

COMMONWEALTH OF PENNSYLVANIA



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October 2, 2012

Rosemary Chiavetta, Secretary  
PA Public Utility Commission  
Commonwealth Keystone Bldg.  
400 North Street  
Harrisburg, PA 17101

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

Dear Secretary Chiavetta:

Attached for electronic filing are the Exceptions of the Office of Consumer Advocate in the above-referenced proceeding.

Copies have been served upon all parties of record as shown on the attached Certificate of Service.

Sincerely yours,

A handwritten signature in cursive script that reads "Dianne E. Dusman".

Dianne E. Dusman  
Senior Assistant Consumer Advocate  
PA Attorney I.D. #38308

Attachment

cc: Honorable Ember S. Jandebour  
Office of Special Assistants  
Certificate of Service  
161309.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.	:	

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EXCEPTIONS  
OF THE OFFICE OF CONSUMER ADVOCATE

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## I. INTRODUCTION

On September 12, 2012, the Office of Administrative Law Judge issued the Initial Decision (I.D.) of Administrative Law Judge (ALJ) Ember S. Jandebour in Kathleen Moran-Roberto, et al. v. UGI Penn Natural Gas, Inc., Docket Nos. C-2011-2251178, *et al.* This case involves UGI Penn Natural Gas (PNG) Company's Gas Beyond the Mains (GBM) program and the fair and equitable treatment of the GBM customers as the GBM rate is phased out and replaced with an unregulated propane rate. Pursuant to the GBM program, the Complainants were to be provided propane at natural gas rates until such time as their utility extended natural gas mains to their homes.

Since as early as the 1960s, PG&W, PNG's predecessor in interest, represented to the GBM customers that propane service at natural gas rates would be temporary, until the Company was able to install mains to serve them with natural gas. Forty years later, the propane tanks are still in the Complainants' backyards, and PNG is telling these customers that if they want natural gas delivered to their homes, they must first pay a cost-prohibitive "Contribution in Aid of Construction" (CIAC). These customers are also seeing significant increases in the cost to heat their homes as the GBM Purchased Gas Cost rate is being raised to the price of unregulated propane. Importantly, these GBM customers will also continue to pay the full level of PNG distribution rates, as if they actually received natural gas service through mains, even though no mains have been extended to their homes. Ironically, all of this is occurring at the same time that the cost of natural gas – which the customers expected would be their ultimate fuel source – is declining in price and is increasingly in abundance in Pennsylvania.

The OCA submits that this case is the first opportunity for the Commission to address the fair and equitable treatment of these GBM customers in the context of today's burgeoning



natural gas market. Prior cases that resulted in the phase-out of the GBM rate addressed only the elimination of the commodity subsidy that resulted from the implementation of the GBM program and the inclusion of the cost of propane in the commodity rate. What has not been addressed in prior cases is the overall bill impacts on these customers, who justifiably expected to receive natural gas service through distribution mains at some point in time. These customers will pay the full market-based propane rate by August 2014, in lieu of the natural gas PGC rate, ending one subsidy. If the Commission does not address the fair and equitable treatment of these customers at this time, however, yet another unfair subsidy is created, as the GBM customers will continue to pay a share of the distribution system required to deliver natural gas to all other PNG customers, on top of the market propane rate.<sup>1</sup>

The impact of the phase-out of the GBM rate and the dramatic increase in overall bills that these customers will see is underscored by the decline in natural gas prices substantially due to the development of Marcellus Shale Gas in Pennsylvania. These eleven GBM complainants reside in northeast Pennsylvania, a region of robust Marcellus Shale development – some of them even reside within sight of drill pads. The evidentiary record contains examples of the natural gas promotional advertising that has peppered the northeast. For example, UGI’s October 2011 ad in the Scranton Times<sup>2</sup> states:

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<sup>1</sup> The OCA specifically acknowledges its participation in the prior base rate and 2011 PGC proceedings and that it was a signatory party to settlements in those cases. PaPUC v. UGI PNG, Docket No. R-2008-2079660 and PaPUC v. UGI PNG, Docket No. R-2011-2238943. The OCA would emphasize, however, that it is not challenging the PGC phase-out of the GBM commodity rate in this proceeding; rather OCA seeks to address questions that remained unanswered in those prior proceedings concerning the fair and equitable treatment of the GBM customers under the Public Utility Code. OCA R.B. at 10-20. The OCA would also note that the both the base rate and the PGC settlement provisions regarding terminating GBM and the phase-in to market propane rate, respectively, were contingent upon the completion of the GBM investigation. Investigation Order, Docket No. D-2008-2063177 (Order entered January 8, 2009). The investigation docket is still pending. OCA R.B. at 21.

<sup>2</sup> Moran-Roberto Exh. 1 at 6 (emphasis in original).

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*....

In addition, the OCA would note that the Commission recently approved an Application for a certificate of public convenience to supply natural gas to the public in portions of northern Susquehanna County. Re Application of Leatherstocking, LLC, for Approval to Supply Natural Gas Service to the Public in Susquehanna County, within the Commonwealth of Pennsylvania, Docket No. A-2011-2275595 (Order entered September 27, 2012). Specifically, Chairman Robert F. Powelson issued a Statement acknowledging the favorable impact of low-cost Marcellus Shale gas on economic development and on Pennsylvania consumers, stating, in pertinent part, as follows:

One hundred percent of the gas sold by Leatherstocking will be locally-produced from the Marcellus Shale, which means that its customers will have some of the lowest, if not *the* lowest, purchased gas cost rates in the Commonwealth. Residents in Susquehanna County will be able to save thousands of dollars a year by switching from high-cost heating sources such as fuel oil and propane to lower-cost natural gas. Further, the areas receiving this service will also have a new economic development tool to keep current, and attract new, businesses.

I applaud Leatherstocking for making this investment in Pennsylvania and I hope it, and our other gas distribution utilities, *continue to look for ways to expand their systems to bring natural gas to more of Pennsylvania's consumers.*

Id., Statement of Chairman Robert F. Powelson, September 27, 2012 (emphasis added). The benefits to consumers and to the economy of promoting natural gas as a low-cost fuel are clear. Yet, natural gas is financially out of the reach of these Complainants, who are PNG's current customers, due to the high CIAC charges that PNG demands as a prerequisite to providing them natural gas service.

The OCA respectfully submits that PNG's phase-out of the GBM commodity rate for this group of current customers without extending natural gas mains on terms other than those that ordinarily apply only to new applicants for utility service is not adequate or reasonable utility service as required by Section 1501 of the Public Utility Code, contrary to the ALJ's conclusions in the Initial Decision. As the record shows, these Complainants were solicited to participate in a utility-sponsored promotional program with the expectation that the natural gas distribution system would be extended to their area. The Complainants relied upon representations of future natural gas service, some in the 1960s, and all in recent decades when making decisions regarding the heating systems and appliances in their homes in order to remain ready for natural gas service through mains. Now, these customers' bills will quadruple by the end of the phase-out yet they will not receive the natural gas service that they expected when they signed up for the program. Moreover, the ALJ's Findings of Fact and the evidentiary record show that, in many other ways, PNG has been unable to provide reasonable and adequate service to these GBM customers. As such, the Company has failed to meet its service obligations to these customers in accordance with the Public Utility Code and pertinent regulations. 66 Pa.C.S. § 1501; 52 Pa. Code § 56.1, 56.140-141, 56.151-152.

To resolve these Complaints, the OCA respectfully urges the Commission to reject the ALJ's Conclusions of Law and to order PNG to extend mains to the GBM customers without CIAC in a manner consistent with the recommendations of OCA witness Marilyn Kraus, in order to meet its service obligations consistent with the Public Utility Code. The remedy proposed by Ms. Kraus would simultaneously be fair to the PNG customers, consistent with the promotion of retail natural gas markets, including the use of native Marcellus Shale gas supplies in Pennsylvania.

## II. EXCEPTIONS

**Exception 1:** The ALJ Erred in Not Recommending Relief in the Form of Main Extensions Without CIAC Under the Unique Circumstances Presented in This Case. (I.D. at 38-45; OCA M.B. at 35-48; OCA R.B. at 5-14).

### A. Introduction

The GBM program was implemented in the mid-1960s by PNG's predecessor, PG&W, as a means of promoting its sales of natural gas. OCA M.B. at 35; OCA St. 1 at 1. The Commission recognized this as the purpose of the "bottled gas" program in its investigation of PG&W in March 1973. Specifically, the Commission stated:

On March 12, 1973, we instituted our own investigation against PG&W predicated on the following averments of fact: that PG&W about ten years ago began rendering service to some new customers by supplying bottled gas at the customers' residence or other place of consumption, instead of natural gas in underground pipes; that such service was initiated as a temporary measure and was intended to be replaced by natural gas when distribution lines could be extended to such customers; that until these lines could be extended, the rate charged for this bottled gas was to be the prevailing rate charged for natural gas, such rate being substantially lower than the cost of supplying bottled gas.

Morgan, et al. v. PG&W, Complaint No. 19852, 47 Pa.PUC 232, 234 (Order entered December 4, 1973). The Commission further stated that "this bottled gas program was simply a device used by PG&W to promote its natural gas sales." Id. at 235. This program allowed PG&W to capture new gas customers before distribution lines were installed in their areas. OCA St. 1 at 3-5, 8-9. The Company was able to realize increased sales and revenues through the program, without making the investment that would have otherwise been required to expand its infrastructure to those customers. Id. OCA witness Kraus summarized the importance of the GBM program to PG&W and its shareholders, as follows:

The natural gas shortage of the 1970s was the situation that resulted in the Commission's restrictions of new natural gas

customers. It also resulted in the shifting of the costs of the promotional GBM program from the shareholders to the ratepayers. Since that time, the ratepayers have borne all of the costs of this promotional program. That is, for all these years, the Company has experienced no expenses or losses to support this promotional program. Indeed, the Company and its shareholders (and its propane affiliate) have realized incremental profits from GBM customers for decades, while at the same time, ratepayers have funded the additional costs of supplying propane to GBM customers.

OCA St. 1 at 15.

The ALJ's Findings of Fact, based on the evidentiary record, make clear that for over forty years, these customers have been provided propane at the natural gas rate, in lieu of natural gas, first by PG&W and PG Energy, and then, upon acquisition of the system by PNG, with the expectation that the natural gas distribution system would be extended into their area. PG&W confirmed the agreement made with the GBM customers in its January 15, 1973 letter in which it stated:

Several years ago Pennsylvania Gas and Water Company made arrangements with some residents residing beyond our natural gas distribution system to furnish them with liquid propane gas (L.P. gas) *until such time as we would be able to extend our natural gas distribution mains to their homes.*

I.D. at 15; Pope Exh. 1 (emphasis added). Further, PNG itself made a statement similar to that of its predecessor in its letter sent to the GBM customers on September 21, 2007. I.D. at 11; 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.*

Id. (emphasis added).<sup>3</sup> The ALJ opines that this case requires deciding such things as a corporate law question, contract issues under the Uniform Commercial Code or whether PG&W used “bait-and-switch” tactics, all questions for the Courts of Common Pleas, not for the Public Utility Commission. I.D. at 39. The OCA respectfully disagrees. This case presents issues that fall squarely within the Commission’s jurisdiction, as was apparent from the Morgan case at the very beginning of this controversy.<sup>4</sup> This is a Section 1501 matter, as the restatement of the availability of future natural gas mains by these utilities, in conjunction with the continuing propane service at natural gas rates, have led the GBM customers to make substantial investments in gas appliances and home heating systems in order to be ready to take natural gas service whenever available, as more fully discussed below. The evidentiary record has been fully developed and this case is ripe for Commission decision under the Public Utility Code and pertinent regulations, at this time.

B. The Record Shows that the GBM Complainants, For Many Years, Have Continued to Make Expenditures to Remain Ready to Take Natural Gas through Mains When Available.

Considering the facts found by the ALJ, the evidentiary record is clear that the Complainants in this proceeding relied on the representations that were made regarding the GBM program, both in the 1960s and today. I.D. at 1-19. For example, in response to statements by PG&W representatives concerning future natural gas mains, Alfred and Stephanie Donnelly changed their home building plans mid-stream, constructing a chimney and installing a gas

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<sup>3</sup> It should be noted that Section 2.2 of the Purchase and Sale Agreement between Southern Union Company and UGI Corporation governs the assumed liabilities of UGI Corporation with respect to the purchase of PG Energy. In that section, the Company agreed to assume all liabilities and obligations, of every kind or nature, arising out of or relating to unperformed service obligations. See OCA St. 1 at 13-14, quoting Purchase and Sale Agreement between Southern Union Company and UGI Corporation, dated January 26, 2006 at 11, approved by Commission Order of August 18, 2006, Re Application of UGI Utilities, Inc., UGI Utilities Newco, Inc., and Southern Union Company, Docket Nos. A-120011F2000, *et al.* I.D. at 29, Finding of Fact No. 149.

<sup>4</sup> See I.D. at 29-30, Findings of Fact Nos. 152-153.

boiler. I.D. at 7; Tr. at 56-61. Similarly, Dolores Alar, whose home was originally outfitted with a coal heating system, converted her home at considerable expense by installing a new furnace and baseboard heaters. I.D. at 13-14; Tr. at 178-182. Ms. Moran-Roberto's parents also converted to gas approximately 40 years ago in response to PG&W statements that propane delivery would be temporary, and she herself contributed toward the purchase and installation of the new gas furnace. I.D. at 5; Tr. at 34-35.

Most of the Complainants have purchased new gas appliances in recent years and some underwent whole-home heating system renovations in anticipation of gas mains being extended to their homes, as represented by the utilities. In 2006, 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. I.D. at 15; Tr. at 216-219. Since 2002, the Donnellys spent \$10,790 on new gas appliances. I.D. at 7-8; Tr. at 101-103. In recent years, Mr. Fuhr replaced his hot water heater and purchased a gas generator and fireplace a cost of \$16,000. I.D. at 15; Tr. at 205-206. Since 1997, Mr. Hennigan spent approximately \$3,200 on new appliances. I.D. at 10; Tr. at 143. Mr. Lindbuchler spent \$4,855 on a new hot water heater and furnace since 2008. I.D. at 11-12; Tr. at 160-161. Mr. Michaels spent \$650 on a gas range and a water heater was replaced at a cost of \$550 as part of the purchase of his home. I.D. at 12; Tr. at 171. The Rowlands replaced their hot water heater twice in recent years at a cost of \$400-\$600. I.D. at 17-18; Tr. at 240.

The record also reflects that some Complainants replaced appliances or made repairs after being "red tagged" by PNG's affiliate AmeriGas during inspections in 2010 so as to continue to be ready for natural gas service. For example, as a result of the AmeriGas inspections, Mrs. Alar spent \$1,100 to replace a stovetop and an oven that had been "red tagged" as unsafe. Tr. at 187;

Alar Exh. 1 at 2. Mr. Schulz was forced to hire a contractor to inspect and fix his service line at a cost of \$150. Tr. at 264.

The evidentiary record and the ALJ's Findings of Fact demonstrate that the Complainants relied on the representation made by PG&W, later 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 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.

The Complainants will now be subjected to significant increased cost for their utility service at the end of the GBM rate transition period without the prospect of receiving natural gas service under PNG's plan. Complainant Kathleen Moran-Roberto provided a copy of her March 2011 PNG bill with her Formal Complaint. The Company indicates on this bill that her annual usage is 104.3 Mcf (i.e., 1043 ccf). OCA St. 1 at 11. Using Ms. Moran-Roberto's bill, OCA witness Kraus discussed the practical impacts of the transition to full market-based propane rates for these customers. She stated:

Under the PGC rate noted above, her annual commodity bill would be \$590.90 (104.3 x \$5.6654.). However, under the market-based propane rate, her annual commodity bill would be \$2,535.47 (104.3 x \$24.3094.) On Ms. Moran-Roberto's bill, PNG indicated that her budget plan billing would be \$107.00 per month, or \$1,284.00 per year (i.e., annual base charges of \$1,284 - \$590.90, or \$693.10, based on the current PGC rate.) Thus, she would be paying an annual bill of \$3,228.57 (\$2,535.47 + 693.10), including costs related to the distribution system that would provide her little or no benefit, in addition to the full market-based propane rate.

OCA St. 1 at 11. Mrs. Donnelly also testified to the rates expected at the end of the phase-out. For five months, between November 2011 and March 2012, AmeriGas delivered 937 gallons of propane to the Donnelly residence. Tr. at 113-114. Mrs. Donnelly calculated that the 937



gallons charged at 100% propane rates would cost \$2,520. Tr. at 113-114. Mrs. Donnelly's costs for the entire 2011 year were \$1,313. Id. As OCA witness Kraus testified, this is not reasonable and efficient service for a PNG utility customer.

These Complainants are regulated utility customers who contribute to the recovery of costs of the natural gas distribution system. As OCA witness Kraus testified:

The GBM customers, while being charged a natural gas rate for propane service, have always paid, and continue to pay, the full distribution rate of their respective class as well as all surcharges. That is, for all these years, the GBM customers have contributed to all of the system costs, including the distribution system from which they receive no benefit. From the base rate perspective, the GBM customers have never been differentiated from the natural gas customers in their class.

OCA St. 1 at 9-10. This lack of differentiation is seen in the fact that the Company is unable to provide any information regarding the actual base cost of service of the GBM customers. I.D. at 28, 32, Findings of Fact Nos. 144, 166 (PNG has never performed a cost of service study specific to the GBM customers.)

The record also demonstrates that the Company has not been able to adequately address the specific needs of these customers. There are numerous examples of the Company providing incorrect information regarding GBM service—leading to distress and confusion for the Complainants. *See* Findings of Fact Nos. 26, 28, 29, 41, 43, 52, 58, 74, 134-135. On several occasions the Complainants were told that there is nothing that PNG could do about the actions or policies of its contractor and affiliate AmeriGas, even though the record demonstrates that those actions do not comport with the mandates of Section 1501.<sup>5</sup> FF 27-30, 41, 43-44, 52, 58,

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<sup>5</sup> PNG, as the public utility, is responsible for ensuring reasonable service, including that provided by its employees and contractors and the Commission has long adhered to the principle that utilities are liable for the actions of contractors performing work on their behalf, so any statements made by PNG representatives that PNG has no responsibility for the actions and policies of its contractor and affiliate AmeriGas are incorrect. See Pa PUC v. Metropolitan Edison Company, Rate Investigation Docket No.

73-74, 77, 110-113, 134-136. Safety issues have also arisen as a result of the GBM Service. FF 24, 52, 57-58. For example, both Mr. Lindbuchler and Mr. Michaels were told by Company representatives that they were not customers of PNG when they called to report, respectively, that the propane tank had run dry and that no Pa One Call markings were done. FF 24, 52, 57-58. Further, despite telling PNG's customer service representatives that they felt harassed and retaliated against, were distressed or that their issue was not resolved, the Complainants were not advised of their ability to file a Complaint with the Commission regarding these issues.<sup>6</sup>

The OCA respectfully submits that the ALJ failed to give sufficient weight to the evidence of PNG's actions, and those of its corporate predecessors, that led these customers to believe that reasonable, adequate and efficient service through the provision of propane would continue unless and until natural gas service would become available through mains. I.D. at 28 (FF 143-144); OCA St. 1 at 9-10. Furthermore, the ALJ did not fully consider the inadequate service that PNG has provided to these GBM complainants in reaching her recommendation. The Commission must reject the ALJ's decision, which is based upon an inapplicable tariff rule and legal precedent, as discussed below, and order PNG to provide these Complainants natural gas service without CIAC.

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626, 28 P.U.R.4<sup>th</sup> 555 (Order Entered March 22, 1979); see also Re Bermex, Inc., Docket No. M-0096081 (Order entered September 18, 1996) (stating that Peoples is responsible for the acts of an employees under contract to provide meter reading services); Petition of the Office of Consumer Advocate for an Investigation and Order to Show Cause with Regard to the Outage at the Salem Nuclear Generating Station, Docket No. P-830453, 70 P.U.R.4<sup>th</sup> 568 (Order entered October 24, 1985).

<sup>6</sup> Chapter 56 details the utility requirements for handling disputes with its customers, both for billing issues and non-billing issues. 52 Pa. Code § 56.151-152. When a customer complains about the service (or lack thereof) that they have received, the Company must issue a report to that customer within 30 days. 52 Pa. Code § 56.151(5). In that report, the customer must be provided with a full and complete explanation of the procedures for filing an informal complaint with the Commission. Id. at § 56.152(6).

C. The ALJ Erred in Applying Tariff Rule 5 to Present Customers. (I.D. at 44-45; OCA M.B. at 46-47; OCA R.B. at 5-7).

1. The ALJ's Determination That the Main Extension Rules Apply to the GBM Customers Must Be Rejected.

In the Initial Decision, the ALJ concludes that PNG's main extension tariff, Tariff Rule 5, must be applied in this situation. The OCA submits that the ALJ erred in concluding that a Tariff Rule directed to new applicants for utility service applies to this situation. It is beyond dispute that the Complainants are and have been utility customers, some for over forty years, and have paid distribution rates to their utility throughout the period of GBM service. I.D. at 24, 28; Tr. at 28. Indeed, the ALJ's Findings relative to each Complaint begin with the fact that each of the Complainants is a current customer of PNG. I.D. at 5, 7, 9, 11, 13, 15, 16, 17, 18. PNG's expert witness, Mr. David Lahoff, Manager of Rates for UGI Utilities, Inc., agreed that the GBM customers are "jurisdictional customers" and that PNG has been profiting from the GBM customers over the years. I.D. at 31, Finding of Fact No. 161; Tr. 26.

The ALJ errs initially in her analysis by referencing the Commission's line extension regulation and by concluding, without discussion of the other applicable tariff language, that it applies in this case. I.D. at 44. The general "Extension of Facilities" regulation itself reads 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. Pursuant to this regulation, the natural gas companies submit tariffs to comply. PNG's Tariff Rule 5.1 reads as follows:

Obligation 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.

PNG Gas – Pa. P.U.C. No. 8, Original Page 19, PNG Exhibit DEL3. The language of the tariff itself illustrates clearly why Tariff Rule 5 does not apply. The definition of “applicant” in the tariff states, in pertinent part:

Any person...that (i) desires from the company natural gas or any 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 (iv) *is not yet actually receiving from the Company any service provided for in this Tariff at such location.*

PNG Gas – Pa. P.U.C. No. 8, Original Page 9 (emphasis added). As the GBM customers are actually receiving service from the Company at their current locations, they do not meet the criterion expressed in Subsection (iv) and are therefore *not* applicants for service. *Id.*; see OCA St. 1 at 13, OCA St. 1S at 5-6. As such, the OCA submits that the conclusion that PNG's Main Extension rule is properly applied to require CIAC of the GBM customers as a prerequisite to natural gas service is incorrect.

The OCA submits that the Commission must reject the notion that longstanding customers of PNG and its corporate predecessors are appropriately treated as *new* applicants for service. As the ALJ found based upon OCA witness Kraus's testimony, the Complainants in the instant case have been customers and have been contributing to the revenue requirement of PNG and its corporate predecessors literally for decades.<sup>7</sup> A portion of the distribution rates paid through their gas bills has supported the creation and maintenance of the infrastructure that is

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<sup>7</sup> The ALJ's Finding No. 144 reads as follows: “The GBM customers have contributed to all 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 No. classes for ratemaking purposes.” I.D. at 28.

delivering gas to every other non-GBM customer on the system – infrastructure that has never benefited them. The ALJ’s conclusory statement that the regulation and the “tariff rule, on its face, applies to all customers that request a line extension” (I.D. at 44) is incorrect.

The OCA submits that the ALJ’s conclusion that PNG must mandate cost-prohibitive CIAC pursuant to Tariff Rule 5 as a prerequisite to providing natural gas service to this small group of existing customers is unjust and unreasonable and the Commission must reject it.

2. The ALJ Erred in Accepting PNG’s Argument That It Must Evaluate the Economics of Extending Mains to GBM Customers Using the 5.5 Year Investment Recovery Period Ordinarily Used for New Applicants for Natural Gas Service.

Despite the fact that the Complainants here are existing customers of PNG and have been for decades, the ALJ found that Tariff Rule 5 must be applied and governs the outcome of this case. I.D. at 43-44. Under Tariff Rule 5, the Company evaluates whether a main extension to a new applicant is economic using a 5.5 year investment recovery period. This period is not specified in PNG’s tariff, but has been selected by PNG for use in deciding whether it will initially fund 100% of the costs of an extension or require applicants for service to pay CIAC. OCA M.B. at 30, 45; Tr. at 16-17. The ALJ erred in accepting PNG’s argument that PNG must use a 5.5 year investment recovery period to evaluate the economics of main extensions to this small group of current PNG customers.<sup>8</sup>

As discussed above, the OCA submits that there is no basis for applying Tariff Rule 5 to these existing customers. Even if Tariff Rule 5 were applicable, however, PNG’s use of a 5.5 year investment recovery period is not required by the Tariff Rule and is inappropriate for use in this situation. The investment recovery period of 5.5 years is a significant factor in determining whether a particular project is “economic” and thus whether CIAC can be charged. OCA M.B.

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<sup>8</sup> The ALJ found that “[a]ccording 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.” I.D. at 30, Tr. at 18-19.

at 45-47. As OCA witness Kraus testified, this unreasonably short period of investment recovery drives the CIAC requested of these customers to cost-prohibitive levels. OCA M.B. at 29 (Proposed Finding of Fact No. 163), 45. Ms. Kraus further elaborated on this point in her Surrebuttal Testimony:

[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 PNG witness Mr. Lahoff agreed, using a higher number of years of base revenues to determine the company investment under their rules would lead to a higher company investment amount and a lower CIAC, if any. Tr. at 21-22. Mr. Lahoff also agreed, as the following exchange shows, that the Company would have to comply with a Commission Order requiring a longer period of analysis if appropriate for the circumstances:

Q. Now, you mentioned in your testimony that the Company is duty-bound to follow Commission directives and policies, et cetera. If the Commission were to approve the Company using a higher number of years in a special circumstance such as this, UGI would then comply with that, wouldn't they?

A. 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.

Tr. at 22.

The ALJ erred not only in concluding that the Tariff Rule 5 applies to these present GBM customers, as argued above, but also in disregarding the evidence that the investment recovery period used by PNG in applying the rule is unreasonably short under the circumstances. The Commission should reject the Initial Decision and require PNG to use a longer investment recovery period, such as the service life of the lines, under the circumstances presented.

3. The ALJ Erred in Disregarding the Evidence of Future Customer Additions on Lines That Would Service These GBM Customers.

The evidence demonstrates that the Company can also consider future customer additions to determine whether the additional revenues could justify a higher level of initial Company investment. According to Mr. Lahoff, UGI can take into account the additional revenues that would be contributed by future customers in the economic calculation. Tr. at 22. As the OCA set forth in brief, several of the Complainants testified that others in their neighborhoods would switch to natural gas as a home heating fuel if PNG made it available to them.<sup>9</sup> In discovery responses, PNG stated that there are currently 116 residential and 5 commercial customers in the GBM class. OCA St. 1 at 11-12. Additionally, the Company disclosed that there are 28 proximate GBM customers and 141 potential new customers that could be served from lines extended to the Complainants alone. Id. Indeed, as noted above, several Complainants testified about neighbors that they knew were interested in receiving natural gas service. Mr. Hennigan and Mr. Lindbuchler collected 25 signatures from residents of their neighborhood who said they would switch to natural gas service if the lines were installed. Tr. at 144-145, Hennigan Exh. 7. Ms. Moran-Roberto testified that there could be as many as 120 future 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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<sup>9</sup> OCA M.B. at 9 (Proposed Finding of Fact No. 11),

the line. Tr. at 234-235. Additionally, the residents of 71 and 73 Honesdale Road heat their homes with propane (at market rates) and would be happy to get natural gas service. Id. Thus, PNG would have a reasonable opportunity to increase substantially the number of natural gas customers in the areas of its current GBM service.

The ALJ did not consider the record evidence relevant to the number of years of revenues considered and the number of prospective customers in the Complainants' vicinity, both of which weigh in favor of eliminating CIAC. The Commission should reject the ALJ's Initial Decision and require the provision of natural gas service without CIAC to the GBM Complainants, as discussed further below.

**Exception 2: The ALJ Erred in Disregarding the Expert Evidence in Support of an Equitable Mechanism For Recovering the Cost of Main Extensions to the GBM Customers.** (I.D. at 28; OCA M.B. at 43-47; OCA R.B. at 2-3, 7-9).

The OCA developed an equitable proposal consistent with ratemaking principles that would be fair to all of the stakeholders -- the GBM customers, other natural gas customers and PNG shareholders. Through the testimony of OCA witness Kraus, the OCA recommended that in order for the Company to comport with the requirements of Section 1501 to provide adequate, efficient and reasonable service, natural gas distribution mains must be extended to the Complainants. To fund the cost of extending the natural gas mains, the OCA put forth the following plan. From a ratemaking standpoint, the "economic" portion of the main extension project based on the revenues to be recovered during the full service life of the main would be included in rate base. OCA M.B. at 45; OCA St. 1 at 7-8. The amount determined to be the "uneconomic" portion of the project would initially be borne by the Company, *i.e.*, the shareholders. Additional amounts would be added to rate base as additional customers connect to these mains in the future. Id. That is, the Company investment in the mains would be treated



tantamount to a “refundable advance” for construction. Importantly, the Complainants would not be charged a contribution in aid of construction (CIAC) for these extensions. OCA M.B. at 44; OCA St. 1 at 16-17.

Using the general principle that underlies its Tariff Rule 5 to determine whether an extension of facilities is “economic” or not, PNG would be permitted to include the “economic” portion of the construction costs in rate base based on the 40 year service life of the main in the first distribution base rate case to follow. The “uneconomic” portion would initially be borne by the shareholders but, as customers are added to the new lines, the additional amount of “economic” company investment per customer (again based upon the revenues received over the full service life of the main) would be added to the Company’s rate base. OCA M.B. at 44-45; OCA 1S at 7. As Ms. Kraus testified, this ratemaking treatment would create an incentive for PNG to seek new customers and expand the use of natural gas in the areas served. Id. As described above, the GBM customers themselves have already identified many potential new customers along the anticipated routes of the new mains.

The OCA submits that this proposal provides a balanced resolution of this issue. Under the OCA’s proposal, the “economic” portion of the main extension project would be included in rate base and the balance of the cost of the mains would initially be absorbed by the shareholders, but the amount allowed in rate base would subsequently increase as additional customers are added. It bears repeating, as discussed above, the GBM program was implemented as a promotional tool by PG&W. Ms. Kraus discussed the importance of this fact:

[T]he Commission recognized that the GBM program was a means for PG&W to increase its sales, i.e., benefit its shareholders. PG&W was allowed to recover the losses it incurred in providing propane at natural gas rates from customers because of the restrictions placed on natural gas utilities by the Commission related to the 1970s natural gas shortage. Upon acquisition of the

system, PNG continued to recover from the ratepayers the difference between the propane it provides to the GBM customers and the cost of natural gas.

The natural gas shortage of the 1970s was the situation that resulted in the Commission's restrictions of new natural gas customers. It also resulted in the shifting of the costs of the promotional GBM program from the shareholders to the ratepayers. Since that time, the ratepayers have borne all of the costs of this promotional program.

Id. Therefore, for all these years, the Company has absorbed no expenses or losses to support this promotional program. As noted earlier, the Company and its shareholders (and its propane affiliate) have realized incremental profits from GBM customers for decades while, at the same time, PNG ratepayers have funded the additional costs of supplying propane to GBM customers. Id.; *see also* I.D. at 31.<sup>10</sup>

The ALJ adopted OCA proposed Findings of Fact Nos. 142 and 149 incorporating OCA witness Kraus's recommendation, but failed to give full consideration to this proposal. I.D. at 28. The OCA submits that its proposal is sound and respectfully submits that the Commission should adopt it to resolve this difficult controversy in a manner that would be fair to all concerned.

**Exception 3: The ALJ's Reliance on Popowsky and Adams Is Misplaced.** (I.D. 41-42; OCA R.B. at 11-13).

A. In Contrast to the Facts Presented Herein, Popowsky Involved a Situation Where Residents of Unserved Areas of PAWC Territory Sought Public Water Service.

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<sup>10</sup> The ALJ found that "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." I.D. at 31, Finding of Fact No. 161. The ALJ further found that "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 these propane sales." Id., Finding of Fact No. 162.

In the Initial Decision, the ALJ accepts the Company's argument that Popowsky v. Pa. P.U.C., 589 Pa. 605 (2006), governs the outcome of the instant case. I.D. at 42-43. The discussion begins with a reference to "OCA's central argument," which according to the ALJ is that PNG is required to make uneconomic line extensions under Section 1501. The ALJ states further that this argument has been rejected by the Commission and the Commonwealth Court. I.D. at 41-42. The ALJ also asserts, as did the Company in its Response Brief, that the OCA argued in Popowsky that PAWC should be required to extend water to the Township at PAWC's sole expense. These statements are oversimplifications of the Popowsky case, mischaracterize the OCA's position here, and should be given no weight.

Here, the OCA has proposed main extensions to *existing* PNG customers who relied on representations that they would ultimately be provided with natural gas. The OCA has not proposed that, across-the-board, natural gas utilities or PNG itself should be required to make uneconomic main extensions whenever unserved members of the public demonstrate a need. And, it should be noted that facilities are *never* extended at a utility's "sole expense," because when such facilities are placed in service, ratepayers pay a return of and on those facilities through base rates.

Most important, however, the major reason that the line of cases PNG relies upon is inapposite here is that they involved *extensions of service to unserved areas of PAWC's territory*. OCA R.B. at 11-13. As the OCA explained above and as Mr. Lahoff himself acknowledged, the Complainants here are existing customers who have been paying PNG distribution rates for years.<sup>11</sup> As the ALJ found, 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

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<sup>11</sup> PNG witness Lahoff stated that PNG considers GBM customers to be jurisdictional customers to whom PNG has an obligation to serve under the Public Utility Code. I.D. at 31, Finding of Fact No. 159; Tr. at 20-21.

overall financial return for PNG. I.D. at 31, Finding of Fact No. 161; Tr. at 26. As the ALJ also found, where PNG's affiliate has been the GBM customers' propane supplier, that company (currently AmeriGas) has been deriving a profit from them as well. *Id.*; Tr. at 27. In addition to paying 100% of the cost of the GBM propane, PNG customers, including the GBM customers, have all been paying for the mains in the ground that comprise the Company's distribution infrastructure; yet the GBM customers have not experienced any benefit from that infrastructure. Tr. at 28-29. Moreover, pursuant to Act 11 of 2012, which amends Chapters 3, 13, and 33 of the Public Utility Code, PNG will be able to implement a Distribution System Improvement Charge, through which its customers (including the GBM customers)<sup>12</sup> will be paying the reasonable and prudent costs incurred to repair, improve, or replace certain eligible distribution property between base rate cases. 66 Pa.C.S. § 1350, *et seq.* The GBM customers will receive no service from this distribution infrastructure.

All of the above unique factors, none of which were at play in the Popowsky line of cases, amply distinguish the instant case from the facts that led to the challenge to the water main extension regulations decided by the Supreme Court in 2006.<sup>13</sup>

In conclusion, the GBM customers should not be treated *as if they had never made any contribution to PNG's revenue requirement*. This is the critical difference between the GBM customers who have paid their bills, including distribution charges for decades, and those who seek service from PNG anew. The ALJ's application of Popowsky to the GBM complaint cases is in error.

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<sup>12</sup> As noted by Mr. Lahoff in testimony, "the way the legislation is written, it is a surcharge that is applied to all rate classes." Tr. at 44.

<sup>13</sup> The OCA would also note, that although the Supreme Court decided in favor of the Commission and the PUC, the citizens of Hickory PA ultimately received the much-needed public water service from PAWC without a mandatory CIAC requirement. OCA R.B. at 11-12.

B. The ALJ Erred in Concluding that the Adams Order Governs the Outcome of This Proceeding. (I.D. at 42-44; OCA M.B. at 45-46; OCA R.B. at 8).

In the Initial Decision at 43-44, the ALJ accepts the Company's argument that the Commission's Order in the Richard Adams v. UGI Utilities, Inc. – Gas Division (UGI), Docket No. C-2010-2182016 (October 31, 2011) (Adams) governs the outcome of this case. The ALJ notes that Mr. Adams—a pro se complainant—alleged only that GBM customers had been promised propane service at natural gas rates until gas mains were extended. I.D. at 32. ALJ Jandebour concluded that, during a very brief hearing, the complainant had failed to meet his burden to establish that UGI had agreed to provide him natural gas distribution service. Id. As argued by the OCA, however, the instant case invokes elements of the Public Utility Code and pertinent regulations – it is *not* a contract case, as the Company would prefer to characterize it.

In contrast to the Adams case that was based upon a breach of contract, the set of issues before the Commission at this time is whether the Complainants have sustained their burden of proving their complaints and not whether there is a valid contract to enforce, whether with PNG or any prior utility that served them pursuant to the GBM program and tariff.

In addition, the Company and the ALJ point to the Adams case to support the conclusion that the Complainants must pay CIAC. I.D. at 43-44; PNG M.B. at 22-23. As the OCA discussed in its Main Brief, the record in the Adams proceeding was extremely limited (21 pages with no exhibits). 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 Commission Order affirming the

dismissal of a *pro se* complaint with a limited evidentiary record is binding precedent is without merit.<sup>14</sup> Based upon the arguments and fully developed record in this proceeding, the OCA urges the Commission to reject the ALJ's reliance on Adams and the application of the main extension tariff to this group of jurisdictional PNG customers.

**Exception 4: The ALJ Erred By Applying the Wrong Burden of Proof Standard.** (I.D. at 32, 46-48; OCA M.B. at 33).

In the initial burden of proof discussion, the ALJ articulates the appropriate standard, as described in the OCA's Main Brief. I.D. at 32; OCA M.B. at 33. This standard is well-known and bears repeating here:

As proponents of a rule or order, Complainants have the burden of proof in this proceeding. 66 Pa.C.S. § 332(a). Complainants must show, by the preponderance of the evidence, that Respondent PNG provided unreasonable service in contravention of Commission rules, regulations, orders or provisions of the Public Utility Code governing quality of service. Samuel J. Lansberry, Inc., v. PaPUC, 578 A.2d 600 (Pa. Commw. Ct. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 1992). This means that the Complainants, assisted by the OCA, must present evidence more convincing, by even the smallest amount, than that presented by the Respondent. Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950).

OCA M.B. at 33; *see also* Adams, *supra* at 4 (applying the “preponderance of the evidence” standard). PNG essentially agreed with this articulation of the appropriate burden of proof standard in a Formal Complaint proceeding. PNG Response Brief (R.B.) at 16-17. The Company went on, however, to mischaracterize the OCA's legal arguments as a “challenge to a previously-approved tariff.” PNG R.B. at 17. In the instance of such a challenge, a party must meet a higher burden and must demonstrate that the “facts and circumstances have changed so

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<sup>14</sup> The OCA would also note that because the Company did not offer any evidence in the Adams case, the whole issue of the applicability of the main extension to GBM customers was not developed at all in that matter. Mr. Adams had no opportunity to raise this issue, as it was articulated only in the Commission Order affirming the dismissal of his Formal Complaint. Thus, the Commission's Order requiring PNG to treat Mr. Adams as an applicant for service under the Tariff Rule is based upon no evidence whatsoever and should not govern the outcome here.

drastically as to render the application of the tariff provision unreasonable.” Kanowicz v. PPL Electric Utilities Corp., Docket No. C-20043915, 2005 Pa. PUC LEXIS 42 (Order entered November 1, 2005) (Kanowicz). The Commission stated therein:

Pennsylvania courts have repeatedly held that tariff provisions that have been properly submitted to and approved by the Commission are prima facie reasonable. Zucker v. Pa PUC, 401 A.2d 1377 (Pa. Cmwlth. Ct. 1979), Shenango Township Board of Supervisors v. Pa.PUC, 686 A.2d 910, 914 (Pa. Cmwlth. Ct. 1996), Kossman v. Pa.PUC, 694 A.2d 1147, 1151 (Pa. Cmwlth. Ct. 1997). Therefore, a complainant seeking to evade the effect of an existing tariff provision carries a very heavy burden to prove that the facts and circumstances have changed so drastically as to render the application of the tariff provision unreasonable. Id.; Brockway Glass Co. v. Pa.PUC, 437 A.2d 1067 (Pa. Cmwlth. Ct. 1981).”

Kanowicz, at \*6-7. In Conclusions of Law Nos. 4 and 16, the ALJ invokes this standard, as argued by PNG, I.D. at 46-48, and concludes that the OCA and the Complainants did not meet it, leading to the recommendation to dismiss the Formal Complaints.

The ALJ’s reliance on a burden of proof standard regarding challenges to existing tariff language is in error because the OCA did not challenge a previously-approved tariff provision.<sup>15</sup> The OCA argued that, by its terms, Tariff Rule 5 *does not apply* to existing customers because the definition of “applicant” specifically includes only those who have filed an application for service and are “not yet actually receiving from the Company any service provided for in this Tariff at such location.” OCA M.B. at 46-47. Indeed, as noted earlier, PNG’s expert witness, Mr. Lahoff explicitly testified that the Company considers the GBM customers to be “jurisdictional customers” to whom PNG owes an obligation to serve. I.D. at 31, Finding of Fact (FF) No. 159; Tr. at 20-21. As such, and as argued above, these customers cannot under the terms of the tariff be considered “applicants for service.”

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<sup>15</sup> The OCA made it clear that, while the Formal Complainants who had not been parties to the 2011 PGC proceeding stated their opposition to the PGC rate in their Complaints and in testimony, the OCA was not challenging the PGC phase-in which was an element of the settlement in the 2011 1307(f) case to which OCA was a signatory. Tr. at 26.

Therefore, the Complainants had no burden of demonstrating the “drastically changed circumstances” required to prove a previously-approved tariff rule unreasonable as the ALJ finds, because they were not challenging the tariff rule. The Commission should thus reject the Conclusions of Law that invoke this inapplicable burden of proof standard.

The OCA would add, however, that even if the Commission found the “drastically changed circumstances” standard to apply, ample evidence of record supports that this standard has been met. The tariff rules governing main extensions date back to the 1990s, when the PUC initiated an all-industry rulemaking to determine appropriate extension policies. Re Line Extension Rulemaking, 27 Pa. Bull. 799 (1997). In recent years, the Commission has repeatedly addressed the need for the development of natural gas service in Pennsylvania, particularly in light of the Marcellus Shale drilling boom. *See, e.g.*, 52 Pa. Code § 60.1 (The development of Pennsylvania natural gas should be promoted, because it will achieve benefits that accrue to gas utilities and their customers); Application of UGI Penn Natural Gas, Inc., 2011 Pa. PUC LEXIS 1521 (2011) at \*33-34. As argued in the OCA Reply Brief, 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. OCA R.B. at 23. Indeed, PNG itself included as an attachment to Mr. Lahoff’s expert testimony the Direct Testimony of Shaun Hart in Docket No. R-2011-2238943 in which Mr. Hart describes the Company’s efforts to purchase Marcellus Shale gas supplies. PNG Exh. DEL-1.

Simply put, to promote natural gas as an efficient home heating fuel on the one hand and on the other to impose cost-prohibitive CIAC on existing GBM customers who have been waiting for natural gas service for decades is paradoxical. The application of cost-prohibitive main extension rules to these current GBM customers would clearly run contrary to the



Commission's policy in favor of promoting the use of natural gas, including native Marcellus Shale gas supplies, in the Commonwealth. Therefore, even though the OCA maintains that the "drastically changed circumstances" standard does not apply in the instant proceeding, even if it did, the standard would be met.

**Exception 5: The ALJ Erred in Refraining from Deciding All of the Formal Complaints Solely Because the Issues Raised in Testimony Were Not Specifically Alleged in the Formal Complaints Themselves.** (I.D. at 45; OCA R.B. at 18).

In the Initial Decision, with regard to the many quality of service issues raised by the eleven Formal Complainants, the ALJ states as follows:

Two complainants raised service related issues in their Formal Complaints, Mr. Hennigan and Mr. Fuhr. A review of the 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 the GBM Complaints and are not addressed herein.

I.D. at 45. The ALJ resolved the issue of what evidence was relevant to the GBM Complaints at hearings. The conclusion in the Initial Decision that the many service-related issues raised are not properly decided herein because they are "outside the scope" of the Formal Complaints contravenes the ALJ's evidentiary ruling to allow the service-related evidence into the record as relevant to the proceeding. Tr. at 105-107. Indeed, the ALJ included many Findings of Fact based upon the evidence offered by the Formal Complainants concerning the problems with propane deliveries, tanks going dry, difficulties with customer service, receipt of inaccurate and confusing information, and the like. *See* I.D. at 5-19.

The ALJ also recognized that the utility responded to the information offered on the record by the Formal Complainants in the Findings of Fact based upon PNG witness Lahoff's testimony. For example, PNG is revising its automatic bill pay procedure to allow for advance

notice where a dispute has been filed and for a customer to remain on the program if they wish. I.D. at 25, Finding of Fact No. 125. The Company is revising its training procedures to improve the customer service representatives' understanding of the GBM program to better facilitate customer service to GBM customers. *Id.*, Finding of Fact No. 126. Electronic devices have been installed on propane tanks to remotely monitor levels to avoid tanks running dry. *Id.*, Finding of Fact No. 127. These are a few examples of the ALJ Findings based upon the evidentiary record relevant to the Formal Complaints that ultimately remain "undecided" in the Initial Decision because they are "outside the scope" of the written complaints.

As noted above, the conclusion that no decision on seven of the Formal Complaints was warranted also runs contrary to the Order of ALJ Melillo in the 2011 PGC case, which severed the rate phase-in issue within the Moran-Roberto Formal Complaint and reserved all service issues for this docket.<sup>16</sup> The ALJ refrained from deciding the seven other complaints apparently in response to the Company's argument 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.

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<sup>16</sup> To not decide the service-related issues in the instant case arguably contravenes the principle of "law of the case," since ALJ Melillo's 2011 Order in the PGC proceeding severed the rate portion of Ms. Moran-Roberto's Formal Complaint to be decided in the PGC proceeding and preserved GBM service-related issues, including main extensions, to this docket. The ALJ stated as follows:

After considering the parties' arguments, particularly the concerns of the Complainant and OCA, I determined that the rates and service issues in the Moran-Roberto Complaint should be severed and separately litigated. The portion of the Complaint which challenged the GBM rate mechanism was consolidated with the underlying PNG 1307(f) proceeding while the main extension issue was reserved for separate litigation. This Order confirms that ruling.

OCA M.B., App. B at 2. *Cf. Clearwater Concrete & Masonry, Inc., v. West Philadelphia Financial Services Institution*, 2011 Pa Super LEXIS 129.

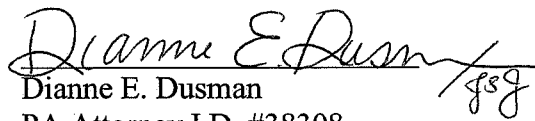
First, the ALJ's order in the 2011 PGC proceeding that severed the rate issues from the remaining GBM issues specifically states that the service issues will be addressed in a separate proceeding. PaPUC v. UGI PNG 1307(f), Docket No. R-2011-2238943 (Order entered July 6, 2011). Additionally, as was discussed 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, three days in advance of the hearings and immediately after receiving them from the Complainants. Tr. at 93-97; 103-107. Further, as noted above, 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 demonstrated 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, also as noted above, Company witness Lahoff addressed a number of the service issues in his written rebuttal testimony, essentially acknowledging that the problems raised by the Formal Complainants at hearings had some merit and called for revisions to PNG practices and customer service responses. Therefore, any claim that the Company did not have adequate notice of or ability to respond to the service issues is without merit.

The ALJ's acceptance of the Company's arguments that any quality of service issue other than main extensions should have been raised in a separate complaint (PNG Response Brief at 49) demonstrates a misapprehension of the case. Essentially, PNG's inability to meet its 1501 service obligations to the GBM customers in the variety of ways that the Formal Complaints demonstrated with credible evidence further substantiates the appropriateness of the requested remedy: natural gas service without CIAC.

**III. CONCLUSION**

For all the foregoing reasons, the Office of Consumer Advocate respectfully excepts to the Initial Decision of Administrative Law Judge Ember S. Jandebour, requests the Commission to reject that Initial Decision, to review the evidence on the issues addressed in these Exceptions and to grant the relief sought by the Office of Consumer Advocate on behalf of the Formal Complainants.

Respectfully submitted,



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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	:	
Bur. of Investigation & Enforcement, Intervenor	:	
v.	:	
UGI Penn Natural Gas, Inc.	:	

I hereby certify that I have this day served a true copy of the foregoing document, Exceptions of the Office of Consumer Advocate, 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 2<sup>nd</sup> day of October 2012.

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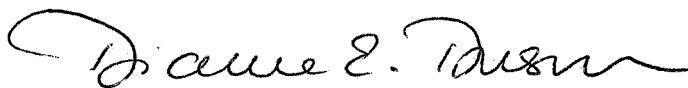
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