**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Kathleen Moran-Roberto : 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. :

**Initial Decision**

Before

Ember S. Jandebeur

Administrative Law Judge

HISTORY OF THE PROCEEDINGS

On June 10, 2011, Kathleen Moran-Roberto (Moran-Roberto) filed a Formal Complaint with the Pennsylvania Public Utility Commission against UGI Penn Natural Gas, Inc. (UGI or PNG or Respondent) alleging that “approximately 40 years ago PG&W[[1]](#footnote-1) contacted residents of Moosic and nearby communities to notify us that they were in the process of bringing natural gas lines to our areas … [T]he gas lines promised have not been installed.” Moran-Roberto asks “UGI to install gas line or continue to supply propane at natural gas rates.”

Respondent filed an Answer denying that Moran-Roberto is entitled to a line extension without a customer contribution in aid of construction (CIAC) under the line extension provisions of PNG’s gas service tariff. PNG estimated that the CAIC cost would be approximately $60,000.

On or about July 19, 2011, John Calafut (Calafut) filed a Formal Complaint alleging that “[t]here was an agreement with Pennsylvania Gas & Water Co. now part of UGI Penn Natural Gas, Inc. The agreement was, if we installed a gas furnace, Pennsylvania Gas & Water Co. would run a natural gas line up our road. Until natural gas line was installed, they sell us propane gas at natural gas prices.” Calafut requested that they “[i]nstall natural gas line up our road or continue to sell propane gas at natural gas prices.” Respondent denied there was an agreement, cited its tariff, cited a settlement in a 2009 Base Rate Case that provided for the elimination of gas beyond the mains (GBM) subsidies as of five years from the date of settlement, and cited its 2011, 1307(f) purchased gas cost proceeding (2011 PGC Proceeding).

On or about July 20, 2011, Jerome I. Fuhr (Fuhr) filed a Formal Complaint alleging that “… owners were contacted by Mr. Ed Delaney, a sales representative of the Pennsylvania Gas & Water Company. Mr. Delaney promised that if the owners would choose gas as their heating fuel the Gas Co. would supply them with propane until the natural gas supply was available to them.” “The Gas Co. has not fulfilled their promise … During that time we have had to contend with the problems of gas supplied in tanks. We have had to tolerate the sight of the unattractive three large containers. The tanks are in an area used by the School Bus, trash haulers and miscellaneous traffic using this area as a turnaround spot … The compliance of the Gas Co. with this agreement for more than forty years clearly supports the existence of the agreement.” The Respondent filed an Answer discussing the 2009 Base Rate Case, the 2011 PGC Proceeding, its tariff, denied any agreement, and stated that it would cost $1,256,775 to extend mains to the Complainant’s home.

On or about August 22, 2011, Daniel L. Pope (Pope) filed a Formal Complaint alleging that “in 1966, Mr. Ed Delahanty of Pennsylvania Gas & Water made a commitment to several local property owners, assuring them that if gas was used as a fuel in their new homes, PG&W would supply propane at natural gas prices until a natural gas supply could be made available … [n]o attempt has been made to bring natural gas to this area. In 1973 PGW first attempted to void their pledge … the matter was apparently dropped. … In a letter from Gene Crossin of PNG, GBM customers … will be phased off GBM rates beginning in December 2011. …” Pope requests that PNG be held to the original agreement. The Respondent filed an Answer denying that the agreement made any promises, cited its tariff, and estimated that the costs to bring gas to the Complainant would be approximately $1,278,677. As with the Calafut and Fuhr Answers, the Respondent cited to the 2009 Base Rate Case, and the 2011 PGC Proceeding.

On or about September 7, 2011, John Hennigan (Hennigan) filed a Formal Complaint, opposing the “37% price increase on 12/1/2011 on my gas service and additional increases in 12/1/20012 [sic] and 12/1/20013 [sic].” … Hennigan requests that the PUC have “UGI extend their gas lines ...” Hennigan alleged that he received a shut off notice … and that “UGI is trying to bully and harass” him. The Respondent filed an Answer citing its tariff, the 2011 PGC proceeding, a 1973 Pennsylvania Gas & Water Company letter that the Company would not provide propane at natural gas prices, that it would cost approximately $269,000 to extend gas to Hennigan, and denied a commitment to extend gas lines to Hennigan.

On or about September 28, 2011, Dolores Alar (Alar) filed a Formal Complaint alleging that she had received a letter from UGI stating that UGI was ending the GBM program. Alar further alleges that there is a forty-four year precedent recognized by PG&W, now UGI, that the GBM program was established to encourage residents to install gas heating appliances and in return, receive natural gas rates for propane until such time that infrastructure improvements were completed. Alar requests that the PUC have the current company honor their commitments. The Respondent filed an Answer denying any commitment to retain the GBM program, denying any agreement, estimating that the cost to extend the main to Alar would be approximately $36,197, and citing the 2011 PGC Proceeding.

On or about October 4, 2011, Charles E. Schulz (Schulz) filed a Formal Complaint alleging: that he strongly opposed the elimination of the GBM program, that he was never informed of the 2009 Base Rate Case and was denied an opportunity to oppose it. The Respondent filed an Answer stating that its customers were notified of the 2009 Base Rate Case by billing insert and that Schulz did not participate in the case, that the discontinuance of GBM was not to cause hardship, that the 2011 PGC Proceeding settlement eliminates the GBM subsidies as of August 2014, denying that there is any agreement or promise between PNG or it predecessor, and citing its tariff.

On or about October 26, 2011, Robert M. Rowlands (Rowlands) filed a Formal Complaint stating “[t]he complaint is based on transferring us from natural gas rate to propane rate. … We feel they should stand by their agreement. …” The Respondent filed an Answer denying any agreement, estimating that it would cost approximately $27,000 to extend mains to Rowlands’ home, citing its tariff, the 2009 Base Rate Case, the 2011 PGC Proceeding, and denying that the elimination of the GBM subsidies is an unjustified rate increase.

On or about December 28, 2011, Alfred and Stephanie Donnelly (Donnellys) filed a Formal Complaint to which Joseph Michaels and Fred Linbuchler joined. The Donnellys allege that they built their home in 1967, that they intended to heat with electric, that PG&W approached them with a proposal to supply propane until extension of natural gas lines was completed, they changed their building plans and that their gas lines were never extended. Since 2003, they have installed a new boiler and water heater anticipating that the natural gas rate would continue. They ask that the PUC not discontinue the GBM program and state that “[c]ontractual obligations require this arrangement not be terminated.” The Respondent filed an Answer citing its tariff, the 2009 Base Rate Case, 2011 PGC Proceeding, that extending the mains to the Donnellys would cost approximately $268,462, and denying that there is any contract, agreement or promise.

The Bureau of Investigation & Enforcement (I&E) entered a Notice of Appearance in each of the Formal Complaints. The Office of Consumer Advocate (OCA) intervened in each of the Formal Complaints, pursuant to 52 Pa. Code §§ 5.81 and 5.103.

A Prehearing Conference was held on November 28, 2011. By Interim Order dated January 11, 2012, the cases were consolidated for hearing.

Two days of Initial Hearings were held on April 5 and 6, 2012. Main Briefs were filed on May 10, 2012; Reply Briefs were filed on May 30 for PNG and I&E; a Reply Brief was filed by OCA on June 6, 2012. The record closed on June 6, 2012.

FINDINGS OF FACT

1. Kathleen Moran-Roberto is a current customer of PNG and lives at 17 Shady Lane, Moosic PA.
2. Ms. Moran-Roberto has been a customer of PNG (or its corporate predecessors) for over 40 years. Tr. at 28. During that time, she has always been a GBM customer. Tr. at 34-35. She inherited the house in which she lives from her father in about 1980. Tr. at 48.
3. Approximately forty years ago, representatives of the utility approached Ms. Moran-Roberto’s parents to advise that if they would switch their heating system to natural gas, the utility would provide them propane at natural gas rates and that eventually the utility would bring gas lines to them, which they did in most of Moosic. The utility continued to provide propane at the natural gas rates. Ms. Moran-Roberto recalls paying $300 toward the purchase and installation of the new furnace. Tr. at 34-35.
4. The propane tank, which was to be temporary until the utility installed natural gas lines, is an eyesore and brings down the value of her property. Tr. at 34; Moran-Roberto Exh. 1 at 7-8.
5. Although at one time in the 1970s, the utility sent a letter stating that it was no longer going to continue to supply propane at natural gas rates because of a gas shortage, the GBM customers fought it and the propane at natural gas rates continued; that was the last that Ms. Moran-Roberto heard from a utility about the rate being discontinued until receipt of the letter in 2011 from PNG. Tr. at 35; Moran-Roberto Exh. 1 at 3. When Ms. Moran-Roberto

received the notice from PNG that the Company was going to stop the GBM program, she was upset and wrote a letter dated June 9, 2011, to the Office of Consumer Advocate. Tr. at 32; Moran-Roberto Exh. 1 at 1-2.

1. Prior to receiving the May 24, 2011 letter, Ms. Moran-Roberto knew nothing about the elimination of the GBM natural gas rate by August 27, 2014, that had been first considered in the 2008 base rate filing. Tr. at 35-36; Moran-Roberto Exh. 1 at 3.
2. Had Ms. Moran-Roberto known that the Rate GBM was going to be an issue in the 2008 rate proceeding, she would have filed a complaint as she did in the 2011 PGC Proceeding. Tr. at 36.
3. Ms. Moran-Roberto now understands that she will be paying about four times more for her heating and hot water bills than what she has been paying, despite her best conservation efforts. Tr. at 36-37.
4. Ms. Moran-Roberto had hopes that the lines would be extended at one time because there is a business approximately 600 feet from her home to which the utility installed gas lines. She believes that there would be 120 possible customers that could be connected from the line that would serve her and that all of the people on her street would be thrilled to have gas lines come through. Tr. at 39. One of her neighbors has oil heat and would like to have natural gas as a heating source. Tr. at 41.
5. Ms. Moran-Roberto does not believe it would be fair to charge the GBM customers for the installation of gas mains, but she would be willing to install a service line. She believes that PNG should be required to absorb the cost of the natural gas mains. Tr. at 49.
6. Ms. Moran-Roberto has been holding off on replacing the furnace because of the uncertainty of the outcome of this case and of being able to continue as a PNG customer. Tr. at 52-53.
7. PNG is willing to provide Ms. Moran-Roberto natural gas through mains, only if she paid a CIAC in the amount of $62,115. PNG St. 1-R at 21-23, PNG Exh. DEL 2.

*Stephanie and Alfred Donnelly*

1. Stephanie and Alfred Donnelly live at 535 Carverton Rd, Wyoming, Pennsylvania 18644. The Donnelly home is in the PNG service territory, and the Donnellys are GBM customers. Tr. at 55-57.
2. The Donnellys constructed their house in 1966-1967. The Donnelly house was built as a “package” home designed for electric heat. During the construction of their home, the Donnellys bought electric baseboard heaters and an electric water heater to install in their house. Tr. at 56-57.
3. In 1966 or 1967, the Donnellys were approached by two men from PG&W regarding their heating source. The PG&W employees told the Donnellys about a program, now known as GBM, which would allow them to heat their home with natural gas and stated that the Donnelly home would be temporarily served with bottled gas until the natural gas mains were extended to their house. The PG&W employees assured the Donnellys that natural gas mains would be brought to their house in a timely manner. Tr. at 58-59.
4. The PG&W employees said that natural gas was inexpensive and a good value. The inexpensive nature of the natural gas appealed to the Donnellys. Tr. at 58-59.
5. The Donnellys modified their house once it was under roof to include a double-walled metal stovepipe chimney necessary for gas heating. The Donnellys received free gas service for six months and a gas lamp post as incentives to switch to natural gas. Tr. at 60-61.
6. In the winter of 1972-1973, PG&W sent a notice to the Donnellys that it was going to discontinue the program under which liquid propane was provided at natural gas rates as the program was too costly. Within a few months of receiving the initial notification in 1972-1973, the program was restored. Tr. at 63-64.
7. Mrs. Donnelly contacted PG&W several times to inquire about the Company extending natural gas mains to her property. Mrs. Donnelly contacted PG&W employee Frank Loch in 1975-1976 about the possibility of PG&W extending the natural gas main during the Carverton Road reconstruction. Mrs. Donnelly also contacted PG&W about the possibility of PG&W extending the natural gas main during the same time that public sewers were being installed in her area. Tr. at 64.
8. The Donnellys received a letter dated May 24, 2011, notifying them of the termination of the GBM natural gas rate. In response to the letter, Mrs. Donnelly filed a Formal Complaint with the Commission and contacted Senator Lisa Baker and Representative Phyllis Mundy. Tr. at 66-68.
9. The Donnellys replaced several appliances in their home since 2002. In 2008, the Donnellys purchased a standby LP gas generator for $5,900; if the Donnellys had known the GBM program was going to end, they would have kept their small gas-powered generator. In 2002, the Donnellys replaced the boiler in their home for $2,359 and in April 2008, the Donnellys purchased a new gas clothes dryer and range for $682 and $1,849, respectively. The Donnellys would not have continued to purchase gas appliances had they known that the GBM program was going to end. Tr. at 101-103.
10. For five months, between November 2011 and March 2012, AmeriGas delivered 937 gallons of propane to the Donnelly residence. Mrs. Donnelly calculated that the 937 gallons charged at 100% propane rates would cost $2,520. Mrs. Donnelly’s costs for the entire 2011 year were $1,313. Mrs. Donnelly is concerned about the increased cost and volatility of prices for propane. Tr. at 113-114.
11. The Donnellys consider the initial promise made by PG&W representatives and the 45-plus years of the program to be a contract. The Donnellys accepted PG&W’s offer in good faith and want natural gas to be provided, as promised. Tr. at 114.
12. PNG would provide the Donnellys natural gas service through mains, only if they paid CIAC in the amount of $48,600. That cost estimate assumes that a main has been installed to Mr. Hennigan at a cost of $269,000. PNG St. 1-R at 21-23, PNG Exh. DEL 2.

*John Hennigan*

1. John Hennigan lives at 527 Carverton Road in Wyoming, Pennsylvania, his residence for the last 30 years. Mr. Hennigan’s house is in the PNG service territory and he is a GBM customer. Tr. at 132-134.
2. Mr. Hennigan spoke with his home’s previous owner, Mr. Cadot, about the heating system in the home prior to purchasing it. After purchasing the home, Mr. Hennigan called the gas company to have his gas service turned on. During that call, the gas company representative confirmed that Mr. Hennigan would receive a rate for bottled gas, as if the natural gas lines were installed. Tr. at 133-134.
3. Mr. Hennigan received a letter dated May 24, 2011 notifying him of the termination of the GBM natural gas rate. Tr. at 143, Hennigan Exh. 1.
4. Mr. Hennigan is enrolled in PNG’s “ABC” automatic bill payment program. While his August 2011 bill stated that the amount due would be deducted from his checking account on August 23, 2011 PNG did not make any debit from his account in August. The Company never contacted Mr. Hennigan to let him know that his August 2011, bill would not be automatically debited. Tr. at 135-141, Hennigan Exh. 2.
5. Mr. Hennigan received a 10-day shut-off notice dated August 31, 2011. The Company did not contact Mr. Hennigan prior to sending him a shut-off notice. Tr. at 136-137, Hennigan Exh. 2 and 3.
6. Mr. Hennigan called PNG customer service on September 6, 2011 to discuss the shut-off notice he received. On that call, PNG representative Jeff told Mr. Hennigan that PNG did not debit his August 23, 2011 payment because he filed a Complaint with the PUC. Jeff then told Mr. Hennigan that his Complaint with the PUC was resolved, so his payment would be automatically deducted in September. Tr. at 137-141, Hennigan Exh. 4, Hennigan Exh. 5, lines 1-85.
7. PNG did not automatically debit Mr. Hennigan’s September bill, and the Company never contacted Mr. Hennigan to let him know that his September 2011, bill would not be automatically debited. Tr. at 138-140, Hennigan Exh. 4, Hennigan Exh. 5, lines 89-231.
8. Mr. Hennigan called PNG customer service on October 3, 2011 regarding the Company’s failure to automatically debit his September 2011 payment. On that call, PNG representative Melody told Mr. Hennigan that the PUC was “holding his account.” Melody said that the reason he was not told of PNG’s policy not to automatically debit his account was because the hold came on Mr. Hennigan’s account after the September 6, 2011, call and that no one from PNG spoke with him since then. She then told Mr. Hennigan that it is “within regulations” for PNG to send him a shut-off notice for any delinquent balance. Tr. at 137-141, Hennigan Exh. 4, Hennigan Exh. 5, lines 89-231.
9. Mr. Hennigan replaced several appliances in his home since 1997. In 1997, Mr. Hennigan replaced the gas boiler in his home for $1,800; in 2002, he replaced the hot water heater in his home for $350; in 2003, he replaced the gas cooktop in his home for $551; and in 2010, he replaced the gas dryer in his home for $505. Mr. Hennigan would not have continued to purchase gas appliances had he known that the GBM program was going to end. Tr. at 143.
10. 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.
11. Prior to this case, Mr. Hennigan was not aware that the difference in the price of natural gas and propane was paid for by the other customers and he believes that, if mains cannot be extended, PNG should pay the difference, not the customers. Tr. 147-148.
12. PNG would provide Mr. Hennigan natural gas through mains only if he pays $269,000 in CIAC. PNG St. 1-R at 21-23, PNG Exh. DEL 2.

*Fred Lindbuchler*

1. Fred Lindbuchler has lived at 532 Beverly Drive, Wyoming Pa, 18644 since April 2002. He is a customer of PNG and is in the GBM program. Tr. at 151-152.
2. PNG sent Mr. Lindbuchler a letter dated September 21, 2007 that states he is “currently being served with propane because PNG’s natural gas mains do not yet extend to your neighborhood.” Tr. at 153, Lindbuchler Exh. 1.
3. Mr. Lindbuchler’s propane tank ran out of gas in the winter of 2006-2007. He called the number on his tank for Modern Gas whose representatives told Mr. Lindbuchler that he was not their customer. He then called PNG regarding his tank being out of gas. During the call, the PNG representative told Mr. Lindbuchler that he was not a PNG customer. Mr. Lindbuchler gave the PNG representative his account number and street addresses, but the representative was still unable to locate his account. The representative was only able to locate the account under the previous owner’s name. Tr. at 155-158.
4. Mr. Lindbuchler replaced several appliances in his home since 2008. In 2008, Mr. Lindbuchler replaced the gas hot water heater in his home for $550 and, in 2009 he replaced the furnace in his home for $4,800. Mr. Lindbuchler would not have continued to purchase gas appliances had he known that the GBM program was going to end. Tr. at 160-161.
5. Mr. Lindbuchler is upset because since PNG purchased PG Energy, it has connected 60,000 new customers, according to the UGI annual report, but PNG will not run lines to its existing customers. He believes that because PNG’s customers were paying for the GBM program, the Company never had any motivation to extend the lines. Tr. at 162-163.
6. PNG would provide Mr. Lindbuchler natural gas through mains only if he pays $48,600 in CIAC. That amount assumes that a natural gas main has already been extended to serve Mr. Hennigan. PNG St. 1-R at 21-23, PNG Exh. DEL 2.

*Joseph Michaels*

1. Joseph Michaels has lived at 539 Carverton Road, Wyoming, Pennsylvania 18644 since September 2007. He is a PNG GBM customer. Tr. at 167-168.
2. In 2007, Mr. Michaels replaced his gas range for $650 and, as part of the home sales agreement, the water heater was replaced in July 2007 for $550. Mr. Michaels would not have continued to purchase gas appliances had he known that the GBM program was going to end. Tr. at 171.
3. Mr. Michaels believes that if mains cannot be installed, PNG should continue to provide the GBM customers propane at the natural gas rates at its expense. Tr. at 172, 174.
4. PNG would provide natural gas service to Mr. Michaels through mains, only if he paid $48,600 in CIAC. PNG St. 1-R at 21-23, PNG Exh. DEL 2. That cost estimate is the incremental cost, assuming that a main has already been installed for Mr. Hennigan. PNG Exh. DEL 2.

*Dolores Alar*

1. Dolores Alar resides in PNG’s service territory at 158 North Lehigh Street, Shavertown, PA. Tr. at 176.
2. Mrs. Alar is 72 years old and her husband passed away about 29 years ago. She has lived alone since then. Tr. at 185, 188.
3. She and her husband purchased the house in 1958. The heating source was coal when the house was purchased. Tr. at 177.
4. In 1967, PG&W was advertising to persuade residents within its service territory to switch to natural gas as a cleaner and more economical fuel than coal. Tr. at 177-178. She and her husband talked about the change, consulted with a plumber, Mr. Monk, and decided to go ahead with the conversion. Tr. at 178-179.
5. In December of 1967, Mr. and Mrs. Alar paid $1,280.00 to convert their home to natural gas for heating and cooking. They had a new furnace installed and put baseboard heating in. Tr. at 179-180; Alar Exh. 1, at 1.
6. The propane tank was installed as a temporary measure and was to remain there only until the natural gas line was put in. A year or two after the propane tank was put in, the natural gas line was installed about one-fourth of the way up North Lehigh Street, but not all the way to the Alar residence, the last house on the dead-end street. Tr. at 181-182, 188.
7. Until the natural gas line was installed, the Alars were to be charged for propane at the natural gas rate. Tr. at 182.
8. The first that Mrs. Alar learned that anything about her service and rates was going to change was when she received the May 2011 letter from PNG advising that the utility was going to take them off the GBM rate by increasing the percentage each year for three years and “after that we’re on our own.” Tr. at 183.
9. After receiving the May 2011 letter, she called the PUC to complain about the change. She was told that her choice was to continue as a PNG customer or to discontinue service with PNG and switch to an independent energy supplier. Tr. 183; Alar Exh. 1 at 4.
10. Had Mrs. Alar known that the GBM program was going to change, she would have considered a different kind of heating. Tr. at 185.
11. The propane tank is about ten feet from the side wall of her house. Tr. at 188.
12. Another natural gas line is nearer to the Alar residence on Harford Avenue and would require a right of way over a neighboring property (the Ratchfords). Connecting to the nearer line would bring the estimated cost to Mrs. Alar under the Company’s calculation using its tariff rule governing main extensions to new customers to $12,584, down from $16,320. PNG would provide Mrs. Alar service only if she paid $12,584 in CIAC. This assumes that PNG and the Ratchfords are able to reach an agreement for the required right-of-way across the neighboring property. PNG Exh. DEL 2; Lahoff Cross Exh. 1, Response to OCA I-3 (Revised).

*Jerome Fuhr*

1. Jerome Fuhr lives at 211 Windswept Road, Tunkhannock, Pennsylvania 18657. He has lived in his home since June 1, 1969. He is a PNG GBM customer. Tr. at 198-199.
2. Mr. Fuhr spoke with his home’s previous owner, Mr. Hoggins, about the heating system in the home prior to purchasing it. Tr. at 200.
3. The three large propane tanks used to serve the Fuhr and Pope homes (as well as a third home) are located on the Fuhr property. The tanks are located near a turnaround that is used by vehicles such as trucks, snowplows and school buses every week. Mr. Fuhr is concerned that the tanks are located in an area where a vehicle could hit them. Tr. at 204-205, Fuhr Exh. 1.
4. Mr. Fuhr has replaced several gas appliances in his home in recent years. Two or three years ago, Mr. Fuhr replaced the gas hot water heater in his home for $7,500, installed a gas generator in his home for $7,700, and installed a gas fireplace at a cost of $800 to $900. Mr. Fuhr would not have continued to purchase gas appliances had he known that the GBM program was going to end. Tr. at 205-206.

*Daniel Pope*

1. Daniel Pope lives at 208 Windswept Road, Tunkhannock, PA 18657. He purchased his home in 1995 and has lived there since 1996. Mr. Pope is a customer of PNG’s GBM program. Tr. at 215-216.
2. Mr. Pope is served by the three 1,000-gallon propane tanks located on the Fuhr property. He shares Mr. Fuhr’s concern that a vehicle could hit the propane tanks due to the tanks’ proximity to the turnaround. Tr. at 217-218.
3. In 2006, Mr. Pope had to replace the entire heating system in his house, including the air handlers and duct work, which cost $38,000. Had Mr. Pope known that the program was going to end, he would have seriously considered alternate energy sources like geothermal. In 2006, Mr. Pope also replaced the boiler for $8,900; in 2009, he installed a gas fireplace for $3,000; and in 2010, replaced a gas range for $1,550. Tr. at 216-219.
4. 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.” Mr. Pope believes that this letter is evidence of a contract between PG&W and the GBM customers. Tr. at 220-222, Pope Exh. 1.
5. PNG would provide Mr. Pope natural gas service through mains only if he paid $628,388 in CIAC. PNG St. 1-R at 21-23, PNG Exh. DEL 2.

*John Calafut*

1. Mr. John Calafut resides at 68 Honesdale Road, Carbondale PA, 18407. His residence is in PNG service territory. He inherited the house from his parents in 1969. Mr. Calafut was born in the Honesdale Road house and has lived there for his entire lifetime. Tr. at 227-228.
2. Mr. Calafut was present when the PG&W representatives came to talk with his parents about converting to gas. The representatives stated that they were going to run natural gas lines up Honesdale Road, but would provide propane gas at natural gas rates until the lines were installed. Tr. at 228.
3. Mr. Calafut has been a customer of the gas utility since 1969, first PG&W – Gas Division, then PG Energy and PNG. He uses propane for heating and hot water. Tr. at 229-230.
4. The first time he had an indication that something about his propane gas service might change was in 1972 when PG&W threatened to discontinue the program. PG&W dropped the idea and continued providing propane gas at natural gas prices, the same terms that had been represented by PG&W initially. Tr. at 230.
5. He again had an indication that the propane gas at natural gas rates may change when he received the May 2011 letter from PNG. Following receipt of the letter, he called the PUC, then Mr. Crossin of PNG. Tr. at 231.
6. Following his conversations with Mr. Crossin and the PUC, he submitted an Objection to the proposed rate change on the form that the PUC provides. He did not get any results from this. He then submitted a Formal Complaint with the same information after Ms. Moran-Roberto contacted him about the situation. Tr. 231; Calafut Exh. 1.
7. Mr. Calafut has a gas boiler and a hot water heater that use propane gas. He had to replace the boiler in the mid-1970s, but he did not remember at what cost. He has had to replace the hot water tank once since he inherited the house. Tr. 232-233.
8. Mr. Calafut’s estimate of the size of his lot is 150 by 200 feet. Mr. Calafut counted 17 or 18 houses from the intersection where the gas lines end to his house. He knows of others at 71 and 73 Honesdale who heat their house with propane who would be happy to get natural gas. Tr. 234-235.
9. If Mr. Calafut cannot receive natural gas through mains, he would like to continue to get propane gas at natural gas prices. Tr. 235.
10. PNG would provide Mr. Calafut natural gas service through mains only if he paid CIAC in the amount of $88,365. PNG St. 1-R at 21-23, PNG Exh. DEL 2.

*Robert and Lorraine Rowlands*

1. Robert and Lorraine Rowlands live at 31 Peacock Lane, Dallas, PA 18612.
2. The Rowlands’ residence is in PNG territory and was purchased in 1976. They have had propane as their heating source since they purchased the house, first from PG&W Gas Division and then from PNG when it purchased PG Energy in 2006. Tr. at 239.
3. The Rowlands received propane at natural gas rates up until December 2011. They use propane for heat, cooking and hot water, as the house was equipped with propane appliances when they purchased it. They have replaced the hot water tank twice at a cost of between $200 and $300. Tr. at 240.
4. Mr. Rowlands’ knowledge about receipt of PNG propane at natural gas rates until the lines are extended stems from his conversations with the real estate agent and Mr. Stervinsky, the prior owner of the house. Tr. at 245.
5. Mr. Rowlands stated that he believes that it would be very unfair for PNG to be able to simply walk away from their GBM customers and leave them with unregulated propane prices. Tr. at 250.
6. Following receipt of the May 2011 letter from PNG, Mrs. Rowlands called PNG to state that she wanted to file a complaint; the PNG Customer Service Representative advised her that she would need to contact the PUC and gave her the phone number. Rowlands Exh. 1 at 5.
7. PNG would provide the Rowlands natural gas service through mains only on condition that they pay CIAC in the amount of $27,000. PNG St. 1-R at 21-23, PNG Exh. DEL 2.

*Charles Schulz*

1. Mr. Charles Schulz and his wife reside at 1114 Crystal Hill Road, Berwick PA, 18603. His residence is in the PNG service territory. They purchased the home in 2005, and have resided there permanently since August of 2011. He has been a customer of PNG since 2006, and the corporate predecessor for a short period prior to that. Tr. at 261-262.
2. When he purchased his home, he inquired about the heat sources and was told that the liquid propane was provided at the natural gas rates. His understanding was that the propane gas would be provided at the natural gas rates until the mains were installed. Tr. at 263.
3. When Mr. Schulz bought the house, it was equipped with a Peerless gas furnace, a hot water heater and a gas range and oven. Mr. Schulz has not had to replace any of these appliances; however, he has had maintenance performed. Tr. at 264.
4. Mr. Schulz first learned that PNG planned to change his service and rates when he received the letter in 2011. He called Mr. Gene Crossin at PNG, whose name was at the bottom of the letter. Tr. at 266.
5. He called the PUC about the proposed rate change and was encouraged to file a Formal Complaint against it. Tr. at 267; Schulz Exh. 1 at 7.
6. According to Mr. Schulz, the letter of May 2011 from PNG was the first time he learned of the 2008 base rate case in which the GBM program was proposed to be eliminated. Mr. Schulz feels that the 2008 base rate case resulted in an invalid settlement. Tr. at 268; Schulz Exh. 1 at 8.
7. Mr. Schulz believes that, if the Company will not extend gas lines because it does not believe that they are economic, the Public Utility Commission should require the Company to continue to provide the remaining GBM customers with propane at natural gas rates. Tr. at 271-272. Mr. Schulz was not aware that other natural gas customers pay the difference between the propane and natural gas rates for GBM customers, but he feels that the Company that markets the program should be responsible for the costs – not the customers. Tr. at 272-273.
8. PNG would serve Mr. Schulz with natural gas service through mains only if he paid a CIAC of $43,900. PNG St. 1-R at 21-23, PNG Exh. DEL 2.

*Expert Testimony[[2]](#footnote-2)*

1. PNG has provided a GBM tariff service pursuant to its Commission approved tariff. GBM is a tariff offering by which PNG, at its option, supplies customers with propane gas in lieu of natural gas. PNG Statement No. 1-R, pp 8-9.
2. GBM 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, 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 uneconomic. 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.) Despite the letter, the GBM program continued.
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 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 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 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 its customers. 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 subsidies by 2014. All parties in the 2009 Base Rate Case, including the 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 the 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 addressing the I&E’s concerns about cross-subsidization. PNG Statement No. 2-R, p. 6.
18. Each of the Formal Complainants alleged that PG&W, PNG’s predecessor, entered into an agreement or contract with them that obligates PNG to extend natural gas distribution mains to the GBM Complainants or to continue to provide propane at natural gas rates indefinitely.
19. The OCA and Complainants further contend that PNG should be required to extend natural gas mains to the GBM Complainants without requiring any CIAC.
20. 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.
21. PNG uses 5.5 times the annual margin to calculate the allowance and the predetermined rate of return. PNG Statement No. 2-R, p. 9; Tr. at 16, 19.)
22. 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.
23. 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.
24. There is no provision in PNG’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.
25. PNG 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. Tr. at 19-21.
26. 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.
27. 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.) 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.
28. Under the 2011 PGC Proceeding 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 eliminated. PNG Statement No. 1-R, pp. 22-23.
29. Under the 2011 PGC Proceeding settlement, the GBM customers will continue to receive 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 consumer protections such as payment agreements for outstanding balances in arrears. PNG Statement No. 1-R, pp. 22-23.
30. The distribution rates paid by PNG customers, including GBM customers, are established to provide the revenue required for PNG 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.
31. The uneconomic portion of the investment to extend mains to serve the 11 GBM Complaints, and 138 of the proximate GBM customers, and potential new customers for which PNG 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.
32. Two Complainants raised service-related issues; they were Mr. Hennigan and Mr. Fuhr. Mr. Hennigan alleges that he was discontinued from PNG’s automatic bill pay program after filing a complaint with the PUC. Mr. Fuhr alleged that the tanks were unsightly and unsafe.
33. PNG’s computer system automatically will temporarily suspend automatic withdrawal payments when a customer files a complaint to eliminate the chance that PNG will withdraw a payment from a customer whose complaint involves a billing amount that is in dispute. PNG 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.
34. 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.
35. 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.
36. 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.
37. 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.
38. 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.
39. 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.
40. 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.
41. 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.
42. Marilyn Kraus is a certified public accountant currently employed as a Senior Regulatory analyst for the OCA and has experience in rate cases and regulatory policy issues for over 27 years. OCA St. 1 at 1, App. I.
43. As part of PNG’s most recent general base rate proceeding at Docket No. R-2008-2079660, the Commission approved a Settlement with terms allowing for a phase-out of the GBM tariff rate by August 27, 2014, i.e., five years after the entry date of the Order in that docket. As a result of the Section 1307(f) gas cost rate proceeding that followed, the Company implemented the first step of the rate phase-out, which comprises a blend of 15% of the market-based propane rate and 85% of the PNG purchased gas costs rate; this first step took effect on December 1, 2011. As a result, the GBM customers are now being charged a commodity rate of $8.4620 per Mcf, as opposed to the commodity rate of $5.6654 for the Class R customers. OCA St. 1 at 2.
44. The GBM program was implemented as a promotional tool in the mid-1960s, to secure gas customers in the face of competition from electric utilities and oil suppliers. OCA St. 1 at 3. As a result of a PUC investigation into GBM in 1973, the Commission ordered

PG&W to extend mains to the GBM customers to the extent that they could be converted under a reasonable extension policy. The utility was to continue to absorb the losses associated with providing propane at the equivalent natural gas rate until its next rate filing. OCA St. 1 at 4.

1. In the 1975 PG&W base rate case, the Commission permitted the utility to recover the losses from all customers, including the GBM customers, through base rates. Later, the purchased gas cost rate became a blended rate comprising both the natural gas and propane purchases. OCA St 1 at 4.
2. In the PNG base rate case in 2008 (Docket No. R-2008-2079660), PNG did not notify its customers of any change in or elimination of the GBM program. The first mention of elimination of the program was in the Office of Trial Staff testimony by witness Michael J. Gruber. PNG rebutted this testimony by saying that the program should not be eliminated and suggested that any decision should await the completion of a pending Commission investigation into all GBM programs. PNG witness Szykman also noted that the GBM customers would experience “very significant rate increases” if the program were phased out. OCA St. 1 at 4-5.
3. The Settlement that was approved by the Commission required amendments to the PNG tariff that would (1) allow continued service to existing GBM customers, (2) preclude the addition of any new GBM customers after January 1, 2010 and (3) provide that the GBM tariff service be eliminated no later than five years from the date of PUC acceptance of the settlement. OCA St. 1 at 5.
4. The Settlement in the PNG Purchased Gas Cost proceeding in 2011 allows for a transition to propane market rates in four steps, with a higher percentage of the propane market rate blended with the natural gas rate in each step. OCA St. 1 at 5-6.
5. The PUC Investigation into the Gas Beyond the Mains programs statewide is not yet complete. OCA St. 1 at 6.
6. OCA witness Kraus recommends that the natural gas distribution mains be extended to the Complainants in this case without PNG charging them a CIAC. OCA witness Kraus further recommends that only the “economic” portion of the investment as determined by UGI be included in rate base initially, with additional amounts added to rate base for each customer who connects to the mains in the future. That is, the Company investment in the mains would be treated tantamount to a “refundable advance” for construction in developer situations. OCA St. 1 at 7-8.
7. The basis for the Kraus recommendation is that from the beginning the program allowed the utility to capture new customers before the distribution lines were installed; as a result, the Company realized increased natural gas sales and distribution revenues to the benefit of its shareholders for many years. The Complainants relied on the representation made by the utilities and have continued to make expenditures over many years in anticipation of continuous gas service. OCA St. 1 at 9.
8. The GBM customers have contributed to all of the system costs, including the distribution system. The Company never performed a separate cost of service study for these customers and includes them with the other residential customers in the Rate R or Rate N classes for ratemaking purposes. OCA St. 1 at 10.
9. At the conclusion of the phase-out period, the GBM customers would be paying a commodity rate of $24.3094 per Mcf, compared to the PGC rate for all other residential customers receiving service through lines of $5.66554 per Mcf; at the same time, they would continue to pay all distribution rates and surcharges, which would have a substantial impact on the GBM customers’ ability to pay for their gas service. OCA St. 1 at 10.
10. As a specific example, the Moran-Roberto commodity bill would increase from $590.90 to $2,535.47 and the overall bill, including distribution and other charges, from $1,284.00 to $3,228.57. OCA St. 1 at 11.
11. The PNG Tariff Rule applies to applicants for UGI service and “applicant” is defined as “any person … that (i) desires natural gas or other service provided for in this Tariff at a specific location … (iii) has filed and is awaiting Company approval of its application for service and (v) is not yet actually receiving from the Company any service provided for in this Tariff at the applicant’s location.” OCA St. 1 at 13, quoting PNG Gas – Pa. P.U.C. No. 8, Original Page 9.
12. When UGI Inc. acquired Southern Union, the agreement called for the acquiring company to “assume any unfulfilled service obligations.” OCA St. 1 at 14.
13. The OCA recommends that only the “economic” portion of the mains investment to serve the remaining GBM customers be placed in rate base initially; the balance of the cost of the mains should be initially absorbed by the shareholders. The amount of the investment allowed in rate base could increase as additional customers are added to the mains. OCA St. 1 at 14, 16.
14. PG&W was allowed to recover the losses it incurred in providing propane at natural gas rates from the customers because of the restrictions placed on natural gas utilities by the Commission related to the 1970s gas shortage. OCA St. 1 at 15.
15. For all of the years since the PUC allowed the shifting of the costs of the promotional GBM program (the difference in the cost of propane and natural gas) from the shareholders to the ratepayers, ratepayers have borne the costs. The Company, its shareholders and its propane affiliate have realized incremental profits from the GBM customers for decades, while ratepayers have funded the costs. OCA St. 1 at 15.
16. In 1973, the PUC investigated the GBM program in response to the Complaint of William D. Morgan, *et al*. against PG&W - Gas Division. OCA St. 1 at App. II. The Commission concluded that PG&W could not simply discontinue the GBM program and increase the rates to the customers to the market-based propane rates. PG&W was thus ordered to extend gas mains that could be constructed under a reasonable main extension policy and, for the GBM customers to who mains were not extended, PG&W was ordered to continue to provide propane at natural gas rates and absorb the losses at least until the next rate filing. OCA 1S at 2; OCA St. 1, App. II, *Morgan* Order at 5-6.
17. 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 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. This eliminates the fuel cost subsidies by the non-GBM customers through the PGC rate, and replaces it with a rate base subsidy by the GBM customers, who would also be paying substantially increased commodity rates. OCA St. 1S at 9‑10, Tr. at 27-28, 42.
18. PNG applies its Tariff Rule governing extensions of natural gas service to PNG GBM customers in order to determine whether a natural gas line is “economic” or “not economic.” PNG St. No. 1-R at 3-4.
19. PNG seeks to recover its investment in mains in 5.5 years from each and every customer to whom it extends a main. Tr. at 16-17.
20. According to PNG, PNG does not have discretion to invest more in a line extension than would be justified by 5.5 years’ worth of distribution revenues. Also according to PNG, the line extension policies apply to all individuals. Tr. at 18-19.
21. PNG applies this rule to any existing jurisdictional customer to determine what to charge them when they need a system upgrade. Tr. at 20.
22. PNG does not charge a residential customer for a replacement main, which is a completely different circumstance. Replacement mains do not fall under the line extension rule. Tr. at 20-21.
23. PNG considers GBM customers to be jurisdictional customers to whom PNG has an obligation to serve under the Public Utility Code. Tr. at 20-21.
24. The average service life of new gas main that goes into service today is in the vicinity of 40 years or more. Tr. at 21. The higher the number of years to determine an appropriate Company investment, the higher the amount of the Company investment; if the Company were to invest more, the GBM customers would be asked for less. Tr. at 21-22.
25. PNG has been profiting from the GBM customers over the years, as the GBM customers are part of the residential class and the revenues received contribute to the overall financial return for the Company. Tr. at 26.
26. UGI’s propane subsidiary, AmeriGas, has been the supplier for the GBM customers starting in about 2010. When AmeriGas sells propane to UGI to provide to the GBM customers, AmeriGas also presumably makes a profit on those propane sales. Tr. at 27.
27. The price of propane to PNG covers all of the costs of getting the propane to the customers, including the trucks, the cost of storing the propane, including the tanks, the cost of the pipes in the ground and the like. The price that AmeriGas or any propane supplier is charging is meant to cover their expenses and the rate of return. 100% of the cost of propane has been collected through the PNG purchased gas cost rate since 2006, when UGI purchased PG Energy. Tr. at 27-28.
28. In addition to paying 100% of the cost of GBM propane, the PNG customers, including the GBM customers, have been paying for the mains in the ground to provide them natural gas through their distribution rates. Tr. at 28-29.
29. GBM customers have been paying the distribution rate to PNG, but have not had the benefit of the underground infrastructure. Tr. at 28.
30. PNG has not performed a cost of service study specific to the GBM customers. Tr. at 28-29.

DISCUSSION

Burden of Proof:

As the party seeking affirmative relief from the Commission, the Complainants individually bear the burden of proof. 66 Pa. C.S. § 332(a).

To satisfy this burden, a complainant must show that the named utility is responsible or accountable for the problem described in the Complaint*. Patterson v. Bell Telephone Company of Pennsylvania, 72 PA PUC 196 (1990); Feinstein v. Philadelphia Suburban Water Company*, 50 PA PUC 300 (1976). This must be shown by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. PA Public Utility Comm’n*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. den.*, 602 A.2d 863 (1992). That is, a complainant must present evidence more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, (1950). Additionally, any finding of fact necessary to support the Commission’s adjudication must be based upon substantial evidence. *Mill v. Comm’w., PA Public Utility Comm’n*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transportation Corp. v. PA Public Utility Comm’n*, 623 A.2d 6 (Pa. Cmwlth. 1993), 2 Pa. C.S. § 704. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk and Western Ry. v. PA Public Utility Comm’n*, 489 Pa. 109, (1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 166 A.2d 96 (Pa. Super. 1960*); Murphy v. Commonwealth, Dep’t. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

Are the Formal Complainants entitled to gas main extensions without a contribution in aid of construction:

OCA’s argument:

The OCA has two parts to its argument; first, it alleges that PNG inadequately addresses the end of the GBM program, and secondly, that PNG’s application of its tariff Rule 5 violates Section 1501 of the Public Utility Code. 66 P.S. § 1501. OCA concludes that the PUC should order PNG to extend the mains without a contribution in aid of construction (CIAC). OCA further concludes that various billing actions by PNG were in violation of 1501.

PNG’s argument:

PNG argues that it cannot be compelled to violate its tariff, which would occur if it allowed a group of customers to get main extensions without following Rule 5 of its tariff. PNG argues that 9 of the 11 Formal Complainants are not the original home owners, therefore, even if a promise was made, it was not to the 9. PNG further argues that even if a promise was made, it was not made stating that there would be no customer contribution. PNG notes that only Mr. Hennigan raised service related issues in his Formal Complaint.

End of the GBM Subsidies:

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 uneconomic. (PNG Statement No. 1-R, p. 4.)

In 2006, PG&W’s successor, Southern Union Company,[[3]](#footnote-3) 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 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.[[4]](#footnote-4) PNG’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.)

The parties to the 2009 Base Rate Case ultimately reached a settlement of all issues in the proceeding, which was adopted by the 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.) The 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 parties to the 2011 PGC Proceeding, including the OCA, 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 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 the associated consumer protections. In addition, this settlement did not require PNG to extend mains to or seek abandonment of GBM customers.

The 2011 PGC Proceeding 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. The 2009 Base Rate Case and 2011 PGC Proceeding do not provide that the GBM customers will be converted to natural gas service, they state that the rate difference and subsidy will be phased out.

Notice:

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) 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).[[5]](#footnote-5)

PNG provided notice of its impending 2009 Base Rate Case by way of a mailing insert. (PNG Statement 1-R, p. 29.) With respect to tariff and rate changes, Section 53.45 of the Commission’s regulations requires 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*.

52 Pa. Code § 53.45 (emphasis added).

The Commission’s regulations contemplate changes in rates and tariff provisions that may not have been requested in an initial rate case filing. 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 the opportunity to participate in the proceeding. *Pa. PUC v. United Water Pennsylvania*, *supra*. PNG’s notice of the 2009 Base Rate Case satisfied the Commission’s due process requirements. The Complainants’ allegations of lack of notice are without merit.

Additionally, the current treatment of the GBM customers was addressed in the 2011 PGC Proceeding, which led to the approval of the transition of GBM customers to market rates over a four year schedule. PNG provided specific 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 right to file complaints if they wished to challenge the transition. (PNG Statement No. 1-R, p. 30.) Thus, 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 that proceeding. Of note, Ms. Moran-Roberto, became a party to the PNG 2011 PGC proceeding as a result of the May 2011 mailing. (PNG Statement No. 1-R, p. 30.)

The elimination of the GBM subsidies has been decided, the Formal Complainants had proper notice, and the appeal period has passed. Nothing in the Formal Complaints, testimony or documents warrants revisiting the settlements in the 2009 Base Rate Case or the 2011 PGC Proceeding. Therefore, the Formal Complainants and OCA’s positions are denied and will be dismissed in the ordering paragraphs below.

Agreement/Promise/Contract:

There are two indications that some sort of agreement was propounded by Pennsylvania Gas & Water (PG&W) to numerous customers to the effect that, if they accepted propane gas in lieu of electric or oil, then PG&W would sell propane to them at natural gas prices until such time as natural gas mains were extended into their areas. One is the extensive oral testimony attesting to the existence of such an agreement, and the other indication is a PG&W letter from 1973 indicating the existence of such an agreement. However, this agreement appears not to have been reduced to writing. Numerous Formal Complainants in their Complaints expressed an understanding that there was a “contract” and, expressed the same in their oral testimony.

There are problems with this: First, there may be questions of whether PNG took over this specific obligation of PG&W; this is a corporate law question. Second, there is the question of the existence of the contract, and if it exists, its terms. Third, customers cannot validly contract in violation of a utilities tariff. Thus, what was the tariff in place at the time of the so called contract? Fourth, any contract over $500 must be in writing according to the Uniform Commercial Code. Fifth, whether PG&W used bait and switch tactics, a form of fraud. These are questions for the Courts of Common Pleas. None of these issues are ones over which the PUC has jurisdiction.

The PUC is a creature of statute, it has only those powers, which are expressly conferred upon it by the legislature and those powers, which arise by necessary implication. *Feingold v. Bell of Pennsylvania,* 477 Pa.1, 383 A 2d 791 (1978). The Commission must act within and cannot exceed its jurisdiction. *City of Pittsburgh v. Pa. Public Utility Commission*, 43 A.2d 348 (Pa. Super. 1945); *Hart v. AT&T Communications of Pennsylvania, Inc.*, Docket No. C-00003769, Commission Final Order entered August 29, 2000 *(Hart); Wilkie v. AT&T Communications of Pennsylvania, Inc.*, Docket No. C-20016085, Commission Final Order entered December 28, 2001 (*Wilkie*).

The Commission is not jurisdictionally empowered to decide private contractual disputes between citizens and utility. *Allport Water Auth. v. Winburne Water Co*., 393 A. 2d 673 (Pa. Super. 1978). However, the reasonableness, adequacy and sufficiency of public utility service are all matters within exclusive original jurisdiction of the Commission. *Id.*

Failure to Extend Mains:

OCA argues that PNG violates § 1501 by not extending mains.

Section 1501 states:

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of the commission.

Subject to the provisions of this part and the regulations or orders of the commission, every public utility may have reasonable rules and regulations governing the conditions under which it shall be required to render service.

Any public utility service being furnished or rendered by a municipal corporation beyond its corporate limits shall be subject to regulation and control by the commission as to service and extensions, with the same force and in like manner as if such service were rendered by a public utility.

The commission shall have sole and exclusive jurisdiction to promulgate rules and regulations for the allocation of natural or artificial gas supply by a public utility.

66 P.S. § 1501 (Spaces added for readability).

OCA argues that “in order to provide reasonable service, PNG must extend natural gas distribution mains to the Complainants.” (Main Brief at 42.) Section 1504 of the statute allows the Commission to establish standards and rules for service.

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[[6]](#footnote-6) 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. 52 Pa. Code § 59.27. PNG’s Commission-approved main extension rules establish these terms and conditions and 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).

The OCA’s central argument -- that PNG is required to make uneconomic line extensions under Section 1501 -- has been 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 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. 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.” *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).

OCA appealed to the Commonwealth Court. 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). The Commonwealth Court stated:

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).

The OCA appealed to the Supreme Court of Pennsylvania. 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.

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]](#footnote-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 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 my decision to dismiss the 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 complaint 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).

Thus, the Commission 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. Neither the Initial Decision nor the Opinion and Order addressed the alleged agreement.

The OCA argues that PNG’s main extension rules do not apply to GBM customers. (OCA Main Brief, pp. 47-46.) This argument ignores the language of the main extension provisions of PNG’s Commission-approved tariff, PNG’s practice, and the Commission’s recent decision in *Adams,* which holds that main extension provisions in a utility’s tariff apply to GBM customers. The main extension rules in PNG’s tariff apply to allcustomers, 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 line extension tariff provisions only apply to new applicants for service that have never been customers of PNG. This is incorrect. Main extensions 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, 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.

Service Issues:

Two complainants raised service related issues in their Formal Complaints, Mr. Hennigan and Mr. Fuhr. A review of the GBM Formal Complaints indicates that all of the GBM Complainants opposed the rate increase, *i.e.*, the phase-in of GBM service to market-based propane rates. All other service-related issues raised by the OCA at hearing are outside the scope of GBM Complaints and are not addressed herein.

With regard to Mr. Hennigan’s service issue, PNG explained during hearing that it is their practice to suspend automatic billing when a formal complaint has been filed. The reasoning is that PNG does not want to automatically withdraw a payment if part of the formal complaint is a billing related challenge. PNG also explained that it is in the process of changing how it handles automatic billing and complaint issues. I find the PNG explanation reasonable. I do not find that the suspension of Mr. Hennigan’s automatic withdrawal amounts to a violation of Section 1501.

With regard to Mr. Fuhr’s allegations that the propane tanks are unsightly and unsafe: PNG has 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.) 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. Further, the record establishes that the propane supplier raised propane tanks, leveled them, and added cement block support for the tanks as necessary. (PNG Statement No. 2-R. pp. 15-16.) In summary, Mr. Fuhr failed to prove that the tanks are unsafe. The appearance of the tanks is not a violation of Section 1501.

CONCLUSIONS OF LAW

* + - 1. The Commission has jurisdiction over the subject matter and parties to this Complaint. 66 Pa. C.S. § 701.
      2. As the party seeking affirmative relief from the Commission, each Complainant bears the burden of proof. 66 Pa. C.S. § 332(a).
      3. As a matter of general principle, a complainant must show that the named utility is responsible or accountable for the problem described in the Complaint in order to prevail. *Patterson v. Bell Telephone Company of Pennsylvania*, 72 Pa. Pub. Util. Comm’n 196 (1990); *Feinstein v. Philadelphia Suburban Water Company*, 50 Pa. Pub. Util. Comm’n 300 (1976). This must be shown by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm’n*, 578 A.2d 600 (1990), *alloc. den.*, 602 A.2d 863 (1992).
      4. Tariff provisions previously approved by the Pennsylvania Public Utility 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).
      5. 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 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)).

1. 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).
2. 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).
3. 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).
4. Under Section 1501 of the Public Utility Code, utilities are only required to extend service to customers “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).
5. 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).
6. PNG’s line extension rules do not violate Section 1501.
7. There is only one main extension provision in PNG’s tariff, which PNG applies to all line extension requests.
8. PNG’s main extension rules apply to GBM customers. *Adams v. UGI Utilities, Inc. – Gas Division*, Docket No. C-2010-2182016 (October 31, 2011).
9. PNG is not terminating propane service but, rather, will continue the GBM service and transition long-term GBM customers to market based rates.
10. PNG is following the terms and conditions of the Commission-approved settlements agreed to by the parties.
11. 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)). PNG’s notice of the 2009 Base Rate Case satisfied the Commission’s due process requirements.
12. 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 that proceeding.
13. PNG has not violated Section 1501 of the Public Utility Code, 66 Pa.C.S. § 1501.
14. The OCA and GBM Complainants failed to meet their burden of proof in this proceeding.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaints filed by: Kathleen Moran-Roberto at Docket No. C-2011-2251178; John Calafut at Docket No. C-2011-2253878; Jerome Fuhr at Docket No. C-2011-2254311; Daniel L. Pope at Docket No. C-2011-2258722; Dolores Alar at Docket No. C‑2011-2266076; Charles Schulz at Docket No. C-2011-2267370; John Hennigan at Docket No. C-2011-2262771; Robert Rowlands at Docket No. C-2011-2272802; and Alfred and Stephanie Donnelly at Docket No. C-2012-2281722, joined in by Joseph Michaels and Fred Linbuchler are dismissed.
2. That the Secretary’s Bureau mark the Dockets closed.

Date: August 31, 2012 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Ember S. Jandebeur

Administrative Law Judge

1. Pennsylvania Gas & Water Company [↑](#footnote-ref-1)
2. All Transcript references are to the second day of hearings unless otherwise noted. [↑](#footnote-ref-2)
3. 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). [↑](#footnote-ref-3)
4. *See* PNG St. No. 1-R, p. 9. [↑](#footnote-ref-4)
5. *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”). [↑](#footnote-ref-5)
6. Natural Gas Distribution Company [↑](#footnote-ref-6)
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). [↑](#footnote-ref-7)