

Environmental Defense Fund
128 Winding Brook Lane
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October 29, 2015

Secretary Rosemary Chiavetta
Pennsylvania Public Utility Commission
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17015-3265

Re: Petition of Philadelphia Gas Works for Waiver of Provisions of Act 11 to Increase the
Distribution System Improvement Charge Cap and to Permit Levelization of DSIC
Charges, Docket No. P-2015-2501500

Dear Secretary Chiavetta:

Enclosed, please find an original copy of Environmental Defense Fund's "Response of Environmental Defense Fund to Motion to Strike Environmental Defense Fund's Direct Testimony" in the above-captioned matter.

Copies are being served in accordance with the attached Certificate of Service.

Sincerely,

John Finnigan

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Philadelphia Gas Works for	:	
Waiver of Provisions of Act 11 to Increase	:	
the Distribution System Improvement	:	Docket No. P-2015-2501500
Charge Cap and to Permit Levelization	:	
of DSIC Charges	:	

**RESPONSE OF ENVIRONMENTAL DEFENSE FUND TO
MOTION TO STRIKE ENVIRONMENTAL DEFENSE
FUND’S DIRECT TESTIMONY**

Pursuant to Rule 5.103(c) of the rules of Administrative Practice and Procedure of the Pennsylvania Public Utility Commission, Environmental Defense Fund (“EDF”) hereby submits its “Response of Environmental Defense Fund to Motion to Strike Environmental Defense Fund’s Direct Testimony.”

The Bureau of Investigation and Enforcement (“I&E”) seeks to prohibit EDF from intervening in this proceeding and also seeks to strike the testimony of EDF’s witness, Simi Rose George. I&E argues that the testimony “confuses the issues, wastes time and is not relevant” (I&E Motion at pp. 13-15). The heart of I&E’s argument is that Simi Rose George’s testimony should be stricken because it “fail(s) to make any mention of or any recommendation related to any of the items requested in PGW’s Petition” (I&E Motion to Strike at p. 13). I&E’s statement is incorrect. To the contrary, Simi Rose George repeatedly recommends in her testimony that Commission should approve an increase to Philadelphia Gas Works’ (“PGW”) Distribution System Improvement Charge (“DSIC”), and this is the main relief requested by PGW in its Petition.

At pp. 2-3 of her testimony, Simi Rose George states:

Q. PLEASE PROVIDE A SUMMARY OF YOUR TESTIMONY.

A. * * * Accordingly, it is recommended that the Pennsylvania Public Utility Commission (PUC) approve PGW's requests relating to an increase in its Distribution System Improvement Charge ("DSIC") cap, and the annualization and levelization of DSIC, in order to facilitate an accelerated pipeline replacement program.

She addresses this topic again later in her testimony at pp. 12-13 as follows:

Q. WHAT IS YOUR RECOMMENDATION WITH RESPECT TO THE CHANGES TO DSIC PROPOSED BY PGW IN ITS PETITION?

A. * * * For these reasons, which are discussed at length in the PUC Staff Report, it would be appropriate and beneficial to allow PGW to recover the additional cost associated with accelerating its pipeline replacement program by increasing the DSIC cap, and annualizing and levelizing DSIC.

* * * Accordingly, my recommendation is that PGW's requests for waiver of the current DSIC cap of 5% to 7.5% of distribution revenues, and levelization and annualization of DSIC be granted to enable cost recovery for the proposed acceleration of its pipeline replacement program.

She reiterated this recommendation in her conclusion at pp. 13-14:

Q. PLEASE SUMMARIZE YOUR RECOMMENDATIONS AND CONCLUSIONS

A. * * * Therefore, it would be appropriate and beneficial from the standpoint of ratepayer interests and the public interest for the PUC to approve an increase to PGW's DSIC cap and levelize and annualize the DSIC, in line with the recommendations in the PUC Staff Report, to ensure that increased funds are available to PGW, allowing it to implement an accelerated pipeline replacement program.

As shown above, Simi Rose George clearly and repeatedly makes recommendations that directly relate to PGW's requested relief. The main relief that PGW seeks in this case is to

waive the current DSIC cap of 5% of distribution revenues and increase the cap to 7.5%. I&E's claim that Simi Rose George's testimony does not address this issue is plainly without merit.

I&E fundamentally mischaracterizes EDF's motivation in intervening in this proceeding by selectively referencing statements from Simi Rose George's testimony without providing the context in which these averments were made. For instance, in noting that PGW lags far behind other utilities in terms of the rate of pipeline replacement, page 10 of Simi Rose George's testimony states:

For instance, as noted in the PUC Staff Report, Public Service Electric & Gas Co. (PSE&G), whose distribution system contains the most miles of cast iron mains among all gas utilities in the U.S., recently filed a petition before the New Jersey Board of Public Utilities, seeking approval for a highly ambitious, multi-year pipeline replacement program that is intended to significantly accelerate its current rate of pipeline replacement. EDF is intervening in this proceeding, broadly in support of PSE&G's petition, in order to ensure an economically efficacious outcome.

On a plain reading, it is evident that this paragraph references EDF's intervention *in the proceeding initiated by PSE&G*, noting that its primary motivation in participating in that proceeding is to ensure an economically efficacious outcome. Instead, I&E arrived at the convoluted and unsupported conclusion that EDF is intervening in the current proceeding "to support its own position in an unrelated utility's petition."

I&E goes on to state that "EDF's testimony should be based on an interest related to PGW." As noted at the very outset of EDF's motion to intervene in the current proceeding, EDF has 16,089 members in Pennsylvania, several of whom live in Philadelphia and are serviced by PGW. Any increase in DSIC will have an immediate impact on these customers. EDF is representing the interests of these customers by intervening in the current proceeding. I&E's view that EDF does not have an interest related to PGW is therefore baseless.

I&E also objects to Simi Rose George's testimony on the grounds that it is "procedurally defective" because the testimony was filed after the deadline in Prehearing Order #1 (I&E Motion at p. 11).

EDF filed the testimony with the Commission prior to the October 19, 2015 12:00 p.m. deadline in Prehearing Order #1, and received electronic confirmation from the Commission stating that the filing was successfully made.

EDF believed that filing its testimony with the Commission by noon would comply with the noon filing deadline. EDF electronically served copies of the testimony on the other parties that same day, and I&E acknowledges that it received the testimony at 7:51 p.m. on October 19, 2015 (I&E Motion at p. 11). The Commission has accepted filings from parties that substantially complied with the Commission's orders. *Petition of PPL Electric Utilities Corporation for Approval of its Energy Efficiency and Conservation Plan*, M-2009-2093216 (Opinion at 11) (December 17, 2010). EDF submits that it substantially complied with the schedule and the Commission should not strike the testimony based on this delay of a few hours. Moreover, I&E has not demonstrated any harm from receiving the testimony a few hours after the deadline.

I&E's other arguments as to why the testimony is "procedurally defective" is that it doesn't contain line numbers, which by I&E's own admission is not a fatal defect, and the fact that the filing was made in advance of the hearing instead of being presented at the hearing. EDF regrets these filing errors on its part. EDF is willing to present another copy of the testimony containing line numbers at the hearing. EDF commits to abiding by all applicable procedural requirements if admitted as a party to the current proceeding.

I&E also notes that content on pages 4-8 of EDF's Direct Testimony is not relevant to the current proceeding. These pages contain a discussion of EDF's expertise and experience on the

issue of methane leaks from aging gas distribution infrastructure, such as that operated by PGW. This discussion serves as crucial, highly relevant background information that directly informs EDF's opinion and recommendation offered in relation to PGW's Petition. Thus, I&E's suggestion that these sections of EDF's Testimony have "no bearing upon PGW" and "instead act to tout EDF's list of projects and research" is fundamentally misconceived and must be rejected by the Commission. I&E goes on to note that EDF's articulated interest in this proceeding is "already being addressed by the OCA." However, as OCA notes in its letter of October 27, 2015 addressed to the Commission, it has been previously held that the participation of the OCA in a given proceeding does not presume that the interests of all of a utility's customers are adequately represented in a hearing before the Commission. Accordingly, I&E cannot reasonably object to EDF's intervention on the basis that OCA is participating in this proceeding.

CONCLUSION

WHEREFORE, EDF respectfully requests that the Commission overrule I&E's motion to strike the testimony of Simi Rose George.

Date: October 29, 2015

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CERTIFICATE OF SERVICE

I hereby certify that on October 29, 2015, I served a true copy of the foregoing document upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), via email and first class mail, upon the persons listed below:

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