gas mains to provide natural gas service and that they were unwilling to provide any CIAC. (April 5 Tr., pp. 49, 130, 149, 166, 175, 192, 214, 226, 237, 253, 274.) If no CIAC is made by the customer, the payback periods for the eleven Complainants' extensions range from 24 years to 1,157 years.¹⁰ When taken together, the payback period for the group as a whole without any CIAC is 289 years. (PNG Statement No. 1-R, p. 24.) Neither OCA nor any of the Complainants have disputed PNG's calculation of the CIAC amounts in this case.

Given the estimated cost to extend mains to serve the 11 GBM Complainants, and the Complainants stated position of being unwilling to provide any CIAC, these investments would be extremely uneconomical and not meet the minimum tariff standard.

3. PNG's Main Extension Rules Clearly Apply To GBM Customers.

The OCA argues that PNG's main extension rules do not apply to GBM customers. (OCA Main Brief, pp. 47-46.) As explained below, this argument ignores the plain language of the main extension provisions of PNG's Commission-approved tariff, PNG's long-standing practice and precedent, as well as the Commission's recent decision in *Adams*, which expressly holds that main extension provisions in a utility's tariff apply to GBM customers. The main extension rules in PNG's tariff apply to **all** customers, including new and existing customers, who file an application for a main extension under Rule 5 of PNG's tariff.

In support of the recommendation that PNG should be required to extend mains to serve the GBM Complainants without any CIAC, the OCA argues that PNG's Commission-approved

¹⁰ PNG revised its estimate to serve Mrs. Alar based upon extending a main through a neighbor's property. This reduced the payback period for Mrs. Alar from 48 years to 24 years. (See Lahoff Cross Exhibit 1.)

line extension tariff provisions only apply to new applicants for service that have never been customers of PNG. This is clearly incorrect. Main extension are governed by Rule 5 of the Company's tariff, which provides in relevant part, as follows:

5. EXTENSION REGULATION

5.1 Obligations to Extend. Under the rules set forth below and under normal conditions of construction and installation, upon written application, the Company will extend its facilities within its service territory, provided that (a) the requested extension will not adversely affect the availability or deliverability of gas supply to existing customers and (b) the Company's investment in facilities is warranted by the anticipated revenue to be derived from the extension. The costs of extending facilities beyond that provided by the Company shall be paid by the applicant.

(PNG Exhibit DEL 3.)

This tariff rule, on its face, clearly applies to all customers that request a line extension. Under Section 5.1, the Company will only make a line extension upon application when the requested extension will not adversely affect service to existing customers and when the Company's investment is warranted by the revenues to be derived from the extension. There are no exceptions or exclusions to this rule. There is only one main extension provision in PNG's tariff, which PNG consistently applies to all line extension requests, whether they are made by new or existing customers. There is no provision in the Company's tariff excluding GBM customers from the line extension rules, and the Company applies these rules uniformly to all customers that request an extension of the Company's distribution lines, as well as to all existing customers that request an expansion of the Company's facilities.

Mr. Lahoff further explained that the Company routinely receives applications for facility upgrades from existing customers and consistently applies its extension regulation policy when determining if a CIAC will be required. (PNG Statement No. 1-R, p. 21.) It is reasonable and prudent for the Company to apply its line extension rules to existing customers who are applying for an extension or upgrade of facilities because to do otherwise would result in an uneconomic

investment on the part of the Company simply because the application has been submitted by an existing customer.

In addition, the Commission recently ruled that a gas utility's line extension rules apply to GBM customers. *Adams v. UGI Utilities, Inc. – Gas Division*, Docket No. C-2010-2182016 (October 31, 2011). There is no basis to distinguish the ruling in the *Adams* case that line extensions rules of a utility's tariff apply to GBM customers. As also explained herein, a public utility may not charge any rate or provide a service other than that lawfully tariffed. *Pennsylvania Electric Co. v. Pa. PUC*, 663 A.2d 281, 284 (Pa. Cmwlth. 1995); *The Bell Telephone Company of Pennsylvania v. Pa. PUC*, 417 A.2d 827, 828-29 (Pa. Cmwlth. 1980). Accordingly, PNG and its customers are bound by the terms and conditions set forth in the Commission-approved line extension provisions of PNG' tariff.

Despite the clear provisions of the Company's tariff and the Commission's ruling in the *Adams* case, OCA concludes that PNG's line extension tariff provisions do not apply to the GBM Complainants. The OCA bases this conclusion, in large part, on the definition of "Applicant" in the tariff which provides as follows: "Any person...not yet actually receiving from the Company any service provided for in this Tariff at such location." (OCA Main Brief, pp. 46-47.)¹¹ According to OCA, the GBM customers are currently receiving service from the Company and, therefore, cannot be considered "applicants" under Rule 5.1.

¹¹ In footnote 11 on page 41 of OCA's Brief, OCA states that Farmington Way Subdivision customers were held harmless from the cost of conversion. As noted on Page 7 of the Commission's Order approving the Farmington Way settlement, UGI had already included the conversion of these customers in its construction budget and the budget was finalized before Prosecutory Staff was involved in the matter. *Pa. PUC v. UGI Utilities, Inc.*, Docket No. M-2010-2138591, Order entered October 25, 2010. There is no record evidence that UGI extended mains to the Farmington Way customers outside of its main extension rules.

There are several flaws with OCA's argument. First, the OCA reads the word "applicant" in the last sentence of Section 5.1 completely out of context. Rule 5 expressly states that an individual who wants a main extension must file a "written application." The word "applicant" at the end of Rule 5 clearly refers to someone who has filed a "written application" under Rule 5.

The term applicant under Rule 5.1 is different than the defined term "Applicant" under the definitions section of the Tariff. The capitalized term "Applicant" in a separately defined term in the tariff and clearly refers to someone who is applying for new service and not to someone who is filing an application for a main extension. The defined and capitalized term "Applicant" is used extensively elsewhere in the Company's tariff to refer to a new customer applying for service. See UGI PNG Tariff, Rules 2.1, 3.1, 3.2, 3.3, 3.4, and 3.9. All new customers are "Applicants" under the tariff and must meet the general requirements for service under the tariff, including credit and other requirements. An applicant under Rule 5 is different than an "Applicant" for new service. An applicant under the line extension rules is any new or existing customer that files an written application for a main extension. GBM customers are applicants for service under the line extension rules because they are applying to have mains installed and to be connected to PNG's primary distribution system.

Mr. Lahoff explained this difference in his testimony:

First, I would note that the word applicant in the main extension provision is not used as the defined term "Applicant" but is simply being used to describe someone who has applied for an extension of gas facilities. When a defined term such as "Applicant" is used in the tariff, it is capitalized. By way of example, see PNG DEL Exhibit No. 4, Original Page 14 of the Company's tariff addressing contracts for Gas Service. However, the word applicant as used in the line extension section of the tariff is not capitalized and is merely referring to the individual who applied for the extension. (See PNG DEL Exhibit No. 3, Section 5, page 19 of PNG-Gas PA

Tariff No.8) Moreover, it is clear that GBM customers are not currently connected to the Company's distribution system and in order to do so, they would need to apply for a line extension.

(PNG Statement No. 1-R, p. 21.)

Based on the foregoing, PNG's main extension rules in its Commission-approved tariff apply to the GBM customers' request for main extensions.¹² As explained above, it is undisputed that main extensions to the GBM customers would be uneconomic and not meet the minimum tariff standard to extend mains without any CIAC.

4. OCA's Reasons For Requiring Uneconomic Main Extensions Are Not Persuasive.

It is clear in this case that the GBM Complainants do not qualify for free main extensions and must make a CIAC under PNG's tariff. OCA offers several reasons why the Commission should abandon its established precedent in this case and require PNG to make uneconomic main extensions for GBM customers. These reasons include OCA claims that: (1) PNG is providing unreasonable service (OCA Main Brief, p. 39); (2) GBM customers were promised propane service at natural gas rates until mains were extended (OCA Main Brief, pp. 35-37.); (3) the GBM Complainants relied on GBM service; (4) the fact that GBM customers' rates will increase under the market rate transition mechanism (OCA Main Brief, p. 38); and (4) that PNG purportedly received incremental profits from GBM customers(OCA Main Brief, p. 44). As explained below, OCA's reasons for requiring uneconomic main extensions are not persuasive.

¹² Even if the main extension rules did not apply, this does not mean that PNG must extend service without CIAC. Pennsylvania case law clearly has recognized that a public utility's duty to provide line extensions is not unlimited and, therefore, will not obligate the public utility to make line extensions that are uneconomic or unreasonable. *Sherman v. Public Service Commission*, 90 Pa. Superior Ct. 523 (1927).

a. PNG Is Providing Reasonable Service To GBM Customers.

It should be noted that PNG will continue to provide reasonable and safe service to GBM customers. PNG is not terminating propane service but, rather, will continue the GBM service and transition long-term GBM customers to market based rates. Under the transition rate mechanism approved by the Commission in the 2011 PGC proceeding, and agreed to by OCA, PNG will continue to provide the same regulated service and the benefits that come from regulated service -- such as monthly metering and billing, safety inspections, emergency response, various bill payment options and applicable customer assistance programs and protections -- while at the same time addressing the I&E's concerns about cross-subsidization. (PNG Statement No. 2-R, p. 6.) Clearly, PNG will continue to provide continuous and reliable service to the GBM Complainants consistent with Section 1501.

PNG is strictly following the terms and conditions of the Commission-approved settlements from the 2009 base rate case and the 2011 PGC proceeding. These settlement were agreed to by the parties, including OCA. The terms and conditions of these Commission-approved settlements are set forth in PNG's Commission-approved tariff, which has the full force of law and is binding on PNG and its customers.¹³ The OCA cannot reasonably argue that following and applying the terms and conditions of the Commission-approved settlements and tariff provisions is unreasonable service.

b. GBM Customers Were Never Promised Uneconomic Main Extensions And Any Such Promise Would Be Void As A Matter of Law.

¹³ *Pennsylvania Electric Co. v. Pa. PUC*, 663 A.2d 281 (Pa. Cmwlth. 1995); *Brockway Glass Co. v. Pa. PUC*, 437 A.2d 1067 (Pa. Cmwlth. 1981); *Stiteler v. Bell Telephone Co. of Pa.*, 379 A.2d 339 (Pa. Cmwlth. 1977).

In this case, the Complainants argued that PNG's predecessor, PG&W, made a promise or agreement with the GBM customer Complainants to extend natural gas distribution mains to the GBM customer complainants or to continue to provide propane at natural gas rates indefinitely. The OCA cites this alleged agreement or promise as support for its position that PNG should make uneconomic main extensions. OCA M.B. at 36. This argument fails for many reasons.

First, PNG has no record of any such agreement, promise, or representation being made by PG&W. (PNG Statement No. 1-R, p. 15.) In addition, the Complainants and OCA failed to introduce any record evidence of the purported agreement. Moreover, none of the Complainants alleged that the promise or agreement provided for uneconomic main extensions. In fact, it appears that PG&W also did not believe that any such agreement, promise, or representation provided for uneconomic main extensions as evidenced by the correspondence sent by PG&W on January 15, 1973, to its propane customers to notify them that PG&W would not be extending natural gas service to gas beyond the main customers, and that PG&W would no longer provide liquid propane at lower-cost natural gas tariff rates. (*See* Pope Exhibit 1.)

Further, it must be noted that 9 of the 11 Complainants are not the original home owners and, as such, cannot allege that PG&W personally promised them that they would receive GBM service at propane rates until mains were extended.¹⁴ *See Adams v. UGI Utilities, Inc. – Gas Division*, Docket No. C-2010-2182016 (October 31, 2011) (affirming the ALJ's decision to dismiss the complaint because the complainant failed to establish that UGI agreed to provide him with natural gas distribution service where the alleged promise was purportedly made to the

¹⁴ Complainants Alar and Donnelly are the original home owners. Complainants Pope, Fuhr, Schulz, Hennigan, Rowlands, Roberto-Moran, Calafut, Michaels, and Lindbuchler are not the original home owners. (April 5 Tr. pp. 56, 177.)

previous owner, not the complainant). In fact, all but one of the GBM Complainants admitted that they were never personally promised by PG&W or PNG GBM service at propane rates until mains were extended.¹⁵ However, in response to discovery, none of the GBM customer complainants, including those two that were the original home owners, were able to produce any such alleged agreement or promise.

Moreover, any such agreement guaranteeing a rate or service outside of tariff rules would be unenforceable and void as against public policy. A public utility can only charge tariffed rates to customers and cannot enter into special agreements that are outside of the tariff with customers. Tariffs have the force and effect of law and parties cannot contractually alter the terms of a tariff. *Pennsylvania Electric Co. v. Pa. PUC*, 663 A.2d 281 (Pa. Cmwlth. 1995); *Brockway Glass Co. v. Pa. PUC*, 437 A.2d 1067 (Pa. Cmwlth. 1981); *Stiteler v. Bell Telephone Co. of Pa.*, 379 A.2d 339 (Pa. Cmwlth. 1977).

The case law on this issue is clear and has been consistent for nearly 100 years. In 1918, the Supreme Court of Pennsylvania held that a Railroad Company could not enter into a contract with a quarry to provide services at a specified rate. *Leiper v. The Baltimore & Philadelphia Railroad Company*, 262 Pa. 328, 105 A. 551 (1918). The Court stated as follows:

Where the rights of individuals under a contract, which would otherwise be perfectly valid are in conflict with the "general well-being of the State," the rights of the individuals must give way to the general welfare. It therefore follows that when, as in this case, the parties enter into a contract with a public service corporation relating to rates, they are presumed to do so with the knowledge that the right of the State to exercise this police power in the future is expressly reserved, and that where the common weal and the interests of the public demand that the provisions of the contract

¹⁵ Although two GBM Complainants are the original home owners, only Complainant Donnelly testified that PG&W representatives expressly offered her propane service at natural gas rates until mains could be extended. (April 5 Tr., p. 58.) However, Complainant Donnelly admitted that the representatives from PG&W were unable to anticipate when, if ever, the mains would be extended. (April 5 Tr., p. 59.)

thus entered into shall be modified, it can be done without any violation of the provision of the Constitution of the United States with reference to the impairment of the obligation of contracts.

Where parties enter into a contract which relates to a matter which may subsequently be the subject of revision by the State in the exercise of its police power, their contracts, whether definite or indefinite in point of time, must be held subject to the right of the State to act in regard thereto. They cannot allege that the contracts, so far as the State is concerned, are inviolable.

Id. at 332, 334.

More recently, in 2002, the Commonwealth Court held that Philadelphia Suburban Water Company could not enter into an agreement to provide free water service to a municipality because this violated the Company's tariff. *Philadelphia Suburban Water Company v. Pa. P.U.C.*, 808 A.2d 1044 (Pa. Cmwlth. 2002). In this case, the Commonwealth Court further noted that a contract that attempts to fix rates for an indeterminate period cannot stand because this would excuse a customer from tariff revisions that may take place over a period of time. *Id.* at 1054, 1058 (citing *Leiper v. Baltimore & Philadelphia Railroad Co.*, 262 Pa. 328, 105 A. 551 (1918)).

PNG's Commission-approved tariff explicitly provides that "[n]o agent or employee of the Company has authority to make any promise, agreement or representation not consistent with this Tariff." Both PG&W's and PG Energy's tariffs contained a similar provision. (PNG Exhibit DEL 5 and 6.) Clearly, any such agreement would violate these tariff provisions. Moreover, the statements by PG&W's representatives are void as against public policy as explained above.

Furthermore, even if the three Complainants that were the original home owners were able to establish an agreement with PG&W whereby PG&W agreed to extend natural gas

distribution mains to the GBM customer complainants or to continue to provide propane at natural gas rates indefinitely, such an indefinite agreement would not be enforceable. The sale of propane and of natural gas is governed by Article II of the Uniform Commercial Code (“UCC”). See 13 Pa.C.S. § 2105(a) (definition of “Goods” under the UCC). Section 2309(b) of the UCC provides “where the contract provides for successive performances but is indefinite in duration, it is valid for a reasonable time but unless otherwise agreed, may be terminated at any time by either party.” 13 Pa. C.S.A. §2309(b). This principle is consistent with Pennsylvania case law which disfavors contracts of perpetual duration. *Hutchinson v. Sunbeam Coal Corp.*, 513 Pa. 192, 519 A.2d 385 (1986).

The Commission clearly assumed jurisdiction over the GBM service many years ago. Tariffed rates and service are always subject to change by the Commission. No rate or service adopted by a public utility remains the same for perpetuity. Indeed, as explained below, there can be no lawful rate *except* the last tariff published as provided by law, which supersedes all prior rates relating to the service called for. *The Bell Telephone Company of Pennsylvania v. Pa. PUC*, 417 A.2d 827, 828-29 (Pa. Cmwlth. 1980). As a result of changes in Commission policy, the Complainants are now subject to Commission-approved changes in their PGC rates implemented to address concerns about the cross-subsidization of propane costs incurred to serve long-term GBM customers by all other PGC customers.

The GBM situation is not unique. For example, PPL Electric Utilities Corporation (“PPL Electric”) had a Residential Thermal Storage (“RTS”) rate that it offered to customers. The RTS rate was a discounted distribution rate offered to customers that installed certain types of heating systems in their homes. After the RTS rate was discontinued, several customers filed complaints with the Commission wherein they argued that PPL Electric had guaranteed the RTS rate for the

life of the home. *See, e.g., Robert Dunham v. PPL Electric Utilities Corporation*, Docket No. C-2010-2155056, Order entered July 1, 2011; *Robert E. Diehl v. PPL Electric Utilities Corporation*, Docket No. C-2009-2149261, Order entered April 1, 2011. In both the *Dunham* and *Diehl* cases, the Commission held that it was appropriate for PPL Electric to phase out the RTS rate and that it was appropriate for RTS rate customers to pay rates that were more closely based upon cost of service. *See Diehl*, p. 8. Similar to those RTS cases, GBM customers' rates are being transitioned to eliminate subsidies so that GBM customers pay rates that reflect their cost of service.

c. The GBM Complainants Reliance On The GBM Service Does Not Justify Uneconomic Line Extensions.

In an effort to demonstrate that there was an alleged promise between PG&W and the GBM customer Complainants, OCA goes to great lengths to show that the GBM Complainants have made investments in reliance on the purported agreement. (OCA Main Brief, pp. 36-38.) In essence, OCA is attempting to establish the existence of an agreement under the theory of promissory estoppel or contract implied-in-law, and requesting that the Commission grant the equitable relief of specific performance. However, the Commission has unequivocally held that “[t]here cannot be any detrimental reliance such as would preclude the utility from carrying out its statutory duty to adhere to its tariff.” *Barbara J. Kieth v. Pennsylvania Power & Light Co.*, Docket No. C-00970726, 1998 Pa. PUC LEXIS 74 at *10 (August 24, 1998).¹⁶ Therefore, the fact that the GBM customers invested in, replaced or maintained their propane equipment is legally irrelevant.

¹⁶ *See also PDJ Cab Company v. Pa. PUC*, 501 A.2d 342 (Pa. Cmwlth. 1988) (While the Commission has jurisdiction over any complaints filed by any person or corporation alleging a violation of the Public Utility Code or any of the Commission's regulations or orders, it does not have jurisdiction over private contract disputes between a utility and another person); *Snyder v. Pa. PUC*, 144 A.2d 468 (Pa. Super. 1958) (same).

In addition, the GBM customers are in no different position than all other customers with respect to this issue. All customers must purchase furnaces or other equipment for their homes and must maintain and replace such equipment. And importantly, the GBM customers will still be able to use their furnaces and equipment because PNG is continuing to provide propane service to these customers.

Moreover, as explained in more detail below, the OCA continues to ignore the fact that the GBM customers received substantial subsidies over the years in the form of discounted propane rates. The average annual savings for GBM customers, as compared to paying full propane rates, over the past 22 years was approximately \$1,093 per year, assuming an average annual usage of 100 Mcf. Consequently, for that 22 year period the total subsidy per GBM customer would have been approximately \$24,024. (PNG Statement No. 2-R, pp. 5-6; PNG Hearing Exhibit 1.)

On balance, PNG believes that the GBM customers have been treated more than fairly through the substantial subsidies paid for by other customers, the planned phase out of those subsidies and continued service as utility customers. The subsidies paid for by other customers have either fully or substantially offset any incremental investments made by the GBM customers.

d. PNG Should Not Be Required To Extend Mains Because GBM Customers' Rates Are Increasing.

i. Introduction

OCA also argues that it is fair for PNG to extend mains without any CIAC because GBM customers are facing a substantial rate increase with the elimination of the GBM subsidies. PNG agrees that the GBM customers rates will increase, but this does not support the OCA's position. First, as explained below, the phase out of the GBM subsidies has been specifically approved by

the Commission and was supported by the OCA itself. PNG's phase out of the GBM subsidies is in strict compliance with prior Commission orders and provides no basis for requiring uneconomic main extensions for GBM customers. Second, OCA completely ignores the benefits received by the GBM customers through rate subsidies over the past 40 years. The elimination of these subsidies provides no basis for the creation of new subsidies through economic main extensions.

ii. PNG Is Strictly Complying With The Terms And Conditions Of the Commission-Approved Settlements.

The OCA completely ignores that it was in fact a signatory to the 2009 base rate case and 2011 PGC settlements. As explained above, the 2009 base rate settlement provided for the elimination of GBM service. The 2011 PGC settlement allowed for the continuation of GBM service with a transition to market based propane rates. The OCA fully supported the terms and conditions of both settlements, including the GBM service provisions. In addition, neither settlement contained any provision that required PNG to extend gas mains to GBM customers or seek to abandon GBM customers. Moreover, although both settlements provided that they were without prejudice to the positions that any of the parties may advance in the future on the merits of the issues resolved therein, here the OCA, in effect, opposes a settlement term, the phase-in to full propane rates, that it expressly agreed to and supported less than one year ago. The OCA has offered absolutely no explanation for its departure from its prior position. The OCA should not now be permitted to essentially walk away from these Commission-approved settlements by reversing its prior position and directly challenging the terms of these settlements that it previously agreed to and supported. While the OCA may not be technically barred from abandoning the prior settlement agreement, its actions are certainly relevant in evaluating the merits of its position in this case.

PNG is strictly following the terms and conditions of the settlements agreed to by the parties, including OCA, and ultimately approved by the Commission. If the continuation of the GBM service without extending mains violates Section 1501 of the Code, as OCA contends, then OCA should not have agreed to the settlements and the settlements could not have been approved by the Commission.¹⁷ Clearly, the Commission, by its approval of the settlement, has concluded that the continuation of the GBM service with a phase-in to market based rates is adequate, efficient, safe and reasonable service and, therefore, consistent with Section 1501 of the Public Utility Code. Importantly, the OCA and GBM Complainants have failed to introduce any facts or circumstances that have drastically changed since the Commission approved the 2009 base rate case and 2011 PGC settlements that would render the continuation of the GBM service with a phase-in to market based rates unreasonable. *Kanowicz v. PPL Electric Utilities Corporation*, Docket No. C-20043915, (Order entered November 1, 2005) (citing *Brockway Glass Co. v. Pa. PUC*, 437 A.2d 1067 (Pa. Cmwlth. 1981)). Accordingly, the continuation of the GBM service with a phase-in to market based rates is adequate, efficient, safe and reasonable service.

Under the 2011 PGC settlement, PNG will continue to provide propane service to the GBM customers and will continue to provide important consumer benefits and protections. The only thing that will change is that the propane subsidy paid by non-GBM customers is being

¹⁷ See *Application of Laser Northeast Gathering Company, LLC*, Docket No. A-2010-2153371, 2011 Pa. PUC LEXIS 6 at *54 (June 14, 2011) (denying the term and condition of a settlement that provided for “light-handed” regulation of Laser because it would be unlawful and inconsistent with Chapters 11, 19, and 21 of the Public Utility Code).

eliminated.¹⁸ The transition to market-based propane rates will eliminate the propane subsidy received by the GBM customers.

The continuation of the GBM service with a phase in to market-based propane rates is set forth in PNG's Commission-approved tariff. It is well-established that a utility's Commission-approved tariff -- list of services, rules for service and rates for service -- has the full force of law and is binding on the utility and its customers. *Pennsylvania Electric Co. v. Pa. PUC*, 663 A.2d 281 (Pa. Cmwlth. 1995); *Brockway Glass Co. v. Pa. PUC*, 437 A.2d 1067 (Pa. Cmwlth. 1981); *Stiteler v. Bell Telephone Co. of Pa.*, 379 A.2d 339 (Pa. Cmwlth. 1977). Importantly, in the absence of an exception by the Commission, a public utility may not charge any rate or provide a service other than that lawfully tariffed. *Pennsylvania Electric Co.* at 284 (quotation omitted).

Indeed, the Commonwealth Court has concluded as follows:

There can be no lawful rate except the last tariff published as provided by law, and the effective rate thus published supercedes all prior rates relating to the service called for. Further, it is well established that in the absence of an exception by the Commission, a public utility may not charge any rate for services other than that lawfully tariffed, and contracts fixing rates are superseded by the rate in effect at the time the service is delivered.

The Bell Telephone Company of Pennsylvania v. Pa. PUC, 417 A.2d 827, 828-29 (Pa. Cmwlth. 1980) (citations omitted). Accordingly, PNG and its customers are bound by the terms and conditions set forth in PNG's Commission-approved tariff, including the adopted phase in of GBM customers to market propane rates.

¹⁸ In general, it is the Commission's policy to avoid cross-subsidization. *Pennsylvania Public Utility Commission v. Total Environmental Solutions, Inc.*, Docket Nos. R-00072493, *et al.*, 2008 Pa. PUC LEXIS 42 (May 23, 2008). Indeed, cross-subsidization is inconsistent with the basic principles of utility cost allocation, in that costs would be assigned to customers who do not cause those costs to be incurred. *See, generally, Lloyd v. Pa. P.U.C.*, 904 A.2d 1010 (2006), *appeal denied*, 591 Pa. 676, 916 A.2d 1104 (2007) (public utilities rates should attempt to allocate costs to those customer classes that actually caused the costs to be incurred).

iii. GBM Customers Have Received A Real And Substantial Benefit In The Form Of Subsidized Propane Rates.

Moreover, when making its argument that GBM customers' rates will increase, the OCA fails to recognize that GBM customers have received, in some cases for more than 40 years, a real and substantial benefit in the form of subsidized propane rates. When looking at the variance between what a customer would pay as a GBM customer versus the average delivery price for propane for the period between 1990 and 2012, the average annual savings for the customer by being on GBM is approximately \$1,093 per year, assuming an average annual usage of 100 Mcf. Consequently, for that 22 year period the total subsidy per GBM customer would have been approximately \$24,024. (PNG Statement No. 2-R, pp. 5-6; PNG Hearing Exhibit 1.) Likewise, if a GBM customer had selected electric baseboard heat, they would have paid an average of \$2,050.00 per year more for electric heat, paying an average of \$45,100 more over the 22 year period. (PNG Statement No. 2-R, pp. 5-6; PNG Hearing Exhibit 1.)

The OCA also fails to acknowledge the other benefits available to GBM customers, which include monthly metering and billing, optional budget billing, auto-pay and electronic billing options, a due date extension program, customer assistance programs, low income weatherization programs, customer education and conservation communications, safety inspections, emergency response and the consumer protections afforded them under 52 Pa Code, Chapter 56, such as payment agreements for outstanding balances in arrears. (PNG Statement No. 1-R, pp. 22-23.)

The record clearly demonstrates that, on balance, the GBM Complainants have been treated more than fairly by receiving, and in some cases for more than 40 years, a real and substantial benefit that has been funded by PNG's non-GBM customers. The Commission has concluded that it is time for this subsidy to come to an end. Notwithstanding, the OCA and the

GBM Complainants argue that it is fair for PNG to extend mains without any CIAC. Stated otherwise, the OCA and GBM Complainants want PNG's non-GBM customers to continue to subsidize the GBM customers by paying for uneconomic main extensions. Such a result is clearly unfair to other customers that have subsidized the GBM customers for approximately 40 years. The OCA's fairness argument ignores the record evidence and, moreover, would clearly be unfair to the PNG's non-GBM customers that would be forced to continue to subsidize the GBM customers.

e. PNG Did Not Receive Incremental Profits From GBM Customers.

The OCA argues that PNG should extend mains to serve the GBM Complainants without any CIAC because the Company has realized incremental profits from the GBM customers for decades, while ratepayers have subsidized the costs of supplying propane to the GBM customers. (OCA Main Brief, p. 44.) OCA's argument is incorrect and misconstrues the ratemaking process. The distribution charges paid by GBM customers were included with revenues received by all residential or commercial customers in the ratemaking process to provide the necessary revenue requirement to recover the Company's costs and earn a reasonable rate of return. The distribution charges paid by GBM customers were in no way "incremental" to the Company's approved rate of return. Had GBM customers not paid distribution charges, the rates for all other customers would have been higher. (PNG Statement No. 1-R, p. 28.)

Equally as important is the fact that the distribution rate paid by these customers was established on a class basis. This practice of class based rates is a fundamental utility ratemaking principle.¹⁹ The distribution rates paid by PNG customers, including GBM customers, are

¹⁹ It is well established that utility rates cannot be designed to reflect individual customer's costs and usage patterns. Section 1304 of the Public Utility Code prohibits unreasonably prejudicial and (Continued on next page...)

established to provide the revenue required for the Company to recover all existing costs associated with serving a class of customers as a whole. Since these GBM customers were classified as being part of either the residential or commercial class of customers, they paid the same average distribution rate even though the actual individual cost to serve them may have been different. The distribution charges paid by the GBM customers contributed to the recovery of the existing costs associated with serving the class as a whole. They clearly are not incremental to revenue requirements established during rate making. Moreover, the distribution charges paid by the GBM customers should not be given consideration as a payment meant to recover some future expansion of gas facilities. (PNG Statement No. 1-R, p. 23.)

B. PNG Cannot Be Required To Bear Uneconomic Main Extension Costs.

OCA recommends that the “economic” portion of the proposed main extensions should be included in rate base, and that the “uneconomic” portion of those main extensions should be paid for by PNG’s shareholders. (OCA Main Brief, pp. 43-44.) The OCA contends that PNG should make uneconomical main extensions because PNG’s predecessor, PG&W, allegedly promised the GBM customers that they would receive propane service at natural gas rates until gas mains were extended. (OCA Main Brief, pp. 35-36.) OCA’s unprecedented proposal should be rejected.

(...continued from previous page.)

disadvantageous rates, and expressly requires rates to be designed based on class ratemaking principles. *See* 66 Pa.C.S. § 1304; *see also Philadelphia Suburban Trans. Co. v. Pa. P.U.C.*, 281 A.2d 179 (Pa. Cmwlth. 1971) (rate structure must be based on economic facts and on an understanding of all facts and circumstances that affect rates and services; rates must be designed to furnish the most efficient and satisfactory service at lowest reasonable price for the greatest number of customers); *see, e.g., U.S. Steel Corp. v. Pa. P.U.C.*, 390 A.2d 849 (Pa. Cmwlth. 1978) (denying separate rate classification for largest individual customer of a gas utility even though its volume far exceeded any other customer and even though it received its gas service through a direct connection with the transmission line).

First, and perhaps most importantly, the OCA's argument is completely unprecedented. The Commission and the Courts have addressed line extension issues in many cases over the years. The issue in all of those cases was whether the individual customer should pay for the extension or whether all customers should pay for the extension. The issue has never been whether the utility should bear the costs of the investment and not be able to recover its costs. OCA's argument is completely unprecedented and lacks any legal basis.

Second, the OCA's argument proposal is clearly unlawful. Under Section 1501 of the Public Utility Code, public utilities are obligated to provide "reasonable service" to the public, including the obligation to make line extensions "to such service and facilities as may be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public." 66 Pa.C.S. § 1501. However, at the same time, Pennsylvania case law clearly has recognized that a public utility's duty to provide line extensions is not unlimited and, therefore, will not obligate the public utility to make line extensions that are uneconomic or unreasonable. *Sherman v. Public Service Commission*, 90 Pa. Superior Ct. 523 (1927). In addition, the Supreme Court of Pennsylvania has held that utilities can adopt main extension rules and that these rules do not conflict with a utility's obligations under Section 1501 of the Public Utility Code. *Popowsky v. Pa. P.U.C.*, 589 Pa. 605, 910 A.2d 38 (2006). The cases recognize that utilities are not required to make imprudent investments.

Indeed, OCA has not cited any cases supporting its argument that PNG should be required to bear the costs of uneconomic main extensions until such time as additional customers are added. OCA claims this is similar to the procedure used by water utilities with respect to refundable advances for construction paid by developers toward main extensions for new developments. (OCA Main Brief, p. 44.) OCA's analogy of comparing PNG, a regulated utility,

to a developer is illogical. PNG provides regulated utility service to customers under the Commission's jurisdiction. PNG is *not* a developer.

As a regulated utility, PNG is both subject to and protected by the “regulatory compact” under which PNG provides service to customers and is authorized to earn a return on its the fair market value of prudent investments made to provide service to the public. When PNG devotes property, including monetary capital, to public service, PNG is entitled to a fair opportunity to earn a fair return on its investment. Rates that do not meet this standard are confiscatory and, therefore, are unconstitutional. *See* U.S. Const. Amend. 14, § 1; Pa. Const. Article I, Section 10; *Federal Power Comm’n v. Hope Natural Gas Co.*, 320 U.S. 591 (1944); *Bluefield Waterworks and Imp. Co. v. P.S.C. of West Virginia*, 252 U.S. 679 (1923); *Pa. P.U.C. v. Pennsylvania Gas and Water Co. – Water Division*, 492 Pa. 326, 424 A.2d 1213 (1980), *cert. denied* 454 U.S. 824 (1981). If PNG is required to extend mains to customers, PNG must be permitted to earn a return on its investment in those mains. To hold otherwise would deny PNG an opportunity to earn a fair return on its investment. There simply is no basis for PNG's shareholders to bear the costs of uneconomic main extensions.

Here, OCA, recommends that the “economic” portion of the proposed main extensions should be included in rate base, and that the “uneconomic” portion of those main extensions should be paid for by PNG's shareholders. OCA asserts that additional amounts should be added to rate base for customers who connect to the mains in the future. (OCA Main Brief, p. 43.) OCA offers no support for its contention that PNG should be required to invest capital to serve customers and only have a future “potential” right to recover a return on its investment if and when additional customers connect to the mains in the future. Further, this argument ignores PNG's right to recover a return on its investment at the time it is being used for public service.

See National Utils. v. Pa. PUC, 709 A.2d 972, 976 (Pa. Cmwlth. 1998) (“the ‘just compensation’ safeguarded to a utility by the fourteenth amendment of the federal constitution is a reasonable return on the fair value of its property at the time it is being used for public service”) (citation omitted).

Further, the OCA’s recommendation is based on an erroneous assumption that PNG will be able to recoup the “uneconomic” portion of the investment if it is able to add 28 proximate GBM customers and 141 potential new customers that could be served from lines extended to the Complainants alone. The OCA disregards that additional investment would be required to serve these customers. PNG explained that the total “uneconomic” portion of the investment to extend mains to serve the 11 GBM Complainants, and 138 of the potential new customers and proximate GBM customers for which the Company has current cost estimates, would be approximately \$2.4 million. Contrary to OCA’s assertion, it would take the addition of approximately 1,176 customers to offset the uneconomic investment; many more than the “potential” number identified by the OCA. Since the majority of the property along the mains required to serve the 11 GBM Complainants is either very rural or is fully built out, it is simply not reasonable to assume that the Company will be able to recoup more than a small fraction of the \$2.4 million of “uneconomic” investment. (PNG Statement No. 1-R, pp. 26-27.)

Clearly, under OCA’s recommendation, the line extension would not result in a reasonable return of investment for PNG, and would likely result in existing customers being forced to subsidize the proposed uneconomic line extensions for the GBM customers. Such a result is contrary to law and must be rejected.

C. Other Issues

1. This Case Is Not The First Time The Commission Has Reviewed GBM Issues.

Arguably, in an effort to justify walking away from a settlement provision that it agreed to less than a year ago, the OCA asserts that this consolidated proceeding is the Commission's first opportunity to address how to fairly and equitably treat the GBM customers. (OCA Main Brief, p. 2.) This is incorrect, as the Commission has had numerous opportunities to address GBM issues, most notably:

- *Morgan, et al. v. Pennsylvania Gas and Water Company*, Docket No. C-19852, I.D. 166 (Jan. 30, 1974). The Commission recognized that it might be uneconomical to extend distribution mains to serve some propane customers and, therefore, further directed PG&W to continue to provide propane service to these customers at the natural gas rate. The Commission also held that PG&W could address cost recovery issues in its next rate case. (*See* OCA Statement No. 1, Appendix II, pp. 5-6.)
- Southern Union Company's 2006 base rate proceeding at Docket No. R-00061365. The Commission approved the establishment of Tariff Rate GBM and the recovery of all propane costs through the PGC. (PNG Statement No. 1-R, p. 8.)
- The Commission's informal investigation into GBM programs at Docket No. M-2088-2072850. In its Order, the Commission identified specific issues and concerns about GBM service that required further investigation. This on-going investigation, which has not yet been concluded.
- PNG's 2009 base rate case at Docket No. R-2008-2079660. In the 2009 PNG base rate case settlement, parties, including the OCA, agreed to the elimination of Rate GBM by August 2014 (absent a Commission order finding the continuation of PNG's GBM service, or all GBM service, to be in the public interest) due to the Commission's concern over the continued subsidy of propane costs to long-term GBM customers by all other PGC customers.
- PNG's 2011 PGC proceeding at Docket No. R-2011-2238943. The Commission approved the Company's proposed mechanism to transition GBM customers to market-based propane pricing by 2014 as a means of addressing the intent of the Commission's earlier order to eliminate the Rate GBM subsidies by 2012 and, importantly, allow GBM customers to continue to receive regulated service from PNG.
- *Adams v. UGI Utilities, Inc. – Gas Division*, Docket No. C-2010-2182016 (October 31, 2011). In a case almost identical to the pending Complaints, the Commission

held that UGI does not have any obligation under the 2009 PGC Settlement to convert the Complainant's propane service to natural gas distribution service, and that UGI should follow its usual line extension process for GBM customers.

Based on the foregoing, it is clear that the Commission and parties have had numerous opportunities to consider GBM issues. Indeed, the Commission recently has addressed the very same legal issue presented in this case, *i.e.*, whether PNG is obligated to extend natural gas distribution mains to the GBM customer complainants or to continue to provide propane at natural gas rates indefinitely. For these reasons, the relief requested in the Complaints and advocated by the OCA should be denied.

2. Customer Notice and Opportunity to Address GBM Issues.

The OCA and several of the GBM Complainants raise the question whether customers received notice of the changes to the GBM tariff service. (OCA Main Brief, p. 2.) This argument is without merit and should be denied.

Administrative agencies, such as the Commission, are required to provide due process to the parties. However, it is well-established that due process is satisfied when the parties are afforded notice and the opportunity to appear and be heard. *Schneider v. Pa. PUC*, 479 A.2d 10, 15 (Pa. Cmwlth. 1984) (citing *Fusaro v. Pa. PUC*, 382 A.2d 794 (Pa. Cmwlth. 1978); *Township of Middleton v. The Institute District of The County of Delaware*, 293 A.2d 885 (Pa. Cmwlth. 1972), *aff'd*, 450 Pa. 282, 299 A.2d 599 (1973)). For example, in *Pa. PUC v. United Water Pennsylvania*, Docket Nos. R-00973947, *et al.*, 1997 Pa. PUC LEXIS 173 (December 3, 1997) (*Recommended Decision*), a large user group opposed a settlement arguing that because customers, specifically large use customers, received no notice of the Joint Settlement's rate increase, these customers were thus denied constitutional rights to reasonable notice and an opportunity to be heard on the ultimate increase. *Id.* at *141. The large user group argued that the fact that the rate increase was being proposed through the settlement process rather than a

formal ratemaking process did not excuse the utility from its obligation to provide notice to the affected ratepayers. *Id.* at *141-42. The ALJ concluded that the large user group’s “due process argument is without merit. As all the parties to the stipulation have pointed out, [the large user group], and all other customers, did receive notice of the Company’s initial filing in this case, and had every opportunity to participate in every aspect of the proceeding.” *Id.* at *163. The Recommended Decision was ultimately affirmed by the Commission. *Pa. PUC v. United Water Pennsylvania*, Docket Nos. R-00973947, et al., 1998 Pa. PUC LEXIS 125 (January 30, 1998).²⁰

Here, PNG provided notice of its impending 2009 base rate case to all of its customers in accordance with all the statutory and regulatory due process protections contained in the Public Utility Code and the Commission’s administrative procedures. (PNG Statement 1-R, p. 29.) With respect to tariff and rate changes, Section 53.45 of the Commission’s regulations require a public utility to provide notice to the public using a mandatory form of notice that states, in pertinent part, as follows:

The state agency which approves rates for public utilities is the PUC. The PUC will examine the requested rate increase and can prevent existing rates from changing until it investigates and/or holds hearings on the request. The company must prove that the requested rates are reasonable. After examining the evidence, *the PUC may grant all, some, or none of the request or may reduce existing rates.*

The PUC may change the amount of the rate increase or decrease requested by the utility for each customer class. As a result, the rate charged to you may be different than the rate requested by the company and shown above.

²⁰ See also *Harrisburg Steel Corp. v. Pa. PUC*, 109 A.2d 719, 726 (Pa. Super. 1954) (“we are unable to agree that there was a failure of administrative due process, as contended by one of the appellants, in the elimination of the B rates by the Commission without notice to the affected industrial users”).

52 Pa. Code § 53.45 (emphasis added). Clearly, the Commission's regulations contemplate changes in rates and tariff provisions that may not have been requested in initial rate case filing. In other words, everything is on the table.

Notably, PNG cannot predict all issues that may arise during a rate case and, therefore, cannot list all issues that will be addressed in the proceeding. Indeed, PNG did not raise the GBM issue in the 2009 base rate proceeding. Rather, the elimination of rate GBM was first mentioned in the direct testimony of the witness for the OTS. Although the GBM issue was not part of PNG's initial filing, this does not change the fact that the GBM customers received notice of the rate case and had every opportunity to participate in every aspect of the proceeding, but declined to do so. *See Pa. PUC v. United Water Pennsylvania, supra*. Clearly, PNG's notice of the 2009 base rate case satisfied the Commission's due process requirements.

Moreover, the current treatment of the GBM customers was addressed in the 2011 PGC filing, which ultimately led to the approval of the transition of GBM customers to market rates over a four year schedule. Importantly, PNG provided *advanced notice* of its transition proposal to all GBM customers by way of a letter mailed in May, 2011, which outlined the proposed transition schedule and provided notice to the customers of their rights to file complaints if they wished to challenge the transition. (PNG Statement No. 1-R, p. 30.) Clearly, the GBM Complainants had notice of the transition to market-based propane rates proposed in the 2011 PGC proceeding, and the opportunity to participate in every aspect of that proceeding. Indeed, as a result PNG's mailings, one of the GBM complainants, Ms. Moran-Roberto, became a party to the PNG 2011 PGC proceeding. (PNG Statement No. 1-R, p. 30.)

3. Service Issues

In an effort to demonstrate that PNG has violated Sections 1501 and 1502 of the Public Utility Code, 66 Pa.C.S. § 1501, and Chapter 56 of the Commission's regulations, the OCA

raises numerous service-related issues in its brief, including inspection of facilities and appliances, propane supplier changes, billing issues, and customer service. (Main Brief, pp. 40-41.) However, these issues are completely unrelated to and have no effect on the primary issue in this case -- whether PNG is obligated to make uneconomical main extensions. In essence, the OCA is raising these service-related issues in an attempt to bootstrap its burden to demonstrate that the facts and circumstances have changed so drastically as to render the Commission's prior approval of line extension and GBM service provisions of PNG's tariff unreasonable. *Kanowicz v. PPL Electric Utilities Corporation*, Docket No. C-20043915, (Order entered November 1, 2005) (citing *Brockway Glass Co. v. Pa. PUC*, 437 A.2d 1067 (Pa. Cmwlth. 1981)).

Further, only one complainant raised any service related issue in his Complaint. A review of the GBM Complaints clearly indicates that all of the GBM Complainants opposed the rate increase, *i.e.*, the phase-in of GBM service to market-based propane rates.²¹ The service-related issues raised by the OCA are outside the scope of GBM Complaints.

Moreover, there is an adequate and proper remedy to address these alleged service concerns. The GBM Complainants each could file formal complaints with the Commission that actually raise and allege service-related issues. More importantly, if Commission were to conclude that there are specific service-related issues, the remedy is for the Company to take prospective steps to correct the service issues; not force PNG to make uneconomic main extensions at the expense of other customers.

²¹ A review of the Formal Complaints clearly indicates that the only Complaint to raise any service-related issues was the Complaint of John Hennigan, Docket No. C-2011-2262771, which alleges that he was discontinued from PNG's automatic bill pay program after filing a complaint with the PUC. This issue was fully addressed in PNG's rebuttal testimony and is explained below.

On page 50 of its Brief, the OCA lists ten reasons why PNG violated Section 1501 of the Public Utility Code and failed to provide safe, adequate, reasonable and efficient service. PNG responds to these allegations below.

First, OCA argues that PNG violated Section 1501 by discontinuing automatic bill payments without providing advance notice. In this proceeding, several of the Complainants orally testified that a hold was put on their automatic payment upon the filing of a complaint with the Commission.²² At the hearing, PNG explained that the Company's computer system automatically will temporarily suspend automatic withdrawal payments when a customer files a complaint to eliminate the chance that the Company will withdraw a payment from a customer whose complaint involves a billing amount that is in dispute. Typically, most customers contact the Company about a dispute prior to the complaint being filed, and are made aware of this policy at this time. However, prior to this consolidated proceeding, the Company did not have a procedure in place to notify customers about the suspension of automatic bill pay if the customer files a complaint without first notifying the Company. PNG explained that, as a result of these GBM customers' experience, the Company will revise its automatic bill pay procedures to allow the automatic withdrawal to continue if the customer confirms that they do not want to be removed and to contact customers in situations where the customer filed a dispute without first

²² A separate billing issue was raised by Mr. and Mrs. Rowlands. The Rowlands testified that they received a bill from a collection agency for service performed by PNG to repair a gas leak; however, the agency sent the bill to the wrong address. PNG explained that the bill was for service work related to repairing a leak and not for utility service. The service bill is a separate bill from the utility bill. Although the Rowlands continuously received their utility bills, it appears that the address on the service bill was inadvertently transposed and, consequently, it is possible that the Rowlands did not receive the bill before it went to collections. To the extent that the Rowlands have paid the collections agency, PNG agreed to credit the paid amount to the Rowlands account. (PNG Statement No. 2-R, p. 17.) PNG represents that the Rowlands account has been fully credited as of the date of this Response Brief.

confirming whether they wish to have the automatic withdrawal suspended or to continue. (PNG Statement No. 2-R, pp. 12-13.)

Second, OCA argues that PNG sent a termination notice to a customer that filed a Formal Complaint. (OCA Main Brief, p. 56.) This situation was related to the suspension of the automatic bill payment. PNG has taken steps to address this issue in response to its customers' concerns. (PNG Statement No. 2-R, pp. 12-13.)

Third, the OCA notes that several GBM Complainants were confused by statements made by PNG customer service representatives. To address this concern, PNG explained that is revising its training procedures to improve the customer service representatives understanding of the GBM program to better facilitate customer service to GBM customers. (PNG Statement No. 2-R, p. 14.)

Fourth, the OCA argues that PNG failed to advise customers of the Commission's formal complaint process if they are unsatisfied with their service. None of the GBM Complainants raised this issue in their Complaints or testimony. Therefore, PNG did not have an opportunity to ask discovery regarding this issue or to respond on the record. The OCA should not be permitted to raise issues that are outside the scope of the Complaints minute because PNG did not have a reasonable opportunity to investigate or respond to these issues.

Fifth, the OCA argued that the Company informed current customers that they did not have service with the Company. Again, none of the GBM Complainants raised this issue in their Complaints. PNG did not have an adequate opportunity to investigate or respond to this issue on the record in this proceeding.

Sixth, the OCA notes that certain propane tanks had run dry on specific occasions. Complainant Donnelly testified that she had run out of propane on several occasions "over the

years,” although she did not specify when. (April 5 Tr., p. 68); Complainant Linbuchler testified that he ran out of propane in 2006 or 2007 (April 5 Tr., p. 155); and Complainant Fuhr testified that ran out of propane in the early 1970s (April 5 Tr., p. 211).

The record clearly establishes that, since these occurrences, an electronic device has been installed on the propane tanks of the GBM Complainants to remotely monitor the volume of propane in the tanks on a percentage basis. The device notifies the propane supplier when the propane level percentage in the tanks reaches 40%, 17% and 12%, at which time an alarm sounds to indicate a low tank level requiring immediate attention. (PNG Statement No. 2-R. pp. 15-16.) Therefore, it is unlikely that these GBM customers will experience empty tanks in the future.

Although it is unclear exactly when Complainant Donnelly ran out of propane, it is clear that these service related claims of Complainants Linbuchler and Fuhr are barred by the three-year statute of limitation. *See* 66 Pa.C.S. § 3314. Moreover, Ms. Donnelly’s claim was not clear and likely occurred many years ago if she could not recall when it happened.

Seventh, the OCA argues that PNG failed to properly maintain propane tanks and tank sites. To the contrary, PNG has properly maintained all propane tanks and tank sites and in fact several customers complained that PNG was conducting safety inspections. (PNG Statement No. 2-R, pp. 10-11.) The OCA also raises the issue of the safety of the location of propane tanks on properties of certain GBM Complainants.²³ It is important to note that propane tank installations by propane suppliers are subject to Federal safety standards. The record establishes that the propane supplier inspected the tanks in question and found them to be in safe working order.

²³ During the hearing, Mr. Fuhr and Mr. Pope raised a specific issue regarding the location of three propane tanks located near and serving their properties. In particular, the area near the three propane tanks was being used as a turnaround for vehicular traffic. Although the propane supplier indicated that the installation meets all required safety standards, PNG stated that it was willing to install concrete bollards at the tank site to address Mr. Fuhr’s and Mr. Pope’s perceived safety concerns. (PNG Statement No. 2-R. pp. 15-16.)

Further, the record establishes that the propane supplier raised propane tanks, leveled them, and added cement blocks support for the tanks as necessary. (PNG Statement No. 2-R. pp. 15-16.)

Eighth, the OCA argued that PNG served multiple customers from one customers' property without an easement or compensation. No customer complained about this issue. Moreover, PNG explained that, under its tariff, PNG employees and contractors have the right to access a property to conduct safety inspections, installations, operations, inspections, and maintenance of the facilities. Further, PNG's tariff provides it with the right to discontinue service if access to the facilities is not provided. (PNG Statement No. 2-R, pp. 10-11; PNG Hearing Exhibit 3.)

Ninth, the OCA argues that PNG's engaged in practices contrary to the Public Utility Code and regulations. Although not raised in their Formal Complaints, several Complainants in their oral testimony appeared upset that Amerigas, the applicable propane supplier at the time, wanted to inspect their propane tanks and come into their homes to conduct a safety inspection of their gas appliances. Amerigas conducted these inspections when it became the customers' supplier of propane. PNG explained that the purpose of the inspection was to make sure that the propane tanks and appliances were safe before Amerigas began providing propane to the property. Indeed, several of the witnesses testified that the inspections resulted in tanks being replaced or relocated, several leaks being detected from appliances, and new meters being installed to facilitate the timely delivery of propane. Clearly, there is a substantial public safety benefit associated with inspecting propane appliances and facilities. (PNG Statement No. 2-R, p. 11.)

Although not raised in their Formal Complaints, several of the Complainants orally testified that they were concerned by the number of times the propane supplier has been changed.

Pursuant to the Commission's recommendations and policy, PNG regularly conducts requests for proposals to solicit bids from propane suppliers to provide propane supply. PNG selects the propane supplier with the best price. PNG does this to ensure that it is obtaining the least cost supply for all supplier of last resort customers, including natural gas supplier of last resort customers that are responsible for paying propane subsidies. Consequently, suppliers may frequently change depending upon the results of the request for proposal process. (PNG Statement No. 2-R, pp. 11-12.)

Tenth, the OCA argues that PNG failed to advise the GBM Complainants of the phase-out of the GBM program at the earliest opportunity. As explained above, PNG provided *advanced notice* of its transition proposal to all GBM customers by way of a letter mailed in May, 2011, which outlined the proposed transition schedule and provided notice to the customers of their rights to file complaints if they wished to challenge the transition. (PNG Statement No. 1-R, p. 30.) Clearly, PNG provided GBM customers with notice of the phase-in to market based propane rates at the earliest opportunity.

Although the aforementioned service issues are entirely unrelated to the primary at issue in this proceeding -- whether PNG is obligated to extend mains to the GBM Complainants or provide propane at natural gas rates indefinitely -- the record clearly indicates that PNG has been responsive to the concerns of the GBM Complainants, many of which have been already fully resolved. PNG's efforts to resolve these concerns will not only benefit the GBM Complainants, but will generally benefit all GBM customers. The OCA simply disregards PNG's efforts and the record evidence. For these reasons, the relief requested in the Complaints and advocated by the OCA should be denied.

VII. CONCLUSION

WHEREFORE, for the foregoing reasons, UGI Penn Natural Gas, Inc. respectfully requests that the Honorable Ember Jandebour and the Pennsylvania Public Utility Commission enter an order denying the relief requested in the following consolidated Formal Complaints:

Formal Complaint filed by Kathleen Moran-Roberto at Docket No. C-2011-2251178;

Formal Complaint filed by John Calafut at Docket No C-2011-2253878;

Formal Complaint filed by Jerome Fuhr at Docket No. C-2011-2254311;

Formal Complaint filed by Daniel L. Pope at Docket No C-2011-2258722;

Formal Complaint filed by Dolores Alar at Docket No. C-2011-2266076;

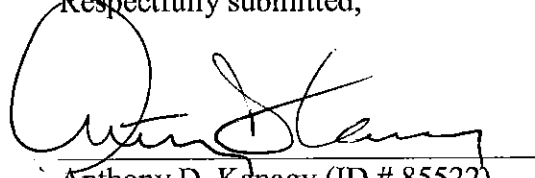
Formal Complaint filed by Charles Schulz at Docket No. C-2011-2267370;

Formal Complaint filed by John Hennigan at Docket No. C-2011-2262771;

Formal Complaint filed by Robert Rowlands at Docket No. C-2011-2272802; and

Formal Complaint filed by Alfred and Stephanie Donnelly at Docket No. C-2012-2281722, joined in by Joseph Michaels and Fred Linbuchler.

Respectfully submitted,



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APPENDIX A
Proposed Findings of Fact

UGI Penn Natural Gas, Inc. (“PNG” or the “Company”) proposes the following findings of fact:

1. PNG has provided a gas beyond the mains (“GBM”) tariff service pursuant to its Pennsylvania Public Utility Commission (“Commission”) approved tariff. GBM is a tariff offering by which PNG, at its sole option and discretion, supplies customers with propane gas in lieu of natural gas. (PNG Statement No. 1-R, pp 8-9.)

2. These customers are supplied propane gas because they are beyond the economic reach of PNG’s distribution mains. (PNG Statement No. 1-R, pp 8-9.)

3. The GBM service began in or about 1963, when PNG’s predecessor in interest, Pennsylvania Gas and Water Company (“PG&W”), began offering propane gas in lieu of natural gas to certain customers that were beyond the territory supplied by PG&W’s distribution mains. PG&W’s propane service was offered where the extension of natural gas facilities was, at the time, uneconomic but was anticipated, but not guaranteed, to be economic in the near future. (PNG Statement No. 1-R, p. 4.)

4. On or about January 15, 1973, PG&W notified its propane customers, in writing, that PG&W would not be extending natural gas service to GBM customers, and that PG&W would no longer provide liquid propane at natural gas tariff rates. (PNG Statement No. 1-R, p. 5; Pope Exhibit No. 1.)

5. In an order entered January 30, 1974, the Commission found that PG&W did not have the capability to expand its distribution mains to serve all of its propane customers, and that

PG&W was incurring substantial losses as a result of its GBM propane service. The Commission therefore directed PG&W to extend its distribution mains to such customers under a “reasonable main extension policy.” (OCA Statement No. 1, Appendix II, p. 5; *Morgan, et al. v. Pennsylvania Gas and Water Company*, Docket No. C-19852, I.D. 166 (Jan. 30, 1974).)

6. The Commission recognized that it might be uneconomical to extend distribution mains to serve some propane customers and, therefore, further directed PG&W to continue to provide propane service to these customers at natural gas rates. (OCA Statement No. 1, Appendix II, p. 5; *Morgan, et al. v. Pennsylvania Gas and Water Company*, Docket No. C-19852, I.D. 166 (Jan. 30, 1974).)

7. GBM customers received substantial subsidies over the years on the GBM program. (PNG Statement No. 2-R, pp. 5-6; PNG Hearing Exhibit 1.)

8. When looking at the variance between what a customer would pay as a GBM customer versus the average delivery price for propane for the period between 1990 and 2012, the average annual savings for the customer by being on GBM was approximately \$1,093 per year, assuming an average annual usage of 100 Mcf. (PNG Statement No. 2-R, pp. 5-6; PNG Hearing Exhibit 1.)

9. For the 22 year period, the total subsidy per GBM customer would have been approximately \$24,024. (PNG Statement No. 2-R, pp. 5-6; PNG Hearing Exhibit 1.)

10. Likewise, if a GBM customer had selected electric baseboard heat, they would have paid an average of \$2,050.00 per year more for electric heat, paying an average of \$45,100 more over the 22 year period. (PNG Statement No. 2-R, pp. 5-6; PNG Hearing Exhibit 1.)

11. PNG provided notice of its 2009 base rate case at Docket No. R-2008-2079660 to all of its customers in accordance with all the statutory and regulatory due process protections

contained in the Public Utility Code and the Commission's administrative procedures. (PNG Statement 1-R, p. 29.)

12. As part of its 2009 base rate case, PNG proposed, among other things, to continue its GBM tariff service. During the base rate proceeding, the Commission's Office of Trial Staff ("OTS"), now the Bureau of Investigation and Enforcement ("I&E"), recommended the discontinuance of Rate GBM to eliminate the continued subsidy of propane costs to long-term GBM customers by all other PGC customers. (PNG Statement No. 1-R, p. 9.)

13. On August 27, 2009, the Commission entered an order in PNG's 2009 base rate case approving a settlement that provided for the elimination of the GBM service by 2014. All parties in the base rate case, including the Office of Consume Advocate ("OCA"), were signatories to the Commission-approved settlement of the 2009 base rate case. (PNG Statement No. 1-R, pp. 9-10.)

14. In its 2011 PGC proceeding at Docket No. R-2011-2238943, PNG proposed to implement the GBM terms of the 2009 base rate case settlement by transitioning existing GBM customers to market based rates for propane in such a way that long-term PNG GBM customers would be paying the full market rate for propane by August 27, 2014, five years after the date of entry of the Commission's base rate case order. (PNG Statement No. 1-R, pp. 10-11.)

15. PNG provided advanced notice of its transition proposal to all GBM customers by way of a letter mailed in May, 2011, which outlined the proposed transition schedule and provided notice to the customers of their rights to file complaints if they wished to challenge the transition. (PNG Statement No. 1-R, p. 30.)

16. On October 14, 2011, the Commission entered an order in PNG's 2011 PGC proceeding approving a settlement that provided for the continuation of the GBM service with a

phase-in to market-based propane rates. All parties in the 2011 PGC proceeding, including the OCA, were signatories to the Commission-approved settlement. (PNG Statement No. 1-R, pp. 10-11.)

17. Under the transition rate mechanism approved by the Commission in the 2011 PGC proceeding, and agreed to by OCA, PNG will continue to provide the same regulated service and the benefits that come from regulated service -- such as monthly metering and billing, safety inspections, emergency response and various bill payment options -- while at the same time addressing the I&E's concerns about cross-subsidization. (PNG Statement No. 2-R, p. 6.)

18. The GBM Complainants filed Formal Complaints challenging the Commission-approved continuation of the GBM service with a phase-in to market based propane rates.

19. Each of the Complaints alleged that PG&W, PNG's predecessor, entered into an agreement with the GBM customers that obligates PNG to extend natural gas distribution mains to the GBM Complainants or to continue to provide propane at natural gas rates indefinitely.

20. The OCA and Complainants further contend that PNG should be required to extend natural gas mains to the GBM Complainants without requiring any contribution in aid of construction ("CIAC") in violation of PNG's Commission-approved line extension tariff provisions.

21. PNG's Commission-approved line extension tariff provisions provide that if the investment in facilities is not warranted by the anticipated revenue to be derived from the extension, customers are entitled to a line extension only with a customer contribution. (PNG Exhibit DEL 3, PNG Gas -- Pa. P.U.C. No. 8, Original Pages 19 through 21).

22. The Company uses 5.5 times the annual margin to calculate the allowance and the predetermined rate of return. (PNG Statement No. 2-R, p. 9; April 6 Tr. pp. 16, 19.)

23. PNG applied the tariff provisions and estimated that the cost to extend mains to serve the 11 Complainants would be \$1.8 million. (PNG Statement 1-R, pp. 26-27; PNG Exhibit DEL 2.)

24. All of the GBM Complainants asserted that PNG should extend natural gas mains to provide natural gas service and that they were unwilling to provide any CIAC. (April 5 Tr., pp. 49, 130, 149, 166, 175, 192, 214, 226, 237, 253, 274.)

25. If no CIAC is made by the customer, the payback periods for the eleven Complainants' extensions range from 24 years to 1,157 years. When taken together, the payback period for the group as a whole without any CIAC is 289 years. (PNG Statement No. 1-R, p. 24.)

26. GBM customers are new applicants for natural gas distribution service because they are not already receiving this type of service. (PNG Statement No. 1-R, p. 21; April 6 Tr., p. 69.)

27. There is no provision in the Company's tariff excluding GBM customers from the line extension rules. (PNG Exhibit DEL 3, PNG Gas – Pa. P.U.C. No. 8, Original Pages 19 through 21).

28. The Company applies its line extension rules uniformly to all customers that request an extension of the Company's distribution lines, as well as to all existing customers that request an expansion of the Company's facilities. (April 6 Tr., pp. 19-21.)

29. PNG has no record of any agreement, promise, or representation being made by PG&W to extend natural gas distribution mains to the GBM customer complainants or to continue to provide propane at natural gas rates indefinitely. (PNG Statement No. 1-R, p. 15.)

30. Nine of the eleven Complainants are not the original home owners. (PNG Statement No. 1-R, p. 16; April 5 Tr. pp. 56, 151, 168.)

31. Although two GBM Complainants are the original home owners, only Complainant Donnelly testified that PG&W representatives expressly offered her propane service at natural gas rates until mains could be extended. (April 5 Tr., p. 58.) However, Complainant Donnelly admitted that the representatives from PG&W were unable to anticipate when, if ever, the mains would be extended. (April 5 Tr., p. 59.)

32. PNG's Commission-approved tariff explicitly provides that "[n]o agent or employee of the Company has authority to make any promise, agreement or representation not consistent with this Tariff." Both PG&W's and PG Energy's tariffs contained a similar provision. (PNG Exhibit DEL 5 and 6.)

33. Under the 2011 PGC settlement, PNG will continue to provide propane service to the GBM customers. The only thing that will change is that the propane subsidy paid by non-GBM customers is being eliminated. (PNG Statement No. 1-R, pp. 22-23.)

34. Under the 2011 PGC settlement, the GBM customers will continue to receive many benefits through the GBM program, which include monthly metering and billing, optional budget billing, auto-pay and electronic billing options, a due date extension program, customer assistance programs, low income weatherization programs, customer education and conservation communications, safety inspections, emergency response and the consumer protections afforded

them under 52 Pa Code, Chapter 56, such as payment agreements for outstanding balances in arrears. (PNG Statement No. 1-R, pp. 22-23.)

35. The distribution charges paid by GBM customers were in no way “incremental” to the Company’s approved rate of return. Had GBM customers not paid distribution charges, the rates for all other customers would have been higher. (PNG Statement No. 1-R, p. 28.)

36. The distribution rates paid by PNG customers, including GBM customers, are established to provide the revenue required for the Company to recover all existing costs associated with serving a class of customers as a whole. The distribution charges paid by the GBM customers are not meant as a payment to recover some future expansion of gas facilities. (PNG Statement No. 1-R, p. 23.)

37. The uneconomic portion of the investment to extend mains to serve the 11 GBM Complainants, and 138 of the proximate GBM customers, and potential new customers for which the Company has current cost estimates, would be approximately \$2.4 million. It would take the addition of approximately 1,176 customers to offset the uneconomic investment. (PNG Statement No. 1-R, pp. 26-27.)

38. The majority of the property along the mains required to serve the 11 GBM Complainants is either very rural or is fully built out. The Company would not be able to recoup more than a small fraction of the \$2.4 million of “uneconomic” investment. (PNG Statement No. 1-R, pp. 26-27.)

39. The Commission and parties have had numerous opportunities to consider GBM issues. (PNG Statement No. 2-R, pp. 4-5.)

40. The only Complaint to raise any service-related issues was the Complaint of John Hennigan, Docket No. C-2011-2262771, which alleges that he was discontinued from PNG's automatic bill pay program after filing a complaint with the PUC.

41. PNG's computer system automatically will temporarily suspend automatic withdrawal payments when a customer files a complaint to eliminate the chance that the Company will withdraw a payment from a customer whose complaint involves a billing amount that is in dispute. The Company is in the process of revising its automatic bill pay procedures, including to allow the automatic withdrawal to continue if the customer confirms that they do not want to be removed and contacting the customers in situations where the customer filed a dispute without first confirming whether they wish to have the automatic withdrawal suspended or to continue. (PNG Statement No. 2-R, pp. 12-13.)

42. PNG is revising its training procedures to improve the customer service representatives understanding of the GBM program to better facilitate customer service to GBM customers. (PNG Statement No. 2-R, p. 14.)

43. An electronic device has been installed on the propane tanks of the GBM Complainants to remotely monitor the volume of propane in the tanks on a percentage basis. (PNG Statement No. 2-R. pp. 15-16.)

44. PNG has properly maintained all propane tanks and tank sites. (PNG Statement No. 2-R, pp. 10-11.)

45. Propane suppliers inspected the tanks and found them to be in safe working order. Further, the propane supplier raised propane tanks, leveled them, and added cement blocks support for the tanks as necessary. (PNG Statement No. 2-R. pp. 15-16.)

46. Under its tariff, PNG employees and contractors have the right to access a property to conduct safety inspections, installations, operations, inspections, and maintenance of the facilities. Further, PNG's tariff provides it with the right to discontinue service if access to the facilities is not provided. (PNG Statement No. 2-R, pp. 10-11; PNG Hearing Exhibit 3.)

47. Amerigas conducted inspections of propane tanks when it became the customers' supplier of propane. The purpose of the inspection was to make sure that the propane tanks and appliances were safe before Amerigas began providing propane to the property. (PNG Statement No. 2-R, p. 11.)

48. Several of the inspections resulted in tanks being replaced or relocated, several leaks being detected from appliances, and new meters being installed to facilitate the timely delivery of propane. (PNG Statement No. 2-R, p. 11.)

49. PNG regularly conducts requests for proposals to solicit bids from propane suppliers to provide propane supply. Suppliers may frequently change depending upon the results of the request for proposal process. (PNG Statement No. 2-R, pp. 11-12.)

50. PNG selects the propane supplier with the best price. PNG does this to ensure that it is obtaining the least cost supply for all supplier of last resort customers, including natural gas supplier of last resort customers that are responsible for paying propane subsidies. PNG Statement No. 2-R, pp. 11-12.)

APPENDIX B
Proposed Conclusions of Law

UGI Penn Natural Gas, Inc. (“PNG” or the “Company”) proposes the following conclusions of law:

1. Tariff provisions previously approved by the Pennsylvania Public Utility Commission (“Commission”) are deemed just and reasonable and, therefore, a party challenging a previously-approved tariff provision bears the burden to demonstrate that the Commission’s prior approval is no longer justified. *See, e.g., Pa. PUC v. Philadelphia Gas Works*, Docket Nos. R-00061931, *et al.*, 2007 Pa. PUC LEXIS 45 at *165-68 (September 28, 2007) (adopting the ALJ’s discussion on burden of proof); *Brockway Glass Co. v. Pa. PUC*, 437 A.2d 1067, 1070 (Pa Cmwlth. 1981).

2. To meet their burden of proof, the Office of Consumer Advocate (“OCA”) and Complainants must demonstrate, by a preponderance of the evidence, that the facts and circumstances have changed so drastically as to render the Commission’s prior approval of the line extension and gas beyond the main (“GBM”) service provisions of PNG’s tariff unreasonable. *Kanowicz v. PPL Electric Utilities Corporation*, Docket No. C-20043915, (Order entered November 1, 2005) (citing *Brockway Glass Co. v. Pa. PUC*, 437 A.2d 1067 (Pa. Cmwlth. 1981)).

3. PNG’s line extension provisions have been approved by the Commission as part of PNG’s tariff and, therefore, have the force and effect of law. *Pa. Electric Co. v. Pa. PUC*, 663 A.2d 281 (Pa. Cmwlth. 1995); *Brockway Glass Co. v. Pa. PUC*, 437 A.2d 1067 (Pa. Cmwlth. 1981); *Stiteler v. Bell Telephone Co. of Pa.*, 379 A.2d 339 (Pa. Cmwlth. 1977).

4. A public utility may not charge any rate or provide a service other than that lawfully tariffed. *Pennsylvania Electric Co. v. Pa. PUC*, 663 A.2d 281, 284 (Pa. Cmwlth. 1995); *The Bell Telephone Company of Pennsylvania v. Pa. PUC*, 417 A.2d 827, 828-29 (Pa. Cmwlth. 1980).

5. The Commission-approved line extension provisions of PNG' tariff provide that if the investment in facilities is not warranted by the anticipated revenue to be derived from the extension, customers are entitled to a line extension only with a customer contribution. (PNG Exhibit DEL 3, PNG Gas – Pa. P.U.C. No. 8, Original Pages 19 through 21).

6. Under Section 1501 of the Public Utility Code, utilities are only required to extend service to customers requires “under reasonable conditions” subject to the regulations and orders of the Commission. 66 Pa.C.S. § 1501; *Fayette County Gas Co. v. Pa. PUC*, 33 A.2d 761 (Pa. Super. 1943).

7. Section 1501 of the Public Utility Code, “affirmatively recognizes that reasonable conditions may attach to the rendering of mandated service.” *Popowsky v. Pa. PUC*, 589 Pa. 605, 910 A.2d 38 (2006).

8. PNG's line extension rules do not violate Section 1501.

9. There is only one main extension provision in PNG's tariff, which PNG consistently applies to all line extension requests, whether they are new or existing customers.

10. PNG's main extension rules apply to GBM customers. *Adams v. UGI Utilities, Inc. – Gas Division*, Docket No. C-2010-2182016 (October 31, 2011).

11. Given the estimated cost to extend mains to serve the 11 GBM Complainants, and the Complainants stated position of being unwilling to provide any contribution in aid of

construction (“CIAC”), these investments would be extremely uneconomical and not meet the minimum tariff standard.

12. Even if the main extension rules did not apply, this does not mean that PNG must extend service without CIAC. Pennsylvania case law clearly has recognized that a public utility’s duty to provide line extensions is not unlimited and, therefore, will not obligate the public utility to make line extensions that are uneconomic or unreasonable. *Sherman v. Public Service Commission*, 90 Pa. Superior Ct. 523 (1927).

13. If PNG is required to extend mains to customers, PNG must be permitted to earn a return on its investment in those mains. *Federal Power Comm’n v. Hope Natural Gas Co.*, 320 U.S. 591 (1944); *Bluefield Waterworks and Imp. Co. v. P.S.C. of West Virginia*, 252 U.S. 679 (1923); *Pa. P.U.C. v. Pennsylvania Gas and Water Co. – Water Division*, 492 Pa. 326, 424 A.2d 1213 (198), *cert. denied*, 454 U.S. 824 (1981).

14. There is no authorization under the Public Utility Code or the Constitution for PNG’s shareholders to bear the costs of uneconomic main extensions.

15. If PNG is required to extend uneconomical gas mains, the costs of those mains must be borne by all customers, not PNG.

16. All aspects of PNG’s provision of GBM service has been in strict accordance with the Commission’s regulations and orders.

17. PNG is not terminating propane service but, rather, will continue the GBM service and transition long-term GBM customers to market based rates.

18. PNG will continue to provide continuous and reliable service to the GBM Complainants consistent with Section 1501.

19. PNG is strictly following the terms and conditions of the Commission-approved settlements agreed to by the parties, including OCA, and the provisions of its Commission-approved tariff.

20. There can be no lawful rate except the last tariff published as provided by law, which supersedes all prior rates relating to the service called for. *The Bell Telephone Company of Pennsylvania v. Pa. PUC*, 417 A.2d 827, 828-29 (Pa. Cmwlth. 1980).

21. Any agreement guaranteeing a rate or service outside of tariff rules would be unenforceable and void as against public policy. A public utility can only charge tariffed rates to customers and cannot enter into special agreements that are outside of the tariff with customers. Tariffs have the force and effect of law and parties cannot contractually alter the terms of a tariff. *Pa. Electric Co. v. Pa. PUC*, 663 A.2d 281 (Pa. Cmwlth. 1995); *Brockway Glass Co. v. Pa. PUC*, 437 A.2d 1067 (Pa. Cmwlth. 1981); *Stiteler v. Bell Telephone Co. of Pa.*, 379 A.2d 339 (Pa. Cmwlth. 1977).

22. A contract that attempts to fix rates for an indeterminate period cannot stand because this would excuse a customer from tariff revisions that may take place over a period of time. *Philadelphia Suburban Water Company v. Pa. P.U.C.*, 808 A.2d 1044, 1058 (Pa. Cmwlth. 2002) (citing *Leiper v. Baltimore & Philadelphia Railroad Co.*, 262 Pa. 328, 105 A. 551 (1918)).

23. GBM customers were never promised uneconomic main extensions and any such promise would be void as a matter of law.

24. The Commission has held that “[t]here cannot be any detrimental reliance such as would preclude the utility from carrying out its statutory duty to adhere to its tariff.” *Barbara J. Kieth v. Pennsylvania Power & Light Co.*, Docket No. C-00970726, 1998 Pa. PUC LEXIS 74 at *10 (August 24, 1998).

25. The GBM Complainants reliance on the GBM service does not preclude PNG from its obligation to comply with its tariff.

26. The continuation of the GBM service with a phase-in to market based rates is adequate, efficient, safe and reasonable service and, therefore, consistent with Section 1501 of the Public Utility Code.

27. The OCA and GBM Complainants have failed to introduce any facts or circumstances that have drastically changed since the Commission approved the 2009 base rate case and 2011 PGC settlements that would render the continuation of the GBM service with a phase-in to market based rates unreasonable. *Kanowicz v. PPL Electric Utilities Corporation*, Docket No. C-20043915, (Order entered November 1, 2005) (citing *Brockway Glass Co. v. Pa. PUC*, 437 A.2d 1067 (Pa. Cmwlth. 1981)).

28. PNG's notice of the 2009 base rate case satisfied the Commission's due process requirements.

29. The GBM Complainants had notice of the transition to market-based propane rates proposed in the 2011 PGC proceeding, and the opportunity to participate in every aspect of that proceeding.

30. PNG has not violated Sections 1501 and 1502 of the Public Utility Code, 66 Pa.C.S. § 1501, or Chapter 56 of the Commission's regulations.

31. The OCA and GBM Complainants have failed to meet their burden of proof in this proceeding.

APPENDIX C
Proposed Ordering Paragraphs

32. The Office of Consumer Advocate (“OCA”) and the eleven Complaints have failed to meet their burden to demonstrate that UGI Penn Natural Gas, Inc.’s (“PNG”) line extension are unreasonable or violate Section 1501 and 1502 of the Public Utility Code.

33. The OCA and the eleven Complaints have failed to meet their burden to demonstrate that PNG is obligated to make uneconomical main extensions to provide natural gas service to the eleven Complainants without any contribution in aid of construction in violation of its Commission-approved tariff.

34. The OCA and the eleven Complainants have failed to meet their burden to demonstrate that PNG and its shareholders should be required to bear the costs of uneconomic main extensions.

35. The eleven Complainants are unwilling to provide any contribution in aid of construction and, therefore, consistent with the terms and conditions of its Commission-approved tariff, PNG is not required to make uneconomical main extensions to provide natural gas service to the eleven Complainants.

36. The OCA and the eleven Complaints have failed to meet their burden to demonstrate that PNG’s Commission-approved gas beyond the mains tariff provisions are unreasonable or violate Section 1501 and 1502 of the Public Utility Code.

37. PNG is strictly following the terms and conditions of the Commission-approved settlement in the 2011 PGC proceeding at Docket No. R-2011-2238943, as set forth in PNG’s tariff.

38. The relief requested in the Formal Complaint filed by Kathleen Moran-Roberto at Docket No. C-2011-2251178 is denied.

39. The relief requested in the Formal Complaint filed by John Calafut at Docket No C-2011-2253878 is denied.

40. The relief requested in the Formal Complaint filed by Jerome Fuhr at Docket No. C-2011-2254311 is denied.

41. The relief requested in the Formal Complaint filed by Daniel L. Pope at Docket No C-2011-2258722 is denied.

42. The relief requested in the Formal Complaint filed by Dolores Alar at Docket No. C-2011-2266076 is denied.

43. The relief requested in the Formal Complaint filed by Charles Schulz at Docket No. C-2011-2267370 is denied.

44. The relief requested in the Formal Complaint filed by John Hennigan at Docket No. C-2011-2262771 is denied.

45. The relief requested in the Formal Complaint filed by Robert Rowlands at Docket No. C-2011-2272802 is denied.

46. The relief requested in the Formal Complaint filed by Alfred and Stephanie Donnelly at Docket No. C-2012-2281722 and joined by Joseph Michaels and Fred Linbuchler is denied.