COMMONWEALTH OF PENNSYLVANIA

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June 6, 2012

Rosemary Chiavetta, Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg.
400 North Street
Harrisburg, PA 17105

Re: Kathleen Moran-Roberto, et al.
v.
UGI Penn Natural Gas, Inc.
Docket No. C-2011-2251178, et al.

Dear Secretary Chiavetta:

Enclosed for filing is the Reply Brief of the Office of Consumer Advocate in the above-referenced proceeding.

Copies have been served as indicated on the enclosed Certificate of Service.

Respectfully submitted,

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Enclosure
cc: Honorable Ember S. Jandebeur
Certificate of Service
156130.doc

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	:	Joint
Fred Linbuchler	:	Joint
Office of Consumer Advocate, Intervenor	:	
Bureau of Investigation & Enforcement, Intervenor	:	
v.	:	
UGI Penn Natural Gas, Inc.	:	

REPLY BRIEF OF THE OFFICE OF CONSUMER ADVOCATE

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Dated: June 6, 2012

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I. INTRODUCTION

The Gas Beyond the Mains (GBM) Complainants in this proceeding have been awaiting natural gas service for many years. While awaiting natural gas service, these customers were placed into the GBM program and on the GBM tariff service. Under this program, these Complainants were to be provided propane service at natural gas prices until such time as the Company extended natural gas mains to their homes. Now these customers' gas commodity rates are being raised to the price of unregulated propane, but they will continue to pay the full level of PNG distribution rates, as if they had mains for natural gas service, even though no mains have been extended to their homes. These existing PNG customers are also now being told that if they want natural gas mains, they must make a substantial Contribution in Aid of Construction (CIAC) pursuant to PNG's main extension tariff.

The OCA respectfully submits that the fair, reasonable and equitable outcome for these Complainants is for PNG to be required to install mains to serve these Complainants with natural gas, without requiring CIAC from them. The OCA submits that the economic portion of the cost of the mains—calculated based on the full service life of the mains—should be included in PNG's base rates. The uneconomic portion, if any, should be initially borne by PNG's shareholders. As new customers are added to those mains, additional economic portions of the investment would be added to rate base. The testimony in this case demonstrates that there is every reason to believe that the extension of mains to these existing customers will attract additional new customers who can be served by these lines.

The Complainants relied on the statements made by PNG and its predecessors regarding the GBM program and have been preparing for natural gas service by maintaining and replacing their gas appliances, at great expense, for many years. They have also paid distribution

charges for all of these years expecting that they, too, would receive natural gas service. PNG and its corporate predecessors have benefitted from this program both through the return provided in the distribution rates paid by these customers and the promotion of natural gas service. Under the circumstances of this case, the most equitable solution to this controversy is to require PNG to install the natural gas mains to serve these Complainants.

In its Brief, the Company states it must apply its main extension tariff to the GBM customers, and when applied as PNG proposes, it is not economic to extend mains to the Complainants without substantial CIAC. As the OCA has demonstrated in its testimony and Main Brief, and as it will show in this Reply Brief, the Company's arguments regarding the application of its main extension tariff are without merit. First, these Complainants are *existing* customers seeking the same basic service that is provided to other residential customers. Their status as current customers makes them different from those applying for new service or an upgrade in service under the main extension tariff. They should not, and do not, have to apply for "new" service under the Company's tariff. Requiring them to do so would be contrary to the plain language of the Company's tariff. The Company also argues that it is required to apply the 5.5 year revenue projection number to determine the economic portion of the mains that would be extended to these customers, thus establishing the substantial CIAC claim of the Company. The Company's tariff does not include a formula for determining what constitutes an "economic" main extension and says nothing about a 5.5 year payback period. The OCA submits that the proper measure in the case of these customers, some of whom have been waiting for mains for over 40 years, is the service life of the mains. There is no reason to believe, that after all this time, these customers will switch fuels in 5.5 years once mains have been extended to them. The Company's calculations are based on an unrealistically short investment recovery

timeframe and also fail to adequately consider the likely addition of more customers along the lines.

PNG also argues that Commission precedent dictates that the Complainants' reliance on the statements made by PNG and its predecessors has no bearing on this proceeding. The OCA will demonstrate that the Company misinterprets the applicable case law and that the Complainants' reliance, as well as the principles of equity and fairness, are important considerations that are appropriately before this Commission.

Finally, the Company states that prior cases have already adequately addressed what would happen to these customers at the end of the rate phase-out. While prior cases sought to address the ongoing commodity cost subsidies resulting from PNG's implementation of the GBM program, these Complaint cases squarely present for the first time the question of what happens to these customers, who rightfully expected that they would receive natural gas service through mains at some point in time. The increase in rates at the end of the phase-out and the inability to receive natural gas service is even more pronounced as natural gas prices have declined substantially due, in part, to the development of Marcellus Shale gas in Pennsylvania. These Complainants homes are in the heart of Marcellus Shale development, and the Complainants testified to UGI's own promotion of natural gas service in their very area. This consolidated Complaint proceeding, which is the first opportunity that the customers themselves have had to be heard on the proposal to eliminate the GBM tariff rate without providing their long-awaited natural gas mains, is the Commission's opportunity to address how to fairly and equitably treat the customers of this program.

For all of the reasons set forth in the OCA's testimony and Main Brief, and explained more fully below, PNG should provide these GBM customers with adequate, safe, efficient and reasonable service and facilities by installing natural gas mains to serve them.

II. REPLY ARGUMENT

A. Issues Regarding the Extension of Mains

In its Main Brief, PNG argues that its main extension tariff applies to these GBM customers and, when analyzed under its main extension tariff, the mains requested here are uneconomic. The Company then argues that it is not required to make uneconomic line extensions and could only extend the mains with a substantial Contribution in Aid of Construction (CIAC) from the Complainants. PNG M.B. at 18. The OCA submits that the Company's arguments are incorrect. The main extension tariff does not apply to these existing PNG customers. Some of the Complainants have been customers of the Company for over 40 years, and PNG's main extension tariff applies to *new* customers, not those with an existing, long-standing relationship with the Company. The OCA also submits that the Company uses an unrealistic formula—which is not included in its tariff—to determine the economics of the main extensions to the Complainants. In this Section, the OCA will address the fallacies in the Company's arguments with respect to the extension of mains.

i. Tariff Rule 5 Does Not Apply to GBM Customers

The Company states that its main extension tariff applies to "all customers, including new and existing customers, who file an application for a main extension under Rule 5 of PNG's tariff." PNG M.B. at 24. The OCA would note, however, that these Complainants are *existing* PNG customers who are seeking to have the same "basic" service that is afforded to all other residential customers of PNG. In that respect, these Complainants are different from those who "apply" for service under the main extension tariff: 1) those without an existing relationship with the Company who would like to become customers and have mains extended to them and 2) existing customers who would like a larger distribution line or some other upgrade beyond

"basic" gas service. M.B. at 46-47, OCA St. 1 at 13, OCA St. 1S at 5-6. The Company compares these Complainants to both groups of applicants, even though neither situation is analogous. PNG M.B. at 24-28. As the OCA explained in its Main Brief and in its testimony, these Complainants are existing customers seeking basic service—not upgraded service or new service—so the application of the main extension tariff is not appropriate or required in this circumstance.[1] M.B. at 46-47; OCA St. 1 at 13, OCA St. 1S at 5-6. The Company drafted its tariff to explicitly exclude those receiving service at their current location from the definition of "applicant." M.B. at 47, OCA St. 1 at 13, OCA St. 1S at 5-6. Even assuming *arguendo* that this tariff provision can be interpreted as the Company suggests, it is, at best, ambiguous and PNG fails to acknowledge that any ambiguity in its tariff must be construed against the drafter of the language. See Russell Kanowicz v. PPL Electric Util. Corp., Docket No. C-20034915, 2005 Pa. PUC LEXIS 43 at *7 (Order entered April 20, 2005).

The Company next argues that it is "undisputed that main extensions to the GBM customers would be uneconomic" and that the OCA and Complainants did not dispute its calculation of CIAC. PNG M.B. at 23-24. The Company misstates the OCA's position on these issues. First, as the OCA explained in its testimony and Main Brief and argued in this case, the Company's use of 5.5 years of revenue as the basis of its economic test for main extensions is the incorrect measure over which to determine what constitutes the economic portion of the mains to these customers. M.B. at 44-45; OCA St. 1S at 6-7. Moreover, the 5.5 year payback calculation is nowhere to be found in the Company's tariff itself. As OCA witness Kraus explained,

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[1] The OCA would also note that there is no reference in the Company's GBM tariff provision to any requirement that the GBM customers must apply for a main extension under Tariff Rule 5. PNG Gas – Pa.P.U.C. No. 8, Supplement No. 13, Second Revised Page 59.

> [B]ecause this is a unique situation to which the tariff does not even really apply, the Company is in no way bound to the provision of this tariff, particularly since it uses 5.5 years of base annual revenues.
> ...
> Clearly, in this situation, many of these customers have been waiting for over forty years for natural gas service. It stands to reason that, if these customers finally get the natural gas service they (or their predecessors in interest in the residence) have been waiting for, they are not going to switch to another fuel in 5.5 years. It would be far more reasonable to use a longer period, for example, the service lives of the mains themselves, to assess the economic portion of the main extension investments.

OCA St. 1-S at 7.

As noted above, the main extension formula is not included in PNG's tariff and is not a tariff requirement. Id., OCA St. 1-S at 7, PNG Gas- Pa.P.U.C. No. 8, Section 5 (Tariff Rule 5). As OCA witness Kraus discussed, under the circumstances of this case, it is far more reasonable to use a longer period, such as the service lives of the mains themselves, to assess the economic portion of the main extension investments to this group of customers. M.B. at 45, OCA St. 1S at 7. Significantly, the Company never addresses in its brief the OCA's recommendation that a longer period should be utilized for both the determination of whether the lines are economic *as well as* the amounts that the Company may initially include in rate base. The Company has not shown the impact on the determination of an "economic" investment based on the life of the mains, nor one that includes a reasonable level of additional customers. Indeed, Company witness Lahoff stated that the life of the mains is approximately 40 years. Tr. (Day 2) at 21. It is important to note that even under the Company's calculation, at least four of the Complainants, Mrs. Alar, Mrs. Donnelly, Mr. Michaels and Mrs. Lindbuchler, were found to have payback periods of less than the life of the mains even with no additional customers taking service from those mains. PNG M.B. at 24, PNG St. 1-R, Exh. DEL 2.

The OCA submits that requiring the Complainants to provide CIAC would be unjust, unreasonable and inconsistent with PNG's own tariff.[2] As was discussed above, applying Tariff Rule 5 to existing GBM customers is not supported by the plain language of the tariff itself.[3,4] M.B. at 46-47.

The OCA's recommendation is that the "economic" portion of the main (calculated using the expected or projected annual base revenues for the Complainants multiplied

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[2] The Company points to the Adams case to support its assertion that the Complainants must pay CIAC. PNG M.B. at 22-23. As the OCA discussed in its Main Brief, the record in the Adams proceeding was extremely sparse (21 pages with no exhibits). Adams v. UGI Utilities, Inc., Docket No. C-2010-2182016 (I.D. entered July 12, 2011). Mr. Adams was a *pro se* Complainant and was unable to provide any evidence to support his request that mains be extended to his house, and so the Company moved for a directed verdict at the conclusion of the Complainant's case, which was granted. Adams at *5. The record in this proceeding is clearly much different than that in the Adams case—in addition to 370 pages of hearing transcripts, multiple rounds of expert testimony were filed as were Main and Reply Briefs. Therefore, the Company's argument that the holding in a *pro se* proceeding with such a minuscule evidentiary record is binding precedent is without merit. The OCA urges the ALJ and the Commission to reconsider the issue of the application of the main extension tariff to this group of jurisdictional PNG customers based upon this fully developed evidentiary record and the arguments made herein.

[3] In a footnote, the Company discusses the Farmington Way case in which a subdivision of GBM customers experienced an outage in 2009 when the propane tanks that service the subdivision contained insufficient propane. PaPUC v. UGI Utilities, Inc., Docket No. M-2010-2138591 (Order entered August 23, 2010). Although that case was resolved by Settlement, the Settlement specifically notes that the Commission's Gas Safety Prosecutory Staff contended that UGI violated Section 1501 when it failed to monitor the propane gas supplies and failed to furnish and maintain adequate, efficient, safe and reasonable service. Id. Mains were extended to the Farmington Way subdivision by UGI. Under the Commission-approved Settlement, the customers were "held harmless from the cost of conversion." Id. at 5. The Company attempts to distinguish the Farmington Way case and states that there is no evidence that these customers were not required to pay CIAC. PNG M.B. at 26. The Company attempts to construe this statement in another way, but its only logical meaning is that the customers did not pay any costs of conversion including CIAC.

[4] The OCA would also note that Section 1303 prevents the Company from charging CIAC if PNG's Tariff Rule 5 does not apply. Section 1303 states, in relevant part:

> No public utility shall, directly or indirectly, by any device whatsoever, or in any wise, *demand or receive from any person*, corporation, or municipal corporation *a greater* or less *rate* for any service rendered or to be rendered by such public utility *than that specified in the tariffs* of such public utility applicable thereto.

66 Pa.C.S. § 1303; see Phila. Sub. Water Co. v. PaPUC, 808 A.2d 1044 (Pa. Commw. Ct. 2002).

by the service lives of the mains) be included in rate base in the first rate case following the installation of the mains. M.B. at 43-45. The cost of the mains would *initially* be borne by the shareholders and the "economic" portion as determined by the Commission would be included in rate base in the next base rate case. Id. As Ms. Kraus explained, the amount allowed in rate base would increase as additional customers are added. Id. As Ms. Kraus testified, this process is analogous to the treatment of developers by water utilities. OCA St. 1 at 7-8. Here, the OCA recommends treating the Company investment as a "refundable advance" for construction made by a developer. M.B. at 43, OCA St. 1 at 7-8.

The Company states that "OCA's analogy of comparing PNG, a regulated utility, to a developer is illogical...PNG is *not* a developer." PNG M.B. at 42-43 (emphasis in original). To the contrary, such treatment makes perfect sense with respect to these customers. The GBM program was started in the late 1960s as a promotional program to allow the utility to develop its service territory and to enhance its market share when there was a shortage of natural gas. M.B. at 43-44, OCA St. 1 at 14-15. This development and expansion of the Company's service territory increased sales—and benefitted shareholders—which is why the shareholders initially paid for the program. Id. Indeed, the language of the GBM tariff itself states that the GBM program was available to those to whom "the extension of natural gas facilities is currently uneconomic but is anticipated to be economic." PNG Gas – Pa.P.U.C. No. 8, Supplement No. 13, Second Revised Page 59.

The Company also argues that "the OCA and GBM Complainants have failed to identify any drastic changes in facts or circumstances" that would warrant the treatment proposed by the OCA. PNG M.B. at 18. The situation in the natural gas market, however, has

dramatically changed since the inception of the GBM program and the 2008 Base Rate case.[5] Now, we are in an unprecedented period of natural gas market expansion, with Marcellus Shale gas in abundance in the very areas in which these customers live. Some of the Complainants testified to the Company's development initiatives and advertisements in their areas. Tr. at 41-43, 162, Moran-Roberto Exh. 1 at 6. Indeed, UGI's October 2011 ad in the Scranton Times (the local paper of a number of the Complainants) states:

> The Switch is On to Natural Gas…Natural Gas is always available to your home. Plus, you only pay for what you use. Switching to Natural Gas is one of the best things you can do for your home and your wallet. Natural Gas heating is affordable- you'll *save up to 60% on your home heating bills*….

Moran-Roberto Exh. 1 at 6 (emphasis in original). Yet, these customers have not been provided with the natural gas service they expected for over 40 years. The OCA has proposed a resolution for these customers that is equitable and will allow the PNG shareholders to recover the cost of construction as new customers are added. A portion of the costs of the mains may be initially borne by PNG shareholders, analogous to the treatment of developers, because the GBM program was, in fact, a customer development program. Importantly, the record is replete with un-rebutted examples of the potential use of the line extensions by a host of new customers. Mr. Hennigan and Mr. Lindbuchler collected 25 signatures from residents of their neighborhood who said they would switch to gas service if the lines were installed. Tr. at 144-145, Hennigan Exh. 7. Ms. Moran-Roberto testified that there would be 120 possible customers who could be connected to the line that would serve her. Tr. at 39, 41. Mr. Calafut counted 17 or 18 houses from the intersection where the gas lines currently end to his property that could be connected to

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[5] The OCA would note that the Company refers to its most recent Base Rate case, filed in 2008 at Docket No. R-2008-2079660, as the 2009 Base Rate Case. The Order in that proceeding was entered in 2009. The OCA will refer to this case as the 2008 Base Rate case, as it did in its Main Brief.

the line. Tr. at 234-235. Additionally, the residents of 71 and 73 Honesdale Road heat their homes with propane and would be happy to get natural gas. Id. Thus, PNG would have a reasonable opportunity to rapidly increase the number of natural gas customers in the areas of their current GBM service. The Company acknowledges that there are at least 138 potential new customers proximate to the 11 Complainants. PNG M.B. at 44.

As the OCA has demonstrated, the Company's arguments that it is not required to make uneconomic line extensions and that it is undisputed that the requested main extensions are uneconomic are without merit. The Company's main extension tariff, upon which the Company's claims of uneconomic extensions lie, does not apply to the GBM customers, who are existing customers seeking basic residential service. The Company is not precluded by its tariff from making extensions to these *existing* customers and should be directed to install mains to them. The Company should include the economic portion of the extension—based upon a realistic formula that accounts for the full life of the main—in its base rates.

ii. The Precedent Cited by the Company is Applicable to *New* Customers, Not to Long-Standing, Existing Customers Like the Complainants

In its Main Brief, PNG states that the OCA's central argument regarding the extension of mains has been previously rejected by the Commission and appellate courts. PNG M.B. at 20. PNG argues that in 2006, the Pennsylvania Supreme Court rejected the OCA's position in this matter that a Company can be required to make an uneconomic main extension and that precedent from that case controls here. R.B. at 12-13, 20. The OCA submits that the precedent cited by the Company is inapplicable to these *existing* GBM customers as the Pennsylvania American Water Company (PAWC) cases cited applied to *new* applicants for service from people who were not already PAWC customers. Popowsky v. PaPUC, 589 Pa. 605

(2006) (Parks); Twp. of Collier v. PAWC, Docket No. C-20016207, 2004 Pa. PUC LEXIS 26 (Order entered May 3, 2004. Moreover, these cases undercut PNG's argument that CIAC is mandatory for all line extensions as, in a subsequent Commission-approved Settlement, PAWC agreed to extend mains to these new customers without requiring CIAC. Application of PAWC, Docket No. A-212285F0136, Tentative Order at 47 entered August 27, 2007 (Opinion and Order adopting Tentative Order on September 27, 2007). The OCA will address these issues below.

The Pennsylvania Supreme Court identified the issue in the 2006 PAWC case as being:

> whether a demonstration of public need for water alone is sufficient to require a water company to extend its water lines and service without receiving customer contribution, in an instance where the cost of the extension project would exceed the company's expected revenue from the extension.

Parks, at 609. While the GBM Complainants and the Parks customers sought a similar solution—the extension of mains—the facts presented in this case are outside the questions addressed in Parks. Parks was addressing a request for new water service to an unserved area. As such, Parks does not control. In this case, the Complainants are not applicants for new service because they are *existing* PNG customers who are paying, and will continue to pay, the full level of the Company's distribution rates.

The OCA acknowledges that, under the PAWC cases, the Commission cannot order a utility to extend service to *new* customers without customer contribution where the cost of the extension would exceed the requirements of its tariff service extension formula. See Parks. Nevertheless, the Commonwealth Court made clear that, "[f]or its own business reasons, however, a utility may invest more. 52 Pa. Code § 65.21(2)." Popowsky v. PaPUC, 853 A.2d 1097, 1109, fn. 32 (Pa. Commw. Ct. 2004). This is exactly what happened to the affected

consumers in Parks. As per a Commission-approved Settlement, they now have utility water service from PAWC and did not have to pay CIAC. Application of PAWC, Docket No. A-212285F0136, Tentative Order at 47 entered August 27, 2007 (Opinion and Order adopting Tentative Order on September 27, 2007).

PNG attempts to characterize the amount it calculates for CIAC under its main extension tariff as mandatory and the non-CIAC amounts are the maximum it can invest. The Court and the Commission have determined, however, that the economic formula calculates a "floor" for utility investment, not a "ceiling."[6] That is, the utility can invest more than that amount and need not request any CIAC from the customer at all. The GBM customers, including several of the Complainants in this proceeding, have been utility customers of PNG and its predecessor for over forty years and have been paying for distribution service in their monthly bills all this time. OCA St. 1 at 12, OCA St. 1S at 5-6. Extension of the distribution facilities to their homes has always been their expectation as customers of PG&W (and PG Energy) and, later, of PNG. They have continued and will continue to pay a share of all base costs and surcharges. At the end of the phase-out period, PNG would continue to provide propane service to the remaining GBM customers at market-based propane rates. As Ms. Kraus explained, this amount is:

> ...*in addition to* the full distribution rate, including all costs associated with a distribution system that provides them no service, as well as applicable surcharges.

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[6] Mr. Lahoff testified that UGI does not have the discretion to invest more than an amount that would be justified by the 5.5 year recovery period, even though it was arrived at through an internal policy decision. Tr. (Day 2) at 16-18. The Company has provided no support for the premise that this time period cannot lawfully be varied from and, in fact, Mr. Lahoff conceded that if the Commission required UGI to do so, it would have to comply with its directive. Tr. (Day 2) at 22. He stated that, "If there were an order from the Commission requiring us to do so, I would say we would be bound to follow the order of the Commission." Id.

OCA St. 1S at 9-10 (emphasis added); see also Tr. (Day 2) at 28, 42. The effect of this is simply to eliminate the fuel cost subsidies by the non-GBM customers through the PGC rate and replace it with a base rate subsidy by the GBM customers, who would also be paying substantially increased commodity rates.[7]

Moreover, as the OCA demonstrated in its Main Brief, the Company has not met the requirements of Section 1501 with respect to these Complainants by failing to extend natural gas mains to them and, therefore, failing to furnish and maintain adequate and reasonable service and facilities. M.B. at 40-41. Pursuant to Section 1501, the Commission has the power to order improvements where utility service is determined to be inadequate. Barone v. PaPUC, 485 A.2d 519 (Pa. Commw. Ct. 1984).

To complement this authority, the Public Utility Code grants the Commission broad authority to devise a remedy for inadequate service. Section 1505 of the Code reads as follows:

> Whenever the commission, after reasonable notice and hearing, upon its own motion or upon complaint, finds that the service or facilities of any public utility are unreasonable, unsafe, inadequate, insufficient, or unreasonably discriminatory, or otherwise in violation of this part, the commission shall determine and prescribe, by regulation or order, the reasonable, safe, adequate, sufficient, service or facilities to be observed, enforced, or employed, including all such repairs, changes, alterations, extensions, substitutions, or improvements in facilities as shall be

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[7] In several places in its Brief, the Company notes that the GBM customers received "substantial benefits" from their status as GBM customers over the years. PG&W began the GBM program as a promotional tool and the terms of that program were that the GBM customers paid natural gas rates for propane *until such time as mains were extended to them.* PNG continued to offer this program after it acquired PG Energy (PG&W's successor). Had the Complainants been told that the mains would never be extended to them, or that they would have to make a substantial up-front payment to get the mains, they may not have enrolled in the program in the first place. This is especially true given that they will now be paying commodity rates five times those paid by natural gas customers without receiving the benefits of the distribution mains they had long expected. See OCA St. 1 at 11.

> reasonably necessary and proper for the safety, accommodation and convenience of the public.

66 Pa.C.S. § 1505. Inherent within this broad power to require construction of facilities is the power to order that utilities take whatever specific actions the Commission deems necessary to provide reasonable service to these existing customers. It is for this reason that the OCA requests that the Commission direct the Company to extend natural gas service to the Complainants in accordance with the OCA's proposal.

B. The Existence of a Contract Is Not Determinative of a Commission Finding that the Company Must Extend Mains to the Complainants

The Company devotes a large portion of its Brief to its assertion that these Complainants do not have valid contracts with PNG or its predecessor. The OCA submits, however, that the existence of a contract or agreement is not determinative of whether natural gas lines should be extended to these Complainants. The Complainants have relied on the statements and representations made not only by PG&W, but also by PNG itself. See OCA M.B. at 36-38. In doing so, the Complainants made modifications to their homes and continued to replace appliances and heating systems over the years. The principles of equity and fairness demand that natural gas mains be extended to the Complainants. It is for these reasons, discussed below and in its Main Brief, that the OCA submits the Company must be directed to extend natural gas mains to the Complainants in accordance with the OCA's proposal.

It is clear that the Complainants in this proceeding relied on the representations that were made regarding the GBM program, from the 1960s to today. Many of the Complainants provided testimony that PNG or PG&W told them that they would receive propane at natural gas rates "until" mains were extended to their homes. Tr. at 34-35, 58-59, 132-134, 263. Since Mr. Michaels purchased his house in 2007, he was offered the GBM

program rate specifically from PNG. Tr. at 167-168. Additionally, many of the Complainants received written communications that made similar representations. For example, in a letter dated January 15, 1973, PG&W stated that it "made arrangements with some residents residing beyond our natural gas distribution system to furnish them with liquid propane gas (LP gas) until such time as we would be able to extend our natural gas distribution main to their home." Tr. at 220-222, Pope Exh. 1. Further, PNG itself made a statement similar to that of its predecessor in its letter sent to the GBM customers on September 21, 2007. Lindbuchler Exh. 1. That letter states:

> As a valued UGI Penn Natural Gas, Inc. (PNG) customer you are currently being served with propane *because PNG's natural gas mains do not yet extend to your neighborhood.*

Lindbuchler Exh. 1 (emphasis added). At no time were these customers told that the natural gas mains would not be extended to their homes or that the main would only be extended if a substantial up-front payment was made.

Further, fairness and equity considerations require an examination of the entire economic picture.[8] Some Complainants made modifications to their homes and converted their heating systems, many at great personal expense. M.B. at 36-38, Tr. at 35-35, 56-61, 178-182. Most of the Complainants purchased new gas appliances in recent years and some underwent whole-home heating system renovations in anticipation of gas mains being extended to their

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[8] This Commission frequently considers equity and fairness in making its determinations. If a Company agrees at the outset to a particular obligation, the Company should not be allowed to de-obligate itself, as such action violates "principles of fundamental fairness, detrimental reliance, or simply 'a card laid is a card played.'" In re Application of Dep't of Transportation, 1989 Pa. PUC LEXIS 160, *32-33 (1989).

homes. Tr. at 101-103, 143, 160-161, 171, 205-206, 216-219[9], 240. Additionally, some Complainants replaced appliances or made repairs after being "red tagged" by PNG's affiliate AmeriGas during inspections in 2010—after the phase out was approved in the 2008 base rate proceeding, but before the Complainants received notice of the phase out. Tr. at 187, 264, Alar Exh. 1 at 2.

The Company asserts that any reliance by the Complainants on the statements made by the Company is irrelevant because detrimental reliance is not a cause of action recognized under the Commission's jurisdiction. M.B. at 34. This statement is incorrect. In the Keith case cited by the Company, the Commission concluded that the prohibition from considering detrimental reliance applies *if* application of the principle would prevent the utility from adhering to its tariff. Keith v. Pennsylvania Power & Light Co., 1998 Pa. PUC LEXIS 74, *10 (emphasis added). As the OCA discussed in its Main Brief and in Section A above, extending the mains to the Complainants is not violative of the tariff. M.B. at 43-49. Therefore, the Complainants' reliance on the statements of the Company and its predecessors can be considered as a basis for the relief the Complainants seek.

As was demonstrated in the record and discussed in the OCA's Main Brief, the Complainants relied on the representations made by PG&W, and affirmed by PNG, and have continued to make expenditures over the years in anticipation of gas mains being extended to their homes. The initial modifications to each property, as well as the more recent replacement

[9] Since filing its Main Brief, the OCA spoke with Mr. Pope and the Company regarding Mr. Pope's testimony. In its Main Brief, the OCA stated that Mr. Pope replaced the entire heating system in his house at a cost of $38,000 and, since then, has replaced other appliances at a cost of $13,450. M.B. at 25-26, 37, Tr. at 216-219. While the $38,000 heating system was installed, the OCA erroneously included the cost of the furnace in its calculation of other appliance expenditures that were made. Therefore, the cost of the other appliance expenditures made by Mr. Pope should be $4,550 and not $13,450. Tr. at 216-219.

of appliances and heating systems, were all made in anticipation of continuous gas service, first with propane at natural gas rates and then with natural gas upon the extension of the distribution mains. Principles of equity demand that the Company be directed to extend mains to the Complainants in accordance with the OCA's proposal.

The OCA also submits that PNG's failure to meet statutory and regulatory requirements with respect to these customers further supports a finding that the Company must extend mains to the Complainants. The Company states that the numerous service issues faced by the Complainants are irrelevant and have no bearing in a determination of whether the Company should be required to extend mains to the Complainants. PNG M.B. at 48-54. The OCA demonstrated that the Company has been unable to provide reasonable and adequate service to these customers in violation of several provisions of the Code and the Commission's regulations. The Company has not shown that it can adequately serve this unique group of customers.[10] PNG M.B. at 48. As the OCA explained, the proper remedy to address these numerous violations is to require the Company to ensure that these customers receive the same basic natural gas service as all other PNG residential customers.

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[10] The Company also states that it was unable to properly respond to these service issues because it was unaware of them or because the information was not in the record. PNG M.B. at 48. First, the ALJ's order in the 2011 PGC proceeding that severed the rate issues from the remaining GBM issues specifically states that the service issues will be addressed in a separate proceeding. PaPUC v. UGI PNG 1307(f), Docket No. R-2011-2238943 (Order entered July 6, 2011). Additionally, as was discussed on the record, the OCA provided the Company with the Exhibits that it intended to present at the hearing, most of which addressed service issues, in advance of the hearings and immediately after receiving them from the Complainants. Tr. at 93-97; 103-107. At the hearing, when responding to the Company's objection, the OCA noted that these documents were provided to it by the *pro se* Complainants who are generally afforded more leniency in the presentation of their case. Id. Further, the ALJ decided at the hearing that such information was relevant to the resolution of the case and admitted the evidence. Id. Additionally, the OCA submitted Company-provided recordings and customers' service records that demonstrate that the Complainants were never advised of their ability to file Formal Complainants. See Donnelly Exhs. 2-4; Hennigan Exhs. 4-5; Schulz Exhs. 1-2. Finally, the Company addressed a number of the service issues in its written Rebuttal testimony. Therefore, any claim that the Company did not have adequate notice of or ability to respond to the service issues is without merit.

As was explained in detail in the OCA's Main Brief, these Complainants have had numerous issues with respect to their service and have not been provided with the safe and adequate service mandated under Section 1501. The record demonstrates that the Company has been unable to address the unique needs of this small group of customers and to provide them with service that comports with the mandates of the Public Utility Code and Chapter 56 of the Commission's Regulations. M.B. at 40-41. The Complainants received a termination notice and had billing issues, were provided incorrect information regarding their service and their status as customers, and were subjected to the improper actions of the Company's affiliate. M.B. at 40-41, FF 27-30, 32, 39-43, 52, 58, 73-74, 110-113, 134-136. Safety issues have also arisen as a result of the GBM service. FF 24, 52, 57-58. Further, the Complainants were not advised of their ability to file a Complaint with the Commission regarding those issues. M.B. at 41. This inability to provide safe and adequate service that complies with Section 1501 and Chapter 56 is one of the reasons why the Company should extend mains to these customers and bring their service into accord with that of PNG's other regulated residential customers.

Finally, the Company states that the phase-out of the PPL Residential Thermal Storage (RTS) rate is a justification for its treatment of the GBM customers. PNG M.B. at 33-34. The two situations are actually very different. The PPL RTS rate provided a discount to customers who installed a specific type of electric heating system. The discounted generation rate that RTS customers paid was eliminated and those customers were transitioned to the *same* rate paid by other PPL residential customers. Dunham v. PPL Elec. Util. Corp., Docket No. C-2010-2155056 (Order entered July 1, 2011); Diehl v. PPL Elec. Util. Corp., Docket No. C-2009-2149261 (Order entered April 1, 2011). The goal in doing so was to obtain a single default service generation rate. Special rates, such as those to serve the RTS customers, were expected

to be provided by the competitive market. Petition of PPL Electric Util. Corp. for Approval of a Competitive Bridge Plan, Docket No. P-00062227 at 13 (Order entered May 10, 2007).

The elimination of the RTS rate discount is distinguishable from the elimination of GBM rates because the GBM rate elimination goes much further. Rather than putting GBM customers in the same position as other PNG customers as the RTS rate did, the GBM customers are going to pay *five times* the rate that other PNG customers pay for natural gas while paying full distribution rates without receiving the benefit of natural gas mains to their homes. See OCA St. 1 at 11. Being placed in the same position as other PNG customers is precisely what the GMB customers are asking for; however, that is not what PNG is proposing to do.

C. The Treatment of the GBM Customers at the End of the Phase Out Has Not Been Addressed

In its Brief, the Company alleges that the OCA's involvement in this proceeding is contrary to the Settlements it signed regarding the GBM program in a previous base rate and PGC proceeding and that "the OCA completely ignores that it was in fact a signatory to the 2008 base rate case and the 2011 PGC settlements." PNG M.B. at 36. The OCA vehemently disagrees with these statements. The OCA specifically acknowledged its participation in these two Settlements in its Direct Testimony and at hearings. OCA St. 1 at 5-7, Tr. (Day 2) at 72-75. The OCA specifically stated in its Direct Testimony, that it was a signatory party to the Settlements in both proceedings. OCA St. 1 at 5-7. The OCA was clear, however, that the Settlements did not address the critical issue in this proceeding—namely what should happen to these customers' distribution service at the end of the GBM Tariff rate phase-out. OCA St. 1 at 5-7, Tr. (Day 2) at 72-75. The positions taken by the OCA in this proceeding are not contrary to

what was agreed upon in either Settlement. Rather, the OCA seeks to address the questions that remained unanswered in those proceedings.

The OCA would initially note that both Settlements contain language stating that the GBM program can continue if the Commission issues an Order upon investigation allowing PNG (or NGDCs as a whole) to continue propane service programs. PaPUC v. UGI PNG, Docket No. R-2008-2079660 (2008 Base Rate Case); PaPUC v. UGI Penn Natural Gas, Inc. 1307(f), Docket No. R-2011-2238943, R.D. at 23 (Order entered September 7, 2011) (2011 1307(f)). The Investigation is pending before the Commission. Investigation Order, Docket No. D-2008-2063177 (Order entered January 8, 2009). The Settlement in the 2008 Base Rate case provided that GBM tariff service would be eliminated no later than five years from the date of Commission acceptance of the Settlement, but was silent as to what would happen to the remainder of the GBM customers' service at that time. The 2011 1307(f) proceeding Settlement set out a transition period for the PGC portion of the GBM rates, but was silent as to how the GBM customers would be treated with respect to all other aspects of their service, including the extension of the mains to the Complainants and their distribution rates.[11] Moreover, the ALJ in the 2011 1307(f) proceeding specifically reserved all non-rate issues for resolution as part of the Moran-Roberto Complaint case. PaPUC v. UGI PNG 1307(f), Docket No. R-2011-2238943 (Order entered July 6, 2011). Given the pending Investigation and the conditions listed in the Settlements, it is not surprising that issues such as main extensions or the treatment of the customers five years hence were not addressed during those proceedings.

The Company also states that the Commission has reviewed the GBM issue many times, so this is not the Commission's first opportunity to address the fair and equitable treatment

[11] Company witness Lahoff agreed that other issues did not arise in the 2011 1307(f) proceeding as that case only addressed the PGC. Tr. at 41-42.

of these Complainants. PNG M.B. at 45-49. This is inaccurate. This proceeding is the first opportunity for these Complainants to address what will happen to their service at the end of the GBM rate phase-out. The Company itself states that it did not provide specific notice to the Complainants regarding the elimination/ phase-out of the GBM rate until May 2011. PNG M.B. at 48. While the Company provided general notice about rate impacts as part of its 2008 Base Rate case, the GBM issue was not specifically noticed as it was raised by the OTS (now, I&E) when OTS filed its Direct Testimony. Id. The Company also acknowledged that it did not notify these Complainants of the terms of the 2008 Base Rate case Settlement. Id. The letter dated May 24, 2011 was the first notice these Complainants received of the rate-phase out. That letter specifically stated that the customers had the right to file a Complaint to address this issue. Tr. at 35-36, 66-68, 143, 171, 184, 206-207, 268; Moran-Roberto Exh. 1 at 3; Donnelly Exh. 1. The instant consolidated proceeding is the direct result of the Complaints filed in response to the May 24, 2011 letter. *This* is the proceeding in which the fair and equitable treatment of *these* customers must be determined.

Similarly, the Company lists a number of cases in which the GBM issue was addressed, e.g. the 2008 Base Rate Case, the 2011 1307(f) proceeding, and the Adams case. The OCA previously discussed why these cases, that address the GBM customers in a piecemeal fashion, do not limit the rights of the Complainants in this proceeding.

These Complainants were not in any of those cases—except for Ms. Moran-Roberto who was in the 2011 1307(f) proceeding. In that case, Ms. Moran-Roberto and all of the parties specifically reserved the litigation of all non-rate transition issues to the instant proceeding. The Company listed three additional proceedings in which it argues that the GBM program was addressed. PNG M.B. at 45. The OCA agrees with the Company that these cases

addressed aspects of the GBM program, but none of these cases address what will happen to the customers at the end of the rate phase-out. The first is the Morgan v. PG&W case from 1974. As a preliminary matter, the OCA would note that, although the program began in the 1960s, until the resolution of the Morgan case, the GBM customers (as they are now known) were not served under a Commission-approved tariff or program. Docket No. C-19852, I.D. 166 (Order entered January 20, 1974). The Company states that the Morgan decision stands for the proposition that it does not have to extend uneconomic mains to GBM customers. PNG M.B. at 45. The OCA disagrees with the breadth of this conclusion. In reaching its decision in Morgan, the Commission specifically referenced the gas shortage that was being experienced at the time of the decision as the reason that it did not require the extension of mains to all of the GBM customers at that time. Morgan at 5. The Commission stated:

> In view of the gas shortage, PG&W does not have the capability to expand its plant to serve all its bottled gas customers.

Morgan at 5. If, given the gas shortage, mains were not able to be extended, the Commission ordered that the GBM customers continue to be provided with LP gas at natural gas prices. Id. at 5-6. As was discussed above, the current state of gas markets is very different from that at the time the Morgan case was decided. Low-cost Marcellus Shale gas is in abundance, and UGI is actively soliciting additional customers *in the Complainants' areas* to come on to its system. Clearly, the foundation of the Morgan decision is inapplicable to these GBM customers.

The Company next discusses the 2006 Southern Union (PG Energy's parent Company) Base Rate case in which the Tariff Rate GBM was established and all propane costs began to be recovered through the PGC. PaPUC v. PG Energy, a Division of Southern Union Company, Docket No. R-00061365, I.D. at 19. Like the other orders discussing the GBM

program, the Southern Union Order does not address the treatment of GBM customers after the rate phase-out period.

Finally, the Company cites the Commission's investigation into the GBM program. As the OCA noted previously, the Orders in both the most recent base rate case and in the 2011 PGC proceeding note that all of the terms of the prior orders in both cases having a bearing on the GBM tariff service could be changed by the outcome of a Commission investigation into the program, which has been pending since 2008. A report was to be submitted to the Commission on or before March 31, 2009, but the date of final Commission action on that report is not known at this time. See Investigation Order, Docket No. D-2008-2063177 (Order entered January 8, 2009). Any notion that the treatment of these GBM customers has been addressed in a proceeding that is still pending must be rejected.

While the Company is correct that the OCA was a signatory party to Settlements in proceedings that addressed the phase-out of the GBM natural gas rate and that other proceedings have addressed the GBM customers (as a class) on a piecemeal basis, PNG is incorrect in arguing that the Settlements or the other cases preclude the OCA from seeking relief on behalf of GBM customers in this proceeding or preclude the Commission from making a determination regarding the treatment of these Complainants at the end of the rate phase-out. As OCA witness Kraus explained:

> The Moran-Roberto complaint case raises the question of the specific treatment of the UGI PNG customers at the end of the tariff service phase-out. It is the OCA's understanding that Ms. Moran-Roberto became aware of the impending end of this program as a result of the notice sent to her in May 2011 advising of the proposed four-step phase-out of the GBM rate in the context of the Purchased Gas Cost case. She filed a Formal Complaint and sent a letter to the OCA requesting assistance in challenging the phase-out of the rate or in getting the mains that were promised to

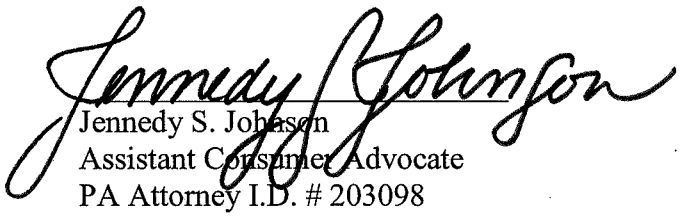
> her installed. While several other Commission investigations have addressed the PGC rate alone in the context of a Section 1307(f) proceeding, the overall bill impact and the ultimate treatment of this group of remaining GBM customers at the end of the tariff service phase-out has not been decided in any case before the Commission.

OCA St. 1 at 7. The simple fact is that the treatment of the GBM customers at the end of the phase out has *not* been addressed and this proceeding is the appropriate forum in which to address these Complainants' concerns.

III. CONCLUSION

For all of the foregoing reasons, the Company's arguments in opposition to the relief requested by the Complainants in this case are without merit. The Complainants have, with the assistance of the OCA, sustained their burden of proving that their Complaints have merit. The Commission should direct PNG to provide these customers with safe, adequate reasonable and efficient service by installing gas mains to serve them under the terms set forth by the OCA herein and in its Main Brief.

Respectfully Submitted,



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I hereby certify that I have this day served a true copy of the foregoing document upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code §1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 6th day of June 2012.

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