



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE  
REFER TO OUR FILE

November 3, 2015

Secretary Rosemary Chiavetta  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Re: Pennsylvania Public Utility Commission v.  
Philadelphia Gas Works  
Docket No. P-2015-2501500

Dear Secretary Chiavetta:

Enclosed please find an original copy of the Bureau of Investigation and Enforcement's (I&E) **Answer in Objection to the Petition to Intervene of Clean Air Council**. Please note that for ease of reference, I&E has consolidated both of these pleadings into one document.

Copies are being served on all active parties of record, as well as EDF's counsel. If you have any questions, please contact me at (717) 787-8754.

Sincerely,

Gina L. Lauffer  
Prosecutor  
Bureau of Investigation and Enforcement  
PA Attorney I.D. #313863

Carrie B. Wright  
Prosecutor  
Bureau of Investigation and Enforcement  
PA Attorney I.D. #208185

CBW/GLL/snc  
Enclosure

cc: Certificate of Service

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission :  
 :  
 v. : Docket No. P-2015-2501500  
 :  
 Philadelphia Gas Works :

**CERTIFICATE OF SERVICE**

I hereby certify that I am serving the foregoing **Answer** dated November 3, 2015,  
in the manner and upon the persons listed below, in accordance with the requirements of  
§ 1.54 (relating to service by a party):

**Served via Electronic and First Class Mail**

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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>Pennsylvania Public Utility Commission</b>	:	
	:	
	:	<b>Docket No. P-2015-2501500</b>
<b>v.</b>	:	
	:	
<b>Philadelphia Gas Works</b>	:	

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**ANSWER OF THE BUREAU OF INVESTIGATION & ENFORCEMENT  
IN OBJECTION TO THE PETITION TO INTERVENE OF  
CLEAN AIR COUNCIL**

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**TO ADMINISTRATIVE LAW JUDGES CHRISTOPHER P. PELL AND MARTA  
GUHL:**

The Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”) hereby submits this Answer in objection to the Petition to Intervene of Clean Air Council (“CAC”) in the above-captioned proceeding pursuant to 52 Pa. Code § 5.66. By way of general response, I&E objects to CACs intervention in this proceeding because it fails to meet the standard for intervention under the Commission's regulations, and was untimely filed. For the reasons explained below, I&E respectfully requests that Administrative Law Judges Christopher P. Pell and Marta Guhl (the “ALJs”) deny CAC's Petition to Intervene. In support of this Answer and Motion, I&E states as follows:

## I. INTRODUCTION

1. On September 1, 2015, Philadelphia Gas Works (“PGW” or “Company”) filed a Petition for Waiver of Provisions of Act 11 to Increase the Distribution System Improvement Charge CAP and to Permit Levelization of DSIC Charges (“Petition”). This Petition, filed at Docket No. P-2015-2501500, serves as a PGW’s request that the Commission: (1) waive the current Distribution System Improvement Charge (“DSIC”) cap of 5% of distribution revenues and approve a maximum allowed DSIC of 7.5% with a total 10% cap including any reconciliations; (2) waive or suspend the requirements of Act 11 of 2012 to permit PGW to use an annual, levelized charge as the basis for establishing a DSIC, subject to a true-up based on PGW’s actual experience; (3) waive the requirements of Act 11 to exempt PGW from paying interest on DSIC over-collections, and (4) authorize the filing, on one day’s notice, of a revised Long Term Infrastructure Improvement Plan (“LTIIIP”).

2. On September 17, 2015, the Office of Consumer Advocate (the “OCA”) filed a Notice of Intervention, Public Statement, Answer, and a formal Complaint to PGW’s Petition.

3. On September 18, 2015, I&E filed an Answer to PGW’s Petition.

4. On September 21, 2015, the Office of Small Business Advocate (the “OSBA”) filed an Answer, Verification, Public Statement, Notice of Appearance, and Notice of Intervention to PGW’s Petition.

5. On September 21, 2015, the Philadelphia Industrial and Commercial Gas Users Group (“PICGUG”) filed an Answer to PGW’s Petition.

6. Pursuant to a Prehearing Conference Order dated September 30, 2015, PGW, I&E, OCA, OSBA, and PICGUG (collectively the “Parties”) submitted prehearing memoranda to the presiding officers on October 1, 2015. The prehearing memoranda identified the Parties’ potential witnesses and issues, and provided each party’s contact information.

7. A prehearing conference was held on October 2, 2015. Counsel for the Parties participated and the Parties adopted a litigation schedule.

8. On October 19, 2015, I&E received by mail the Petition to Intervene of Environmental Defense Fund (“EDF”).

9. On October 30, 2015 EDF’s Petition to Intervene was granted.

10. On November 3, 2015, I&E received CAC’s Petition to intervene which was email to the Parties November 2, 2015 at 6:48 p.m., well after the close of business.

11. CAC’s Petition generally alleges that it has members in the PGW service territory, although no such members are identified, CAC’s Petition also alleges that CAC has interests and perspectives on issues in this proceeding that are not adequately represented, including prioritizing pipeline replacement.

12. The Pennsylvania Public Utility Code recognizes eligibility for intervention on the limited bases enumerated in 52 Pa.Code § 5.72:

(a) *Persons*. A petition to intervene may be filed by a person claiming a right to intervene or an interest of such nature that intervention is necessary or appropriate to the administration of the statute under which the proceeding is brought. The right or interest may be one of the following:

(1) A right conferred by statute of the United States or of the Commonwealth.

(2) An interest which may be directly affected and which is not adequately represented by existing participants, and as to which the petitioner may be bound by the action of the Commission in the proceeding.

(3) Another interest of such nature that participation of the petitioner may be in the public interest.

(b) *Commonwealth*. The Commonwealth or an officer or agency thereof may intervene as of right in a proceeding subject to subsection (a)(1)—(3).

(c) *Supersession*. Subsections (a) and (b) supersede 1 Pa. Code § 35.28 (relating to eligibility to intervene).

## II. ANSWER TO CAC's PETITION TO INTERVENE

I&E opposes CAC's Petition on the basis that CAC lacks standing to participate in this proceeding. CAC's Petition, filed extremely late in the proceeding, fails to allege any facts to prove that it has an interest which may be directly affected and which is not already adequately represented by existing participants in this proceeding. Further, PGW filed its DSIC Petition on September 1, 2015, over two months ago. Since that time, the Parties have invested a great deal of time expounding discovery, preparing testimony, and developing the issues in this case. CAC's attempt to intervene 48 hours before hearings are scheduled to begin in this expedited proceeding shows complete disregard for the other Parties efforts and will generate an untold amount of disorder in the proceedings. In support of I&E's opposition, it offers the following enumerated responses to the Petition:

1. After reasonable investigation, I&E is without sufficient knowledge or information to form a belief as to the truth of the averment contained in Paragraph 1. By way of further response, I&E would note that while CAC indicates that “most” of its members are PGW customers, nowhere does CAC indicate specifically who these members that are PGW customers are, and therefore no confirmation can be made.

2. Admitted.

3. Admitted.

4. Admitted in part. It is admitted that PGW is requesting the Commission allow it to increase the DSIC cap from 5% to 7.5%. By way of further response, aside from the request identified in Paragraph 4, PGW is also requesting a waiver of the requirements of Act 11 to exempt PGW from paying interest on DSIC over-collections and authorization to file a revised LTIIP on one day’s notice.

5. Admitted in part, denied in part. To the extent that the averments contained in Paragraph 5 are consistent with the Staff Report, they are admitted. To the extent that such averments are inconsistent with the Staff Report, they are denied. By way of further response, the Staff Report speaks for itself and any conclusions drawn by CAC are denied.

6. Admitted in part, denied in part. To the extent that the averments contained in Paragraph 6 are consistent with the Staff Report, they are admitted. To the extent that such averments are inconsistent with the Staff Report, they are denied. By way of further

response, the Staff Report speaks for itself and any conclusions drawn by CAC are denied.

7. Admitted, in part. It is admitted that natural gas is transmitted through PGW's pipeline and that natural gas contains methane. The allegation regarding the impact of methane as a greenhouse gas is a conclusory statement to which no response is required.

8. After reasonable investigation I&E is without sufficient knowledge or information to form a belief as to whether CAS is the "oldest and most prominent Philadelphia-based air quality advocacy group," and whether "CAC has a deep interest in ensuring that PGW's pipe infrastructure is the most protective system that is possible." Further, I&E is without sufficient knowledge or information to form a belief as to whether "CAC's members include those who are most vulnerable to air contaminants."

9. Paragraph 9 merely contains a recitation of CAC's position to which no response is required.

10. Admitted in part, denied in part. To the extent that the allegations contained in Paragraph 10 are consistent with the cited Commission regulations they are admitted. To the extent that such averments are inconsistent with the cited Commission regulations, they are denied

11. Denied. It is denied that CAC meets the standards for intervention. To the contrary, to possess standing to intervene, a party must have an interest in the controversy that is distinguishable from the interest shared by other citizens.<sup>1</sup> CAC's interest in

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<sup>1</sup> *Sierra Club v. Hartman*, 529 Pa. 454, 605 A.2d 309 (1992).

assuring the PGW prioritizes replacement of the pipelines that leak the most is already adequately represented in this proceeding. I&E has addresses this exact issue in I&E Statement No. 2, the Direct Testimony of Gas Safety Inspector Terri Cooper-Smith. Further, EDF, in its Petition to Intervene indicated that it “has an interest in ensuring that PGW develop a cost-effective plan to remove or replace its case iron and bare steel pipes, and to reduce methane emissions....”<sup>2</sup> By way of further response, even assuming that CAC has members who are in PGW’s service territory, those members either knew or should have known of PGW’s filing in this matter prior to the date of CAC’s untimely intervention. With such knowledge, it is inexcusable for CAC to make its last-minute attempt to intervene in this matter. Notably, CAC provides no compelling reason for its extremely late intervention.

12. Denied. As noted above, I&E has addressed CAC’s issue in Direct Testimony and further, EDF’s Petition to Intervene, which has been granted, indicates that it has a similar interest in this proceeding as CAC. The fact that CAC considers itself a “well-established local environmental organization” does not give CAC standing to intervene in this proceeding.

13. Denied. It is denied that CAC’s intervention in this proceeding will allow CAC to contribute its unique perspective, because, as articulated above, CAC’s interest is not that unique as it is already adequately represented by other Parties to this proceeding.

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<sup>2</sup> EDF Petition to Intervene at Paragraph 11.

14. This paragraph is merely a recitation of the CAC position to which no response is required. However, I&E would note that the untimely filing of this Petition shows a total disregard for the other Parties and a disregard for this proceeding. PGW's Petition was filed on September 1, 2015. CAC has had 2 months to file this Petition to Intervene, but did not choose to do so until November 2, 2015, and did not serve the Parties until after the close of PUC business at 6:48 p.m. Thus, the ALJs and the Parties have been afforded only approximately 48 hours before hearings are scheduled to begin to consider this Petition. By way of further response, although CAC seeks to reserve its right to "raise and address issues identified through its continued review and analysis of PGW's proposal," by this late stage of the case, CAC has missed its chance to participate in discovery and to serve testimony, so its request to continue to review and analyze PGW's proposal only demonstrates the inappropriateness and untimeliness of its Petition. If, in fact, CAC's interest were not already adequately represented, one would presume CAC would not wait until this late in the proceeding, when the time to file testimony has passed, to intervene. CAC's filing of this Petition at such a late juncture when the Parties, and presumably the ALJs, are deeply entrenched in preparing for hearings is unconscionable, and if CAC's Petition is granted, it will set a precedent that other parties can wait until the last minute to intervene in Commission proceedings.

**CONCLUSION**

WHEREFORE, for the reasons stated herein, the Bureau of Investigation and Enforcement respectfully requests that the Pennsylvania Public Utility Commission Deny the Clean Air Council's Petition to Intervene in this proceeding.

Respectfully Submitted,



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Dated: November 3, 2015