**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

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|  | Public Meeting held July 16, 2013 |
|  |  |
| Commissioners Present:  Robert F. Powelson, Chairman  John F. Coleman, Jr., Vice Chairman  Wayne E. Gardner  James H. Cawley  Pamela A. Witmer |  |

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. :

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of the Office of Consumer Advocate (OCA) filed on October 2, 2012, to the Initial Decision (I.D.) of Administrative Law Judge (ALJ) Ember S. Jandebeur, which was issued on September 12, 2012, in the above-captioned proceeding. Replies to Exceptions were filed by UGI Penn Natural Gas, Inc. (PNG or the Company) on October 12, 2012. For the reasons set forth below, we shall deny the OCA’s Exceptions.

**I. History of the Proceeding**

On June 10, 2011, Kathleen Moran-Roberto (Moran-Roberto) filed a Formal Complaint (Complaint) with the Commission against PNG 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.”

On August 9, 2011, PNG filed an Answer denying that Moran-Roberto is entitled to a line extension without a customer contribution under the line extension provisions of PNG’s gas service tariff. PNG estimated that it would cost approximately $60,000 to extend mains to Moran-Roberto’s residence, while based on the twelve-month billing period ending in June 2011, her total distribution margin[[2]](#footnote-2) was only $550.44. Answer at 1.

On 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.”

On August 15, 2011, PNG filed an Answer to the Calufut Complaint denying there was an agreement. In support of its position, PNG: (1) averred that it must comply with its tariff; (2) cited a settlement in its 2009 Base Rate Case at Docket No. R 2008‑2079660 (2009 Base Rate Case) that provided for the elimination of gas beyond the mains (GBM) subsidies as of five years from the date of the settlement; and (3) cited its 2011 1307(f) purchased gas cost proceeding at Docket No. R-2011-2238943 (2011 PGC Proceeding), whereby PNG proposed to phase GBM customers to market-based rates by August 27, 2014. PNG estimated that it would cost approximately $88,365 to extend mains to Calafut’s residence, while based on the twelve-month billing period ending in July 2011, his total distribution margin was only $612.05. Answer at 1- 5.

On 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.” Mr. Fuhr stated that “…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.

On August 15, 2011, PNG filed an Answer to the Fuhr Complaint discussing the 2009 Base Rate Case, the 2011 PGC Proceeding, and its tariff. PNG denied that there was any agreement or promise between PNG and Fuhr to extend service as alleged and also denied Fuhr’s other allegations because they were vague and confusing. PNG estimated that it would cost approximately $1,256,775 to extend mains to Fuhr’s residence, while based on the twelve-month billing period ending in July 2011, his total distribution margin was only $544.04. Answer at 1-6.

On 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 … but no attempt has been made to bring natural gas service 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 requested that PNG be held to the original agreement and that the Commission require the continuance of the GBM rate schedule.

On September 13, 2011, PNG filed an Answer to the Pope Complaint denying that the agreement made any promises, cited its tariff, and, as with the Calafut and Fuhr Answers, the Company cited to the 2009 Base Rate Case and the 2011 PGC Proceeding. PNG estimated that it would cost approximately $1,278,677 to extend mains to Pope’s residence, while based on the twelve-month billing period ending in July 2011, his total distribution margin was only $544.41. Answer at 1-4.

On 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 also requested that the Commission have “UGI extend their gas lines . . .” like he was told thirty years ago. Hennigan alleged that he received a shut off notice and that “UGI is trying to bully and harass” him.

On November 3, 2011, PNG filed an Answer to the Hennigan Complaint citing its tariff, the 2009 Base Rate Case, the 2011 PGC proceeding, and a 1973 Pennsylvania Gas & Water Company letter stating that the Company would not provide propane at natural gas prices. PNG denied that there was any agreement or promise between PNG and Hennigan to extend service. PNG estimated that it would cost approximately $269,000 to extend gas to Hennigan’s residence, while based on the twelve-month billing period ending in October 2011, his total distribution margin was only $538.49. Answer at 1-7.

On September 28, 2011, Dolores Alar (Alar) filed a Formal Complaint alleging that she had received a letter from PNG stating that it was ending the GBM program. Alar further alleged that this is unacceptable as there is a forty-four year precedent recognized by PG&W, now PNG, that the GBM program was established to encourage residents to install gas heating appliances and, in return, to receive natural gas rates for propane until such time that infrastructure improvements were completed. Alar requested that the Commission have the current Company honor their commitments and retain the GBM program.

On October 26, 2011, PNG filed an Answer to the Alar Complaint denying any commitment to retain the GBM program and denying any agreement to extend service. PNG estimated that it would cost approximately $36,197 to extend the main to Alar’s residence, while based on the twelve-month billing period ending in September 2011, her total distribution margin was only $674.86. Answer at 1-7.

On October 4, 2011, Charles E. Schulz (Schulz) filed a Formal Complaint stating that he strongly opposed the elimination of the GBM program and that he was never informed of the 2009 Base Rate Case and was, thus, denied an opportunity to oppose it. Mr. Schulz stated that elimination of the GBM Tariff serves no useful purpose other than to impose unjust financial hardship on current GBM customers by PNG.

On November 3, 2011, PNG filed an Answer to the Shultz Complaint stating that: (1) its customers were notified of the 2009 Base Rate Case by billing insert; (2) Schulz did not participate in the case; (3) the discontinuance of GBM was not to cause hardship; and (4) the 2011 PGC Proceeding settlement eliminates the GBM subsidies as of August 2014. PNG denied that there is any agreement or promise between PNG or its predecessor.

On October 26, 2011, Robert M. Rowlands (Rowlands) filed a Formal Complaint stating that “[t]he complaint is based on transferring us from natural gas rate to propane rate. . . . We feel they should stand by their agreement. . . . ” Mr. Rowlands stated that PNG’s revision amounts to an unjustified rate increase.

On November 22, 2011, PNG filed an Answer to the Rowland Complaint citing its tariff, the 2009 Base Rate Case, and the 2011 PGC Proceeding. PNG denied the existence of any agreement and that the elimination of the GBM subsidies is an unjustified rate increase. PNG estimated that it would cost approximately $27,000 to extend the main to Rowland’s residence, while based on the twelve-month billing period ending in November 2011, his total distribution margin was only $567.02. Answer at 1-6.

On December 28, 2011, Alfred and Stephanie Donnelly (Donnellys) filed a Formal Complaint, in which Joseph Michaels and Fred Linbuchler joined. The Donnellys alleged that they built their home in 1967, that they intended to heat with electric and that PG&W approached them with a proposal to supply propane until the extension of natural gas lines was completed. The Donnellys stated that they changed their building plans to install gas rather than electric heat, but that their gas lines were never extended. Since 2003, the Donnellys claimed that they have installed a new boiler and water heater anticipating that the natural gas rate would continue. They requested that the PUC not discontinue the GBM program and stated that “[c]ontractual obligations require this arrangement not be terminated.”

On January 25, 2012, PNG filed an Answer to the Donnelys Complaint citing its tariff, the 2009 Base Rate Case, the 2011 PGC Proceeding and denying that there is any contract, agreement or promise. PNG estimated that it would cost approximately $268,462 to extend the main to the Donnellys’ residence, while based on the twelve-month billing period ending in December 2011, their total distribution margin was only $555.68. Answer at 1-7.

The Commission’s Bureau of Investigation & Enforcement (I&E) entered a Notice of Appearance in each of the Formal Complaints. The OCA intervened in each of the Formal Complaints, pursuant to 52 Pa. Code §§ 5.81 and 5.103. On October 13, 2011, the OCA filed a Motion to consolidate the above-listed Formal Complaints.

On January 11, 2012, the ALJ issued an Interim Order Consolidating Cases for purposes of hearing.

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

As noted, on September 12, 2012, the ALJ issued an Initial Decision dismissing the Complaints. Also, as previously mentioned, Exceptions were filed by the OCA and Replies to Exceptions were filed by PNG.

**II. Discussion**

ALJ Jandebeur made 166 Findings of Fact and reached nineteen Conclusions of Law. I.D. at 5-32, 46-48. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

Before addressing the Exceptions, we note that any issue or Exception that we do not specifically delineate shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the parties. [Consolidated Rail Corp. v. Pa. PUC, 625 A.2d 741 (Pa. Cmwlth. 1993);](file://C:\research\buttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c\cite%3e&_butType=3&_butStat=242&_butNum=5&_butInline=1&_butinfo=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b625%20A.2d%20741%5d%5d%3e%3c\cite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=ad2b02d95c2a9216e83b92a3570d4785) *also* see, generally, [University of Pennsylvania v. Pa. PUC, 485 A.2d 1217 (Pa. Cmwlth. 1984).](file://C:\research\buttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c\cite%3e&_butType=3&_butStat=242&_butNum=6&_butInline=1&_butinfo=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b485%20A.2d%201217%5d%5d%3e%3c\cite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=9b1cc8319afd12440738bb82d74455ef)

**A. Legal Standards**

As the proponent of a rule or order, the Complainants in this proceeding bear the burden of proof pursuant to Section 332(a) of the Code. 66 Pa. C.S. § 332(a). To establish a sufficient case and satisfy the burden of proof, the Complainants must show that the Company is responsible or accountable for the problem described in the Complaints. *Patterson v. The Bell Telephone Company of Pennsylvania*, 72 Pa. P.U.C. 196 (1990). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied,* 529 Pa. 654, 602 A.2d 863 (1992). That is, the Complainants’ evidence must be more convincing, by even the smallest amount, than that presented by the Company. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, this Commission’s decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC,* 489 Pa. 109, 413 A.2d 1037 (1980).

Upon the presentation by the Complainants of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of the customer shifts to the Company. If the evidence presented by the Company is of co-equal value or “weight,” the burden of proof has not been satisfied. The Complainants now have to provide some additional evidence to rebut that of the Company. [*Burleson v. Pa. PUC,* 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff’d,* 501 Pa. 433, 461 A.2d 1234 (1983).](http://www.lexis.com/research/buttonTFLink?_m=0d7e78528297490763e78babd487bc42&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b2006%20Pa.%20PUC%20LEXIS%20102%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=16&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b66%20Pa.%20Commw.%20282%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=9&_startdoc=1&wchp=dGLzVzz-zSkAz&_md5=44d0f4cf51bc1159652e85695542a09d)

While the burden of going forward with the evidence may shiftback and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. PUC,* 768 A.2d 1217 (Pa. Cmwlth. 2001).

**B. Background of Gas Beyond the Mains Service**

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 St. 1-R at 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 St. 1-R at 8.

On January 8, 2009, the Commission entered an Investigation 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, 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. 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. 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 St. 1-R at 9.

The Parties to the 2009 Base Rate Case ultimately reached a settlement of all issues in that 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 accep-tance 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 [Natural Gas Distribution Companies] generally, to continue propane service programs.

2009 Base Rate Case Joint Petition for Settlement of All Issues at 8.

All of the 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 St. 1-R at 10. The settlement did not require PNG to extend mains to or seek abandonment of GBM customers.

In its 2011 PGC Proceeding, 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 from the entry date 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 through blended rates implemented 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 St. 1-R at 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, addressed 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 did not provide that the GBM customers would be converted to natural gas service. Instead, the proceedings provided that the rate difference and subsidy would be phased out.

**C. Positions of the Parties**

The OCA submitted that PNG’s proposal to simply phase out the GBM rate without extending natural gas mains inadequately addressed the end of the GBM program. The OCA first alleged that PNG has not provided reasonable service to the Complainants as required by Section 1501 of the Public Utility Code (Code). The OCA noted that Section 1501 of the Code requires every public utility to “furnish and maintain adequate, efficient, safe, and reasonable service and facilities . . . for the accommodation, convenience and safety of its patrons.” 66 Pa. C.S. § 1501. The OCA averred that most of the Complainants purchased new gas appliances in recent years and some underwent whole-home heating system renovations in anticipation of gas mains being extended to their homes. The OCA argued that the Company has violated Section 1501 mandates by failing to extend natural gas mains to the Complainants and, therefore, failing to furnish and maintain adequate and reasonable service and facilities. OCA M.B. at 32-42.

The OCA recommended that to resolve these Complaints, the Commission should order PNG to extend the gas mains to the Complainants without requiring a customer contribution. The OCA argued that “in order to provide reasonable service, PNG must extend natural gas distribution mains to the Complainants.” The OCA set forth a plan to fund the cost of extending the natural gas mains whereby the “economic” portion of the main extension project should be included in rate base. Furthermore, the OCA offered that the amount determined to be the “uneconomic” portion of the project should initially be borne by the Company with additional amounts added to rate base when new customers connect to these mains in the future. According to the OCA, in addition to transferring a portion of the costs related to the GBM program back to the shareholders who have benefitted from this program, this procedure would provide the Company an incentive to seek new customers along these gas main extensions. *Id.*  at 42-45.

The OCA further argued that PNG’s main extension rules do not apply to GBM customers. According to the OCA, applying PNG’s Tariff Rule 5 to the existing GBM customers is contrary to the plain language of the tariff. The OCA opined that Tariff Rule 5 applies only to applicants for service, not to existing customers such as the GBM customers. *Id.* at 45-47.

PNG countered that it is not required to extend mains to all customers in its service territory free of charge as this would impose a significant and unreasonable cost burden on other customers and/or deny the utility a fair return on its investment to serve the public. PNG stated that to achieve the balance between utility and customer, the Commission, pursuant to Section 1501 of the Code, has promulgated Regulations at 52 Pa. Code § 59.27 that require gas utilities to file tariff rules setting forth the conditions under which mains will be extended to supply service. In compliance with these Regulations, PNG has adopted main extension rules in Rule 5 of its Commission-approved tariff. These main extension rules state that the Company will extend its facilities provided that: (1) the required extension will not adversely affect gas supply to existing customers; and (2) the Company’s investment is warranted by the anticipated revenue to be derived from the extension. According to PNG, it is undisputed that none of the GBM Complainants meet the requirements of the tariff and that it cannot extend service to these customers without a very substantial customer contribution. PNG argued 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 R.B. at 4-11.

With regard to the alleged promise made by PNG’s predecessor, PG&W, to the GBM customers that they would receive propane service at natural gas rates until gas mains were extended, the Company argued that, it has no record of any such agreement, promise or representation being made by PG&W, and the GBM Complainants were unable to produce any such alleged agreement or promise. Further, PNG argued that nine of the eleven Complainants are not the original homeowners; therefore, even if a promise was made, it was not to these nine customers. PNG further argued that even if a promise was made, it was not made stating that there would be no customer contribution. Also, PNG argued that the fact that GBM customers made investments based on the GBM tariff is legally irrelevant because an alleged promise to provide propane service at natural gas rates forever cannot trump PNG’s tariff or justify uneconomic main extensions. PNG averred that the GBM customers have received very substantial subsidies through GBM service, which, have either fully or substantially offset any investments made in propane equipment. PNG estimated that over the past twenty-two years, the average subsidy received by GBM customers has been over $1,000 per year, which has been paid for by other PNG customers. *Id.* at 11-16.

**D. ALJ’s Initial Decision**

In her Initial Decision, the ALJ first addressed the alleged existence of an agreement between PNG’s predecessor and the Complainants that natural gas mains would be extended into their areas if they accepted propane service. The ALJ noted that this agreement appears not to have been reduced to writing. The ALJ also stated that there may be questions of whether PNG took over this specific obligation of PG&W, which is a corporate law question. Additionally, the ALJ noted that there is a question of the existence of the contract, and if it exists, its terms. Furthermore, the ALJ noted that customers cannot enter into a contract that is in violation of a utility’s tariff. Next, the ALJ noted that any contract over $500 must be in writing according to the Uniform Commercial Code. Lastly, she questioned whether PG&W used bait and switch tactics, a form of fraud. According to the ALJ, these are all questions for the Courts of Common Pleas as the Commission lacks jurisdiction over these issues. The ALJ stated that the Commission is not jurisdictionally empowered to decide private contractual disputes between citizens and a utility. I.D. at 39 (citing *Allport Water Auth. v. Winburne Water Co*., 393 A.2d 673 (Pa. Super. Ct. 1978)).

In consideration of the issue that PNG violated Section 1501 of the Code due to the failure to extend natural gas facilities, the ALJ stated that the Commission requires natural gas distribution companies (NGDCs) to have line extension rules in order to protect existing customers from bearing unreasonable costs and to maintain reasonable rates. According to the ALJ, 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 of the Commission’s Regulations, 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. The ALJ found that PNG’s Commission-approved main extension rules establish these terms and conditions and require a contribution in aid of construction (CIAC) for all uneconomic main extensions. *See* PNG Exhibit DEL 3, PNG Gas – Pa. P.U.C. No. 8, Original Pages 19 through 21. I.D. at 39-41.

Furthermore, the ALJ found that 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. The ALJ cited *Popowsky v. Pa. PUC*, 589 Pa. 605, 910 A.2d 38 (2006), where the OCA argued that Pennsylvania-American Water Company’s (“PAWC”) line extension regulations violated Section 1501 of the Code and that PAWC should be required to extend water service to a township at PAWC’s sole expense. In that case, 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. I.D. at 41-42.

The ALJ noted that the OCA appealed that ruling to the Commonwealth Court, and later to the Supreme Court of Pennsylvania, and that both Courts held that PAWC’s line extension rules, and the Commission’s line extension regulations, were lawful and did not violate Section 1501. I.D. at 42 (citing *Popowsky v. Pa. PUC*, 853 A.2d 1097 (Pa. Cmwlth. 2004); *Popowsky v. Pa. PUC*, 589 Pa. 605, 910 A.2d 38 (2006)).

Next, the ALJ stated that the Commission has recently addressed main extension issues for GBM customers of UGI, a company which also has a GBM tariff provision that transitions GBM customers to full propane rates over a multi-year period. The ALJ referenced a June 15, 2010 complaint filed by Mr. Richard Adams against UGI, alleging that the GBM rate was going to change and requesting that UGI provide natural gas service to his street. I.D. at 42-43 (citing *Richard Adams v. UGI Utilities, Inc. – Gas Division*, Docket No. C-2010-2182016 (Order entered October 31, 2011)) (*Adams)*. In that Order, the Commission dismissed the complaint because the complainant failed to meet his burden to establish that UGI agreed to provide him with natural gas distribution service. In that decision, the ALJ noted that the Commission went on to state 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.

I.D. at 43 (citing *Adams, supra,* at 6 (footnote omitted)).

However, the ALJ stated that the Commission also 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. 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*.

I.D. at 43 (quoting *Adams, supra*, at 7 (emphasis added)).

Thus, according to the ALJ, the Commission recognized that, under UGI’s main extension tariff provisions, the complainant in *Adams* may have been required to pay a CIAC if the requested extension was uneconomical. I.D. at 43-44.

With regard to the issue that PNG’s main extension rules do not apply to GBM customers, the ALJ concluded that 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 do apply to GBM customers. According to the ALJ, 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. I.D. at 44.

The ALJ stated that 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.

I.D. at 4; PNG Exhibit DEL 3.

The ALJ concluded that 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. The ALJ concluded that there are no exceptions or exclusions. I.D. at 44-45.

In conclusion, the ALJ stated that the elimination of the GBM subsidies has been decided, the Formal Complainants had proper notice, and the appeal period has passed. She concluded that nothing in the Formal Complaints, the OCA’s testimony or documents warrants revisiting the settlements in the 2009 Base Rate Case or the 2011 PGC Proceeding. Therefore, the ALJ dismissed the Formal Complaints. I.D. at 38, 49.

**E. Exceptions**

**1. Main Extensions Without CIAC**

**a. Exception and Reply**

In its first Exception, the OCA avers that the ALJ erred in not recommending relief in the form of main extensions without CIAC under the unique circumstances presented in this case. The OCA 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. The OCA opines that the ALJ’s decision is based upon an inapplicable tariff rule and legal precedent. According to the OCA, the ALJ erred in applying Tariff Rule 5 to present customers. The OCA submits that this Tariff Rule is directed to new applicants for utility service and does not apply to this situation. According to the OCA, 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. OCA Exc. at 5-12.

According to the OCA, the ALJ erred 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. The OCA stated that the Commission’s 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.

*Id*. at 12 (quoting 52 Pa. Code § 59.27). The OCA noted that pursuant to this regulation, the natural gas companies submit tariffs to comply.

According to the OCA, 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.

*Id*. (quoting PNG Gas – Pa. P.U.C. No. 8, Original Page 19, PNG Exhibit DEL3). The OCA opines that the language of the tariff itself illustrates clearly why Tariff Rule 5 does not apply. According to the OCA, 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.*

*Id*. at 13 (quoting PNG Gas – Pa. P.U.C. No. 8, Original Page 9 (emphasis added)). The OCA submits that 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. *Id.*

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. The OCA offers that 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. The OCA avers that, the ALJ’s conclusory statement, that the regulation and the “tariff rule, on its face, applies to all customers that request a line extension” is incorrect. As a result, 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 service. *Id.* at13-14.

Next, the OCA submits that even if Tariff Rule 5 were applicable, 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 OCA avers that 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 customers. According to the OCA, 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. The OCA offers that it would be more reasonable to use a longer period to assess the economic portion of the main extension investments considering many of the Complainants have been waiting for over forty years for natural gas service. The OCA requests that the Commission 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 of this proceeding. *Id.* at 14-16.

Additionally, the OCA faults the ALJ in disregarding the evidence of future customer additions on gas lines that would service these GBM customers, as these additions could justify a higher level of initial Company investment. The OCA states that 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. According to the OCA, the Company disclosed that there are twenty-eight proximate GBM customers and 141 potential new customers that could be served from lines extended to the Complainants alone. Thus, the OCA asserts that PNG would have a reasonable opportunity to increase substantially the number of natural gas customers in the areas of its current GBM service. The OCA opines that 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. *Id.* at 16-17.

In its Replies to Exceptions, PNG first asserts that utilities are not required to make uneconomic line extensions under Section 1501 of the Code. PNG argues that, the OCA’s position that the failure to make uneconomic line extensions to GBM customers constitutes unreasonable service under Section 1501 is without merit. PNG posits that under Section 1501, utilities are only required to extend service to customers “under reasonable conditions” subject to the regulations and orders of the Commission. According to PNG, the Commission requires NGDCs to have line extension rules in order to protect existing customers from bearing unreasonable costs and to maintain reasonable rates. PNG explains that consistent with this requirement, the Company’s Commission-approved main extension rules establish these terms and conditions and clearly require a CIAC for all uneconomic main extensions. PNG asserts that in this case, it is undisputed that none of the GBM Complainants meet the requirements of this tariff, and that PNG cannot, under its Commission-approved tariff, extend service to these customers without a very substantial CIAC. As none of the GBM Complainants are willing to pay a CIAC, each of the extensions would be uneconomical for PNG and are precluded by the tariff. PNG R. Exc. at 4-5.

Next, PNG argues that the OCA’s position that GBM customers are existing customers of PNG and, therefore, the main extension tariff provisions are inapplicable to them, violates well established principles of law and must be rejected. The Company states that there is only one main extension provision in its tariff that applies to all line extension requests, whether they are made by new or existing customers. PNG acknowledges that the GBM customers are existing customers of PNG, but argues that they are not natural gas customers currently receiving service via a natural gas main. According to PNG, the GBM customers are propane customers that do not have natural gas mains extending to their homes. PNG asserts that its tariff expressly states that an individual who wants a main extension must file a written application, and that the word “applicant” clearly refers to someone who has filed a written application under the Company’s tariff. Therefore, PNG argues that, in order for the GBM customers to receive natural gas service, they would have to apply for a main extension under the Company’s main extension tariff provision. As a result, PNG avers that GBM customers clearly are applicants under the line extension rules because they are applying to have mains installed and to be connected to PNG’s primary distribution system. *Id.* at 7-8.

Furthermore, PNG explains that it is reasonable and prudent for the Company to apply its line extension rules to existing customers who are applying for an extension or upgrade of facilities because to do otherwise would potentially result in an uneconomic investment on the part of the Company simply because the application has been submitted by an existing customer. PNG asserts that, if the OCA’s position is accepted, significant, and perhaps severe, impacts on PNG’s cost of providing service to existing customers could occur. PNG argues that, under the OCA’s interpretation of the main extension rules, existing customers would not be required to pay for service upgrades no matter the cost. According to PNG, its main extension tariff provisions are intended to protect the Company’s customers from bearing uneconomic costs for extending or upgrading facilities to both new and existing customers. *Id.* at 8-9.

In reply to the OCA’s criticism of the Company’s use of a 5.5 year investment recovery period to determine if a CIAC is required for a requested main extension, PNG avers that the OCA is confusing the facts. PNG states that the 5.5 value is not the investment recovery period, as the Company uses 5.5 times the annual margin to calculate the allowance and the predetermined rate of return. According to PNG, using this 5.5 ratio yields a predetermined rate of return of approximately 10.6% after tax. PNG asserts that the Company does not recover its investment in 5.5 years. Additionally, PNG argues that its use of the 5.5 ratio is completely irrelevant to the legal issue of whether PNG’s main extension tariff provisions apply to the GBM customers. *Id.* at 9.

In response to the OCA’s argument that PNG will be able to recoup the “uneconomic” portion of the investment if it is able to add potential new customers that could be served from lines extended to the Complainants, PNG notes that the OCA disregards that additional investment would be required to serve these additional customers. PNG maintains that the total “uneconomic” portion of the investment to extend mains to serve the eleven GBM Complainants, and 138 of the potential new customers and proximate GBM customers for which the Company has current cost estimates, would be approximately $2.4 million. According to PNG, it would take the addition of about 1,176 customers to offset the uneconomic investment, which is many more than the potential amount identified by the OCA. PNG opines that the GBM customers are located too far from PNG’s facilities and in low density areas that make extending mains to these customers very uneconomical. *Id.* at 14-15.

**b. Disposition**

Based upon the evidence of record, we are not convinced by the arguments of the OCA that we should require PNG to extend its natural gas mains to the GBM Complainants in this proceeding without any requirement of a contribution from the Complainants. Instead, we are persuaded by the position of PNG that the GBM Complainants in this proceeding are applicants under the main extension tariff rules of the Company and, as such, are bound by those tariff rules. We also are in agreement with the ALJ that PNG’s Commission-approved main extension rules require applicants to contribute towards the cost of uneconomic main extensions. Based upon the evidence of record, it is clear that each of the GBM Complainants would be required to make a customer contribution towards the cost of the natural gas main extensions required to provide them service. It is important to note that this Commission has adopted Regulations requiring NGDCs to adopt line extension rules in their tariffs to set forth the conditions under which facilities will be extended to serve new customers. *See*, 52 Pa. Code § 59.27. These line extension rules were adopted to protect existing customers from bearing the costs of uneconomic main extensions and to maintain just and reasonable rates for all customers. PNG’s Tariff Rules 5.1 and 5.2 state, in pertinent part, as follows:

5.1 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. The costs of extending facilities beyond that provided by the Company shall be paid by the applicant.

5.2 General

(a) Annual Base Revenue. The Annual Base Revenue is the anticipated base rate revenue from the extension, as determined by the Company, less the cost of fuel included in rates. Where gas is used as a supplemental source of fuel for peak heating purposes, anticipated base revenues from such use shall be excluded from Annual Base Revenue.

(b) Allowable Investment Amount. The Company’s Allowable Investment Amount shall be the Annual Base Revenue divided by a predetermined rate of return.

(c) Estimates and non-standard costs. Cost estimates used by the Company in analyzing a proposed extension of facilities will be based on construction and installation conditions anticipated for the particular extension, standard street opening terms and fees and installation during the construction season. Notwithstanding the foregoing, applicant may be required to pay for additional costs attributable to nonstandard street opening terms, fees and estimated additional costs attributable to winter season installation.

(d) Surface Restoration. The Company will restore the street surface in accordance with applicable local government regulations and provide rough backfilling of the installation trench from the curb to the meter. Applicant may be required to perform or pay the cost of non-standard additional surface restoration, including but not limited to replacement or repair of sidewalks, driveways, landscaping or sod.

PNG Gas-Pa. P.U.C. No. 8, Original Page 19.

We further find that the OCA’s arguments that the GBM customers are currently receiving service from the Company and, therefore, cannot be considered “applicants” under Rule 5.1 to be flawed. We find that Rule 5.1expressly states that an individual who wants a main extension must file a written application and that the word “applicant” at the end of Rule 5.1 clearly refers to someone who has filed a written application under that Rule. The capitalized term “Applicant” under the definitions section of the Tariff noted by the OCA is a separately defined term in the tariff and refers to someone who is applying for new service and not to someone who is filing an application for a main extension. We agree with PNG that an “applicant” under Rule 5 is different than an “Applicant” for new service as the former refers to any new or existing customer that files a written application for a main extension. Therefore, we reject the OCA’s argument on this point and find that PNG’s main extension rules in its Commission-approved tariff apply to the GBM customer’s request for main extensions.

In consideration of the OCA’s argument concerning PNG’s use of a 5.5 year investment recovery period, we find that this is not relevant to the issue of whether the GBM Complainant’s should have gas distribution mains extended to them without any customer contribution. Similarly, the OCA position that the potential new customers located along the proposed GBM line extensions would enable the Company to recover its uneconomic investment over time is rejected as speculative based upon the record evidence.

It is important to note that this Commission has previously determined within our decisions in the 2009 Base Rate Case and the 2011 PGC Proceeding that the subsidy being provided to the long standing GBM customers by receiving propane service at natural gas rates was inappropriate and should be phased out over a reasonable transition period. Our decision in this proceeding is consistent with these prior decisions as it would not be appropriate to order PNG to further subsidize these customers through uneconomic main line extensions. It is also important to note that PNG’s Commission-approved Tariff is consistent with our prior decisions and has the force and effect of law and is binding on both the public utility and its customers. *Brockway Glass Co. v. Pa PUC,* 437 A.2d 1067, 1070 (Pa. Cmwlth. 1981). Furthermore, tariff provisions that have been approved by the Commission are *prima facie* reasonable. *Lynch v. Pa. PUC,* 594 A.2d 816, 819 (Pa. Cmwlth. 1991).

While we fully understand the dilemma facing these GBM customers based upon the ramifications of this Commission’s prior decisions in the 2009 and 2011 proceedings, and while we generally support the extension of gas distribution facilities whenever it is operationally and economically feasible, we cannot endorse the allowance of service line extensions in a manner that places an unreasonable economic burden on existing customers. Such an endorsement in this proceeding would create an unacceptable regulatory precedent at a time when natural gas has recently become an abundant, economical and a greatly sought after domestic natural resource. We note that the GBM customers have received a significant economic benefit as a result of receiving propane service at the cost of natural gas for many years, the cost of which has been borne by other customers. In our prior rulings, we decided that this practice must be discontinued over a reasonable transition period. It would simply be unreasonable for this Commission to now require that uneconomic line extensions be constructed to these GBM customers without any customer contributions, thereby resulting in further subsidization by PNG’s other customers. Accordingly, we shall adopt the ALJ’s Initial Decision and deny the OCA’s Exceptions on this issue.

In consideration of the dilemma facing these GBM customers, where in the near future they will be paying market-based propane costs and paying the distribution charges within PNG’s tariff, we are of the opinion that it may not be in their best interests to remain customers of PNG. We, hereby, have determined that it is neither reasonable nor economic to extend natural gas distribution facilities to them at this time.

**2. Equitable Mechanism for Recovering the Cost of Main Extensions**

**a. Exception and Reply**

In its next Exception, the OCA asserts that it developed an equitable proposal consistent with ratemaking principles that would be fair to the GBM customers, other natural gas customers and PNG shareholders. The OCA recommends 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. The OCA states that to fund the cost of extending the natural gas mains, PNG would be permitted to include the “economic” portion of the construction costs in rate base based on the forty-year service life of the main in the first distribution base rate case to follow. According to the OCA, 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 (based upon the revenues received over the full service life of the main) would be added to the Company’s rate base. The OCA opines that this ratemaking treatment would create an incentive for PNG to seek new customers and expand the use of natural gas in the areas served. OCA Exc. at 17-18.

The OCA submits that this proposal provides a balanced resolution of this issue. According to the OCA, the ALJ failed to give full consideration to this proposal. The OCA submits that its proposal is sound and that the Commission should adopt it to resolve this difficult controversy in a manner that would be fair to all concerned. *Id.* at 19.

In reply, PNG asserts that the ALJ correctly determined that PNG’s main extension tariff provisions apply to GBM customers. PNG states that the OCA’s position ignores PNG’s right to recover a return on its investment at the time it is being used for public service and is based on an erroneous assumption that PNG will be able to recoup the “uneconomic” portion of the investment if additional customers could be served from lines extended to the Complainants. However, as previously noted, PNG explains that it would take the addition of approximately 1,176 customers to offset the uneconomic investment which is many more customers than the potential number identified by the OCA. Also, PNG avers that the OCA proposal is completely unprecedented in line extension cases. PNG submits that the issue has never been whether the utility should bear the costs of the investment and not be able to recover its costs. According to PNG, Pennsylvania case law has recognized that a public utility’s duty to provide line extensions is not unlimited and, therefore, does not obligate the public utility to make line extensions that are uneconomic or unreasonable. PNG cites to *Sherman v. Public Service Commission,* 90 Pa. Superior Ct. 523 (1927) and *Popowsky, supra,* for its position*.* PNG offers that if it is required to extend mains to customers, the Company must be permitted to earn a return on its investment in those mains under the “regulatory compact.” PNG maintains that there simply is no precedent for PNG’s shareholders to bear the costs of uneconomic main extensions. *Id.* at 15-16.

**b. Disposition**

Based on our previous determination that PNG’s main extension tariff provisions apply to these GBM customers, we shall reject the OCA’s proposed alternative cost recovery mechanism. In our opinion, there is simply no justification under the circumstances of this proceeding to require the Company to bear the uneconomic portion of these line extension costs or to expect, based on the record before us, that a sufficient amount of additional customers could be added to the new lines to recover the uneconomic investment. As noted by the Company, it would require the addition of over 1,100 new customers to offset this uneconomic investment, an amount far greater than the potential new customers identified by the GBM complainants and the OCA on the record. Accordingly, we shall deny the OCA’s Exception on this issue.

**3. ALJ’s Reliance on *Popowsky* and *Adams***

**a. Exception and Reply**

In its next Exception, the OCA asserts that the ALJ’s statements in relation to the *Popowsky* case are oversimplifications which mischaracterize the OCA’s position and should be given no weight. The OCA states that in this proceeding, it has proposed main extensions to existing PNG customers who relied on representations that ultimately they would be provided with natural gas. The OCA avers it has not proposed across-the-board, that PNG should be required to make uneconomic main extensions whenever unserved members of the public demonstrate a need. Also, the OCA points out that 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. OCA Exc. at 19-20.

According to the OCA, the major reason that the line of cases that the ALJ and PNG relies upon is inapposite here is that they involved extensions of service to unserved areas of PAWC’s territory. The OCA states that the Complainants here are existing customers who have been paying PNG distribution rates for years. The OCA asserts 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 PNG. *Id.* at 20-21 (citingI.D. at 31, Finding of Fact (FOF) No. 161; Tr. at 26). Also, the OCA notes that 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*. at 21 (citing Tr. at 27). The OCA further notes that 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. *Id.* (citing Tr. at 28-29). According to the OCA, 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. The OCA opines that 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. As a result, the OCA argues that the ALJ’s application of *Popowsky* to the GBM complaint cases is in error. *Id.* at 21.

Next, the OCA asserts that the ALJ accepted the Company’s argument that the Commission’s Order in *Adams* governs the outcome of this case. The OCA 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. The OCA notes that ALJ Jandebeur 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. The OCA maintains that, in contrast to *Adams,* that was based upon a breach of contract, the set of issues before the Commission in this proceeding are 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. *Id.* at 22.

In reply, PNG avers that the ALJ properly relied on the decisions from the Commonwealth Court and this Commission. PNG avers that there was nothing in *Popowsky* that limited the holding to only new customers, instead the issue was “whether a demonstration of public need for water alone is sufficient to require a water company to extend its water lines and service without receiving a customer contribution, in an instance where the cost of the extension project would exceed the company’s expected revenue from the extension.” PNG states that, in *Popowsky* the Supreme Court rejected this proposition, affirming the holdings of the Commission and the Commonwealth Court that the utility’s Commission-approved line extension provisions applied. PNG notes that the Supreme Court held that, under Section 1501, utilities are only required to extend service to customers “under reasonable conditions,” and that utilities are not required to make uneconomic line extensions without CIAC. PNG opines that Section 1501 applies equally to existing customers and new applicants for service, and there is nothing in *Popowsky* that limited its holding to apply only to new customers. PNG R. Exc. at 17.

In regard to the OCA’s contentions concerning the *Adams* decision, PNG asserts that the Commission held that main extension tariff provisions similar to PNG’s applied to an existing GBM customer, and that the GBM customer may be required to pay a CIAC if the requested extension is uneconomical. PNG opines that the Commission’s holding in *Adams* clearly is dispositive of the pending complaints. PNG claims that the OCA’s attempt to distinguish *Adams* by claiming that the issue raised in *Adams* was whether the utility promised the GBM customer that he would receive propane service at natural gas rates until gas mains were extended is nonsensical. PNG asserts that a review of the complaints in this case reveals that each of them alleged that PNG’s predecessor promised that they would receive propane service at natural gas rates until gas mains were extended, the very same issue raised by the complaint in *Adams.* According to PNG, the OCA disregards that the issue actually decided by this Commission in *Adams* was not whether there was an agreement but, rather, whether UGI’s main extension provisions should be applied to the GBM customer. *Id.* at 18-19.

**b. Disposition**

We find that the ALJ properly relied on specific issues addressed in the decisions in *Adams* and *Popowsky* in reaching a determination in this proceeding. The *Adams* case is procedurally and factually similar to the instant case. In *Adams*, we addressed a complaint filed by a UGI customer who alleged that his GBM rate was going to change and requested that UGI provide natural gas service to his street. We explained that the Commission had approved a settlement providing that UGI’s GBM customers would be transitioned to full propane rates over a multi-year period. We determined that UGI did not have an obligation under the settlement to convert the complainant’s propane service to natural gas distribution service. We stated, “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.” *Adams* at 6. We directed UGI to consider the complainant’s service request in the complaint as a written application for a line extension under Rule 5 of UGI’s tariff. We stated that UGI should follow its usual line extension process, including providing the complainant with an estimate of “the total costs to extend UGI’s facilities to his home and what portion would have to be borne by the [c]omplainant.” *Id*. at 7.

Based on our analysis of *Adams,* it is clear thatwe have previously determined that a utility’s main extension tariff provisions, which are similar to PNG’s tariff provisions, apply to GBM customers, and that GBM customers may be required to pay CIACs if the requested extension is uneconomical. Accordingly, we agree with PNG that the ALJ appropriately relied on *Adams* in making such a finding*.*

Moreover, we are in agreement with the ALJ and PNG that the OCA’s argument that the Company be required to make uneconomic line extensions under Section 1501 has been previously rejected by this Commission and the appellate courts. We concur with PNG that the issue examined in *Popowsky* that is of significance to the instant case was “whether a demonstration of public need for water alone [wa]s sufficient to require a water company to extend its water lines and service without receiving a customer contribution, in an instance where the cost of the extension project would exceed the company’s expected revenue from the extension.” *Popowsky*, 589 Pa. at 609, 910 A.2d at 40.

In that case, the OCA requested that the utility, at its sole expense, be required to extend its water service into a township and alleged that the utility was in violation of Section 1501 of the Code, which requires utilities to extend lines “as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public.” *Id*. at 611, 41. In addressing this argument, the Pennsylvania Supreme Court concluded the following:

But while Section 1501 speaks to necessary extensions, it does not purport to speak to the economics of required line extensions, much less does it suggest that the PUC was obligated to conclude that the entire cost of a water line extension must be borne by the utility. Indeed, Section 1501 later states in explicit terms that: “Subject to the provisions of this part and the regulations and 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.” Thus, in addition to the fact that the delegated power does not affirmatively restrict the PUC from authorizing customer contribution, the statute affirmatively recognizes that reasonable conditions may attach to the rendering of mandated service.

*Id*. at 632, 44-45. In this case, we likewise find that the ALJ correctly determined that PNG’s line extension rules did not violate Section 1501 of the Code, which states that utilities are only required to extend service to customers “under reasonable conditions subject to the regulations and orders of the Commission.” *See*, I.D. at 47. We also agree with PNG that Section 1501 applies equally to existing customers and new applicants for service, and that *Popowsky* did not limit its holding to apply only to new customers. Accordingly, we shall deny the OCA’s Exception on these issues.

**4. Burden of Proof Standard**

**a. Exception and Reply**

In its next Exception, the OCA asserts that 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.[[4]](#footnote-4) The OCA argues 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 Exc. at 24; OCA M.B. at 46-47. The OCA avers that PNG’s expert witness explicitly testified that the Company considers the GBM customers to be “jurisdictional customers” to whom PNG owes an obligation to serve. OCA Exc. at 24; I.D. at 31, FOF No. 159; Tr. at 20-21. As such, the OCA explains that these customers cannot under the terms of the tariff be considered “applicants for service.” OCA Exc. at 24.

Therefore, according to the OCA, 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 OCA requests that the Commission reject the Conclusions of Law that invoke this inapplicable burden of proof standard. *Id.* at 25.

In reply, PNG states that the ALJ applied the correct burden of proof with respect to the OCA’s challenge to previously approved tariff provisions. PNG asserts that the OCA argument, that it is not challenging Commission-approved settlements from the 2009 Base Rate Case and the 2011 PGC Proceeding or PNG’s main extension tariff provisions, is without merit. According to PNG, the OCA is challenging the terms and conditions of these prior settlements that the OCA had previously agreed to fully support. PNG claims that in the instant proceeding, the OCA is, in effect, opposing the settlement terms, the phase-in to full market-based propane rates, and fails to offer a reasonable explanation for its departure from its prior position. PNG maintains that if the continuation of GBM service without extending mains violates Section 1501 of the Code, then the OCA should not have agreed to the 2011 settlement, which provides for the continuation of GBM service without requiring main extensions. PNG opines that the Commission, by its approval of these settlements, has concluded that the continuation of the GBM service, with a phase-in to market-based rates is adequate, efficient, safe and reasonable service, and therefore, consistent with Section 1501 of the Code. PNG states that the OCA and GBM Complainants have failed to meet their burden 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 or the application of PNG’s main extension tariff provisions unreasonable. PNG R.Exc. at 19-22.

**b. Disposition**

We find that the OCA’s assertion that it is not challenging a previously-approved tariff is without merit. PNG’s Commission-approved line extension tariff rule requires applicants to contribute towards uneconomic line extension requests. While the OCA may also be challenging the applicability of the tariff provisions in this case, the OCA’s major argument here is that PNG should be required to extend facilities to the GBM customers without any customer contribution, despite the amount the Company would be required to invest. Clearly, the OCA is challenging a previously-approved tariff provision. There is also evidence in the record to demonstrate that the individual Complainants are challenging the gas beyond the main service provisions of PNG’s tariff. Accordingly, we find that the ALJ correctly stated that the OCA and the Complainants must demonstrate, by a preponderance of the evidence, that the facts and circumstances have changed so drastically as to render our prior approval of the line extension and gas beyond the main service provisions of PNG’s tariff unreasonable. *See,* I.D. at 46 (citing *Kanowicz v. PPL Electric Utilities Corporation*, Docket No. C-20043915 (Order entered November 1, 2005). Therefore, we shall deny the OCA’s Exceptions on this issue.

**5. Quality of Service Issues**

**a. Exception and Reply**

Lastly, the OCA avers that the ALJ’s conclusion that the many service-related issues raised by the Complainants are not properly decided because they are “outside the scope” of the Complaints contravenes the ALJ’s evidentiary ruling to allow the service-related evidence into the record as relevant to the proceeding. OCA Exc. at 26;Tr. at 105-107. According to the OCA, the ALJ included many FOFs based upon the evidence offered by the Complainants concerning the problems with propane deliveries, tanks going dry, difficulties with customer service, receipt of inaccurate and confusing information, and the like. OCA Exc. at 26.

The OCA points out that the ALJ recognized that the utility responded to the information offered on the record by the Complainants in the FOFs based upon the PNG testimony. For example, the OCA notes that 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. *Id.* at 27;I.D. at 25, FOF No. 125. The OCA further notes that 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. OCA Exc. at 27; I.D. at 25, FOF No. 126. The OCA submits that electronic devices have been installed on propane tanks to remotely monitor levels to avoid tanks running dry. OCA Exc. at 27;I.D. at 25, FOF No. 127. According to the OCA, these are a few examples of the ALJ Findings, based upon the evidentiary record relevant to the Complaints, that ultimately remain “undecided” in the Initial Decision because they are “outside the scope” of the written Complaints. OCA Exc. at 26-27.

According to the OCA, ALJ Melillo’s Order in PNG’s 2011 PGC Proceeding that severed the rate issues from the remaining GBM issues specifically stated that the service issues will be addressed in a separate proceeding. *Pa PUC v. UGI PNG* *1307(f)*, Docket No. R-2011-2238943 (Order entered July 6, 2011). Additionally, the OCA states that it 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. OCA Exc. at 28; Tr. at 93‑97, 103-107. Further, the OCA notes that the ALJ decided at the hearing that such information was relevant to the resolution of the case and admitted the evidence. *Id.* Finally, the OCA avers that the Company witness addressed a number of the service issues in his written rebuttal testimony, essentially acknowledging that the problems raised by the Complainants at hearings had some merit and called for revisions to PNG practices and customer service responses. Therefore, according to the OCA, any claim that the Company did not have adequate notice of or ability to respond to the service issues is without merit. OCA Exc. at 28.

The OCA asserts that 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 demonstrates a misapprehension of the case. According to the OCA, PNG’s inability to meet its Section 1501 service obligations to the GBM customers in the variety of ways that the Complaints demonstrated with credible evidence further substantiates the appropriateness of the requested remedy of natural gas service without CIAC. *Id.*

In reply, PNG asserts that the ALJ properly refused to consider issues that were beyond those raised in the GBM Complaints and that the OCA’s arguments are without merit. PNG maintains that the ALJ’s July 2011 Order in PNG’s 2011 PGC Proceeding did not preserve any and all “service-related” issues as suggested by the OCA. According to PNG, the only issue reserved for litigation in the ALJ’s July 2011 Order in the 2011 PGC proceeding was the limited issue raised in the Moran-Roberto Complaint, whether mains should be extended to serve the Complainant. Further, PNG asserts that, although the ALJ in this proceeding admitted certain service-related evidence into the record, over the Company’s objection, the ALJ’s ruling clearly indicated that the evidence was not being admitted to amend the complaints or to convert the proceeding into a general service complaint proceeding. Rather, PNG explains that the ALJ stated that the evidence was being admitted solely for the purpose of addressing the issue of whether PNG should be required to provide main extensions to the GBM customers. PNG R. Exc. at 23;Tr. at 122. Additionally, PNG maintains that the fact this evidence was provided to it at the eleventh hour and admitted into the record for limited purposes does not change the fact that these service issues were not raised in the GBM Complaints. PNG opines that any consideration of these issues would be a denial of its due process of law. PNG R. Exc. at 22-24.

Lastly, PNG asserts that even assuming that the GBM Complaints properly raised the service issues alleged by the OCA, which it denies, these issues are completely unrelated to and have no effect on the primary issues in this case, whether the ALJ correctly determined that PNG’s line extension tariff provisions apply to GBM customers and whether PNG is obligated to make uneconomical main extensions. PNG accuses the OCA of raising the service-related issues in an attempt to bootstrap its burden to demonstrate that the facts and circumstances have changed so drastically as to render the Commission’s prior approval of line extension and GBM service provisions of PNG’s tariff unreasonable. PNG claims that this is not the appropriate standard for deciding the actual issues raised in this proceeding. PNG further asserts that the OCA’s exception is without merit because it ignores the record evidence that PNG has been responsive to the concerns of the GBM Complainants, many of which have been already fully resolved. *Id.* at 24-25.

**b. Disposition**

We note that two Complainants, Mr. Hennigan and Mr. Fuhr, raised service-related issues in their Formal Complaints. A review of the GBM Complaints generally indicates that all of the GBM Complainants opposed the rate increase, *i.e.*, the phase-in of GBM service to market-based propane rates. The ALJ stated that all other service-related issues raised by the OCA at hearing were outside the scope of GBM Complaints and would not be addressed. I.D. at 45.

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. The ALJ found PNG’s explanation reasonable and did not find that the suspension of Mr. Hennigan’s automatic withdrawal amounted to a violation of Section 1501. *Id.* We agree with the ALJ.

With regard to Mr. Fuhr’s allegations that the propane tanks are unsightly and unsafe, the ALJ found that PNG has maintained all propane tanks and tank sites. *Id.* (citingPNG St. 2-R at 10-11). The ALJ noted that propane tank installations by propane suppliers are subject to federal safety standards. According to the ALJ, the record established that the propane supplier inspected the tanks in question and found them to be in safe working order. Further, according to the ALJ, the record established that the propane supplier raised propane tanks, leveled them, and added cement block support for the tanks as necessary. I.D. at 45. (citingPNG St. 2-R. at 15-16). The ALJ found that Mr. Fuhr failed to prove that the tanks were unsafe and that the appearance of the tanks was not a violation of Section 1501. We agree with the ALJ.

Additionally, we agree with PNG that the ALJ’s July 6, 2011 Order in PNG’s 2011 PGC Proceeding did not preserve all “service-related” issues. Based on our reading of the Order, the ALJ merely indicated that the portion of the complaint of Kathleen Moran-Roberto that related to a natural gas main extension was reserved for separate litigation in a separate proceeding. *See*, *Order Granting Petition or Motion to Consolidate, in Part, of UGI Penn Natural Gas, Inc*.at 10. We also note that our review of the record reveals that the ALJ in this proceeding actually sustained PNG’s objection to the inclusion of service-related matters which were not included within the Complaints filed by the GBM Complainants as it was unreasonable and unfair to the Company. *See* Tr. at 97. Furthermore, we are in agreement with PNG that these service-related issues are inconsequential to the primary issue in this proceeding, whether PNG is obligated to construct uneconomical line extensions to existing GBM customers. Accordingly, we shall deny the Exceptions of the OCA on this issue.

**III. Conclusion**

Based upon the foregoing discussion, we shall deny the Exceptions of the OCA and adopt the Initial Decision of ALJ Jandebeur; **THEREFORE,**

**IT IS ORDERED:**

1. That the Exceptions to the Initial Decision of Administrative Law Judge Ember S. Jandebeur, filed by the Office of Consumer Advocate on October 2, 2012, are denied, consistent with this Opinion and Order.

2. That the Initial Decision of Administrative Law Judge Ember S. Jandebeur, issued September 12, 2012, is adopted.

3. 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.

4. That the record at these Dockets be marked closed.

BY THE COMMISSION,

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: July 16, 2013

ORDER ENTERED: July 16, 2013

1. Pennsylvania Gas & Water Company. PGW is the predecessor to PNG. [↑](#footnote-ref-1)
2. As used here, the total distribution margin refers to the customer charges, distribution charges, and merchant charges. Answer at 1. [↑](#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*, 1995 Pa. PUC Lexis 124. 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 (Order entered October 15, 1999). [↑](#footnote-ref-3)
4. 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. [↑](#footnote-ref-4)