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March 31, 2017

Via Electronic Filing

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

Re: PA Public Utility Commission et al., v. Philadelphia Gas Works
Docket Nos. R-2017-2586783

Dear Secretary Chiavetta:

Enclosed for electronic filing please find Philadelphia Gas Works' ("PGW") Answer in Opposition to the Petition to Intervene of Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia with regard to the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,


Daniel Clearfield

DC/lww
Enclosure

cc: Hon. Christopher Pell w/enc.
Hon. Marta Guhl w/enc.
Certificate of Service w/enc.

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of PGW's Answer in Opposition to TURN's Petition to Intervene upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

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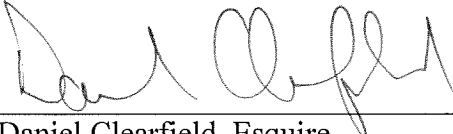
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Date: March 31, 2017



Daniel Clearfield, Esquire

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

| | | |
|-----------------------------|---|---------------------------|
| PENNSYLVANIA PUBLIC UTILITY | : | |
| COMMISSION | : | Docket No. R-2017-2586783 |
| | : | |
| v. | : | |
| | : | |
| PHILADELPHIA GAS WORKS | : | |

**PHILADELPHIA GAS WORKS’
ANSWER IN OPPOSITION TO
PETITION TO INTERVENE OF
TENANT UNION REPRESENTATIVE NETWORK AND
ACTION ALLIANCE OF SENIOR CITIZENS OF GREATER PHILADELPHIA**

Philadelphia Gas Works (“PGW” or the “Company”), pursuant to 52 Pa.Code § 5.66, hereby files this Answer in Opposition to the Petition to Intervene (“Petition”) filed by the Tenant Union Representative Network (“TURN”) and Action Alliance of Senior Citizens of Greater Philadelphia (“Action Alliance,” together with TURN, “TURN *et al.*”). By way of general response, PGW objects to the TURN *et al.*’s intervention in this proceeding because they have failed to allege sufficient facts to support their standing to participate in this proceeding or to satisfy the requirements for intervention under the rules of the Pennsylvania Public Utility Commission (“PUC” or “Commission”).

TURN *et al.* has neither adequately demonstrated that its members have a sufficiently direct interest in the outcome of the proceeding nor has it demonstrated that it meets the PUC’s rules for intervention. It is beyond cavil that the interests of low and moderate income customers are already adequately represented in the proceeding by the Office of Consumer Advocate (“OCA”) as well as by the PUC’s Bureau of Investigation and Enforcement (“BIE”). Moreover, such duplication of advocacy will be extremely burdensome and increase the costs of litigation,

which ultimately must be borne by PGW's customers. PGW is a municipal utility with limited resources and even more limited staff.

PGW fully respects TURN *et al.*'s interest in advancing the policy interests of low and moderate income customers (such as tenants and/or senior citizens) – in the proper forum. It should not be permitted to do so in a PGW's rate case,¹ which is an adjudication and requires that participants have a direct interest in the actual issues and interests in the case that are not adequately represented by others. As noted herein, other parties will adequately advance any legitimate, rate case-related issues TURN *et al.* may have. In support of this Answer, PGW states as follows:

Representational Standing

TURN *et al.* seeks to obtain standing through their members that reside within PGW's service territory and are customers of PGW. However, the Petition fails to comply with the requirements for representational standing. Importantly, TURN *et al.* is not a "statutory advocate." Unlike the OCA or the Office of Small Business Advocate ("OSBA"), they have not been established by state law and are simply policy advocacy organizations who seek to become involved in contested, on the record proceedings, such as this rate case, to attempt to advance their policy goals. Accordingly, it must meet the same standing requirements as any other person or organization. An organization may have standing solely as a representative of its members. *See Tripps Park v. PUC*, 415 A.2d 967 (Pa.Cmwlt. 1980). To have representational

¹ It is acknowledged that TURN *et al.* participated in PGW's prior base rate cases (including, R-2009-2139884), and the PGW did not object to such participation. That being said, past participation in one proceeding does not constitute a waiver of the right to object in different proceeding. In each proceeding, participants must satisfy the eligibility requirements established by the regulations.

standing before the Commission, the organization must not only demonstrate an immediate direct and substantial interest or injury, but it must also demonstrate either (a) the representative will fairly and adequately represent those who have a sufficient interest and that those entitled to complain are unable to adequately pursue their own interests or (b) there is a showing that the allowance of the representative's participation will aid the Commission in the development of facts necessary for a proper disposition of the proceeding. *See Manufacturers Association of Erie v. the City of Erie- Bureau of Water*, Docket No. 20518, 50 Pa. PUC 43, 1976 Pa PUC LEXUS 79 (1976).

On the facts alleged, TURN *et al.* does not have representational standing to represent the interests of the customers in PGW's service territory. While the Petition alleges that several members of TURN *et al.* are customers of PGW,² it never states whether these customers would actually be affected by the rate increase. Importantly to the extent that these customers are enrolled in or eligible for PGW's low income Customer Assistance Program ("CAP"), they would not be affected by any rate increase that the Commission may grant. Nor is PGW proposing any other changes in its CAP program. Thus, the Petition fails to sufficiently allege a direct interest or how the Petitioners' participation will aid the Commission in the development of facts necessary in this proceeding.

As noted TURN *et al.* purports to advocate policy on behalf of its members; while PGW fully supports TURN *et al.*'s commendable work in advancing the interests of low income customers, this is the wrong venue in which to do so. As noted, no policy changes have been identified by TURN *et al.* and a rate case proceeding is not the appropriate forum for advocating policy changes. Moreover, to the extent that TURN *et al.* seeks to ensure just and reasonable

² Petition to Intervene of TURN *et al.*, at ¶¶ 4 (TURN members), 5 (Action Alliance members).

rates³ and the reasonableness of PGW's proposals⁴, such policies are embedded in the concept of just and reasonable rates; but such interests are too general⁵ to confer standing.

Moreover, and importantly, those interests are adequately represented by existing participants (as discussed in greater detail below). Since the existing participants are adequately representing such interests, the ill-defined and general "interests" of the members of TURN *et al.* are not "sufficient" to justify participation in this proceeding. See 52 Pa.Code §§ 5.72(a)(2), 5.72(a)(3), 5.76(a).

In addition, the Petition filed by TURN *et al.* is deficient because it fails to identify the members who they will represent. Commission's regulations require the attachment of a list of an organization's members who the organization will represent. 52 Pa.Code § 5.73(b). No such list is attached or included in the Petition for either TURN or Action Alliance. This is particularly important for TURN, which appears to be an unincorporated association. In Pennsylvania, an action may not be brought by an unincorporated association in its own name without naming one or more members of the association.⁶

³ See Petition to Intervene of TURN *et al.*, at ¶¶ 9.a., 9.i.

⁴ See Petition to Intervene of TURN *et al.*, at ¶¶ 9.b to 9.h and 9.j.

⁵ Standing requires that a person or entity have a direct, immediate and substantial interest in the subject matter of a proceeding. *William Penn Parking Garage, Inc. v. City of Pittsburgh*, 346 A.2d 269 (Pa. 1975). The requirement of a "substantial" interest means there must be some discernible adverse effect to some interest other than the general interest in having others comply with the law. See *William Penn Parking Garage*, 346 A.2d at 282; *Friends of the At Glen-Susquehanna Trail, Inc. v. PUC*, 717 A.2d 581 (Pa.Cmwlth. 1998), appeal denied, 739 A.2d 1059 (Pa. 1999).

⁶ Pa. R. Civ. P. No. 2152; See *Pa. Petroleum Ass'n v. Pennsylvania Power & Light Co.*, 377 A.2d 1270 (Pa.Cmwlth 1977), affirmed, 412 A.2d 522 (Pa. 1980), wherein the Commonwealth Court stated that associational standing could be a proper basis for allowing complainant status where association members that also are ratepayers are identified by the association's complaint. See also *Apple v. Department of Insurance*, 431 A.2d 1183 (Pa.Cmwlth. 1981).

Eligibility to Intervene

TURN *et al.* appears to base its eligibility to intervene on 52 Pa.Code § 5.72(a). That regulation requires petitions to intervene to show that the petitioner: a) has an interest which may be directly affected; and b) has an interest that is not adequately represented by existing participants. 52 Pa.Code § 5.72(a)(2).

The Petition filed by TURN *et al.* seeks to represent the interests of moderate and low income individuals (tenants and/or senior citizens) residing in Pennsylvania. But, in PGW's service territory all residential customers are served under the same rate schedule, so there is not a "low income or moderate income rate class." Nor is there a "tenant" rate class or a "senior citizen"⁷ rate class for TURN *et al.* to represent. The impact of the proposed rate increase on those groups of customers is not different than the Commission's determination of whether the proposed rates are just and reasonable for residential customers in general.

Based on past practice, TURN *et al.* is likely planning to attempt to use this rate case to argue for changes in PGW's low income energy assistance programs -- its CAP or its low income energy conservation program -- LIURP. But PGW has not proposed any changes to its universal service programs as part of this proceeding. Just as important, customers in those programs will not be affected by the rate increase sought by PGW. Customers in CAP pay an "asked to pay" amount that reflects a percentage of their income; thus the low income customers rates that TURN *et al.* seek to represent will not be affected by the rate increase. In fact,

⁷ PGW does have a senior citizen discount program. PGW Gas Service Tariff at First Revised Page No. 72 to Original Pg. No. 73. As of September 1, 2003 enrollment in that program was closed. *Id.* No changes are proposed to this program.

universal service issues are being addressed in a separate proceeding where TURN *et al.* is actively participating.⁸

Moreover, even if any of these issues do arise in the proceeding they will be adequately addressed by the existing parties. Importantly, the Petition filed by TURN *et al.* does not allege that TURN *et al.* has an interest that is not adequately represented by existing participants. Nor can it. BIE filed a Notice of Appearance,⁹ and is examining all issues relevant to the proposed rate increase on behalf of all customers. BIE indicated in its Prehearing Memorandum that it intended to examine issues affecting senior citizens and low income customers.¹⁰ Similarly, OCA has filed a Complaint¹¹ and is also examining all issues relevant to the proposed rate increase on behalf of all customers, with an emphasis on residential customers.¹² It too stated in its prehearing memorandum that it intended to investigate issues affecting low income customers.¹³ Extensive discovery has already been served by BIE and OCA regarding the effect of the proposed rate increase on all customers, including moderate and low income (such as tenants and/or senior citizens).

The basis for the standing rule is to protect a participant from expending resources to litigate against multiple parties on the same issues. Since BIE and OCA can adequately

⁸ See, e.g., PGW Universal Service and Energy Conservation Plan for 2017 – 2020, M-2016-2542415.

⁹ <http://www.puc.state.pa.us/pdocs/1511538.pdf>.

¹⁰ BIE Prehearing Memorandum at p. 3 (senior citizens), 4 (universal service issues).

¹¹ The OCA's complaint was docketed at C-2017-2592092.

¹² The OCA generally stresses the interests of residential consumers. See http://www.oa.state.pa.us/information_links/brochure.htm.

¹³ OCA Prehearing Memorandum at p. 5-6 (universal service issues).

represent the interests of all residential customers, no justification exists for permitting the interventions of TURN *et al.*

By way of further answer, PGW states as follows:

1. PGW's response to Paragraphs 4 and 5 of the Petition are incorporated herein by reference.
2. To the best of PGW knowledge and belief, the name and contact information in Paragraph 2 of the Petition are true and accurate.
3. The averments in Paragraph 3 of the Petition generally describe the contents of documents filed by PGW with the Commission on February 28, 2017 in this proceeding. Those documents speak for themselves, and any allegation or averment in the Petition that is contrary to and/or not corroborated by those documents is specifically denied.
4. Upon information and belief, PGW admits that TURN¹⁴ a) advocates on behalf of tenants¹⁵ and b) purports to be a not-for-profit advocacy organization. PGW does not have sufficient information to form a belief as to the truth of the remaining factual averments in Paragraphs 1 and 4 of the Petition. Such averments are, therefore, denied. No response is required to the legal interpretations and conclusions in Paragraphs 1 and 4 of the Petition. To the extent that a response is required, PGW's response to Paragraphs 9 to 11 of the Petition are incorporated herein by reference.

¹⁴ TURN is a fictitious name registered with the Commonwealth of Pennsylvania, Department of State, Corporation Bureau (Entity Number 3318125). *See* <https://www.corporations.pa.gov/Search/CorpSearch>.

¹⁵ http://www.pcacares.org/service_provider/tenant-union-representative-network-turn/

5. Upon information and belief, PGW admits that Action Alliance a) advocates on behalf of senior citizens and b) is a non-profit (non stock) Pennsylvania corporation.¹⁶ PGW does not have sufficient information to form a belief as to the truth of the remaining factual averments in Paragraphs 1 and 4 of the Petition. Such averments are, therefore, denied. No response is required to the legal interpretations and conclusions in Paragraphs 1 and 4 of the Petition. To the extent that a response is required, PGW's response to Paragraphs 9 to 11 of the Petition are incorporated herein by reference.

6. The averments in Paragraph 6 of the Petition generally describe the contents of documents filed in other Commission proceedings. Those documents speak for themselves, and any allegation or averment in the Petition that is contrary to and/or not corroborated by those documents is specifically denied. No response is required to the legal interpretations and conclusions in Paragraph 6 of the Petition. By way of further answer, it is denied that participation in proceedings related to PGW's universal service plan justifies participation in this proceeding. PGW's response to Paragraphs 9 to 11 of the Petition are incorporated herein by reference.

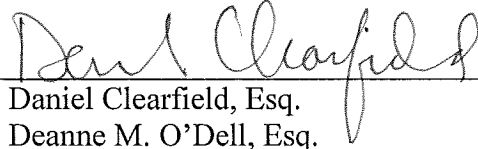
7 to 8. The averments in Paragraphs 7 and 8 of the Petition generally describe the contents of documents filed by PGW with the Commission on February 28, 2017 in this proceeding. PGW's response to Paragraph 3 of the Petition is incorporated herein by reference.

9 to 11. No response is required to Paragraphs 9 to 11 of the Petition, which contain the Petitioners' legal interpretations and conclusions. To the extent that a response is required, it is denied that TURN *et al.* has standing to participate in this proceeding.

¹⁶ Action Alliance is registered with the Commonwealth of Pennsylvania, Department of State, Corporation Bureau (Entity Number 723592). *See* <https://www.corporations.pa.gov/Search/CorpSearch>.

WHEREFORE, PGW respectfully requests that the Petition to Intervene of TURN *et al.*
be denied.

Respectfully submitted,



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Dated: March 31, 2017

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