



April 5, 2017

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Front Street
Harrisburg, PA 17120

**RE: Pa. PUC et al. v. PGW
Docket No. R-2017-2586783 et al.**

Reply of CAUSE-PA to PGW's Answer to CAUSE-PA's Petition to Intervene

Dear Secretary Chiavetta:

Enclosed for filing please find the Reply of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) to PGW's Answer to CAUSE-PA's Petition to Intervene in the captioned proceeding. Copies of these documents have been served pursuant to the attached Certificate of Service.

Please do not hesitate to contact me should you have questions or need additional information.

Respectfully submitted,

Patrick Cicero
Counsel for CAUSE-PA

CC: Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	R-2017-2586783
Office of Consumer Advocate	:	C-2017-2592092
Office of Small Business Advocate	:	C-2017-2593497
Philadelphia Industrial & Commercial	:	
Gas Users Group	:	C-2017-2595147
William Dingfelder	:	C-2017-2593903
	:	
v.	:	
	:	
Philadelphia Gas Works	:	

Certificate of Service

I hereby certify that on April 5, 2017, I have served copies of the **Reply of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) to PGW’s Answer to CAUSE-PA’s Petition to Intervene** upon the parties of record in the above captioned proceeding in accordance with the requirements of 52 Pa. Code § 1.54 in the manner and upon the persons listed below.

VIA FIRST CLASS MAIL AND/OR EMAIL

<p>Hon. Christopher P. Pell Hon. Marth Guhl Administrative Law Judges Pennsylvania Public Utility Commission 801 Market Street, Suite 4063 Philadelphia, PA 19107 cpell@pa.gov mguhl@pa.gov</p>	<p>Christy M. Appleby, Esquire Darryl A. Lawrence, Esquire Kristine E. Marsilio, Esquire Harrison W. Breitman, Esquire Office of Consumer Advocate 555 Walnut Street, 5th Fl, Forum Place Harrisburg, PA 17101-1923 CAppleby@paoca.org DLawrence@paoca.org KMarsilio@paoca.org HBreitman@paoca.org <i>Counsel for the OCA</i></p>
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<p>Todd S. Stewart, Esquire Hawke McKeon & Sniscak 100 North Tenth Street Harrisburg, PA 17101 tsstewart@hmslegal.com <i>Counsel for RESA</i></p>	<p>Robert Ballenger, Esquire Josie B.H. Pickens, Esquire Jenna Collins, Esquire Community Legal Services 1424 Chestnut Street Philadelphia PA 19102 rballenger@clsphila.org jpickens@clsphila.org jcollins@clsphila.org <i>Counsel for TURN and Action Alliance</i></p>

Respectfully submitted,

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Date: April 5, 2017

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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	:	
v.	:	
	:	
Philadelphia Gas Works	:	

**REPLY OF THE COALITION FOR AFFORDABLE UTILITY SERVICES
AND ENERGY EFFICIENCY IN PENNSYLVANIA (CAUSE-PA) TO PGW’S ANSWER
TO CAUSE-PA’S PETITION TO INTERVENE**

Through its attorneys at the Pennsylvania Utility Law Project, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) files this Reply to Philadelphia Gas Works’ (PGW) Answer in Opposition to CAUSE-PA’s Petition to Intervene. For the reasons stated more fully below, applicable law and precedent demonstrate that CAUSE-PA has fully satisfied the Public Utility Commission’s (Commission) intervention standards set forth in 52 Pa. Code § 5.72, and that it has standing to intervene. PGW’s opposition to the intervention of *any and all* low-income representatives¹ in this proceeding is a bad faith attempt

¹ PGW also filed an Answer in Opposition to the Petition to Intervene of the Tenant Union Representative Network (TURN) and Action Alliance of Senior Citizens (Action Alliance) (collectively TURN et al.). As noted in their Petition, TURN is “a not-for profit advocacy organization composed on moderate and low-income tenants,” Petition at 4, and “Action Alliance is a not-for-profit membership organization of senior citizens,” Petition at 5. PGW’s Answer in Opposition to the TURN et al.’s Petition to Intervene is identical in all material respects to its answer to CAUSE-PA’s Petition to Intervene. CAUSE-PA supports TURN et al.’s involvement in this proceeding and believes that for all of the reasons asserted here, those entities should also be granted full intervener status.

to exclude representatives of its most vulnerable customers from speaking out about issues of significance that are relevant to PGW's proposed rate increase. CAUSE-PA urges the Commission to reject PGW's narrow and erroneous position, and to grant CAUSE-PA's Petition to Intervene.

I. Background

On February 28, 2017, Philadelphia Gas Works (PGW) filed Supplement No. 100 to PGW's Gas Service Tariff – PA. P.U.C. No. 2 (Supplement No. 100) to become effective April 28, 2017, seeking a general rate increase calculated to produce \$70 million (11.6%) in additional annual revenues. PGW also filed a petition seeking waiver of the application of the statutory definition of the fully projected future test year (FPFTY) so as to permit PGW to use a FPFTY beginning on September 1, 2017 in this proceeding. In its proposed rate structure, PGW seeks to introduce a 50% increase to their fixed monthly charge from \$12 per month to \$18 per month.

By Order entered March 16, 2017, the Pennsylvania Public Utility Commission (Commission) instituted an investigation into the lawfulness, justness, and reasonableness of the proposed rate increase. Pursuant to Section 1308(d) of the Public Utility Code, 66 Pa. C.S. § 1308(d), Supplement No. 100 to Philadelphia Gas Works' Gas Service Tariff – PA. P.U.C. No. 2 was suspended by operation of law until November 28, 2017, unless permitted by Commission Order to become effective at an earlier date. In addition, the Commission ordered that the investigation include consideration of the lawfulness, justness and reasonableness of the respondent's existing rates, rules, and regulations. The matter was assigned to the Office of Administrative Law Judge for the prompt scheduling of hearings culminating in the issuance of a Recommended Decision.

On March 17, 2017, a Prehearing Conference Order was issued by Administrative Law Judges Christopher P. Pell and Marta Guhl (“the ALJs”) setting a telephonic prehearing conference for Wednesday, March 29, 2017 at 10:00am, and requiring parties to file a Prehearing Memorandum no later than 12:00 pm on Monday, March 27, 2017. CAUSE-PA filed its Petition to Intervene and Prehearing Conference Memorandum on March 22, 2017. Petitions to Intervene, Notices of Appearance, and/or Complaints were also filed by the following: The Commission’s Bureau of Investigation and Enforcement (I&E), the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA), the Retail Energy Supply Association (RESA), the Philadelphia Industrial and Commercial Gas Users Group (PICGUG), and TURN et al.²

The ALJs held a telephonic prehearing conference on March 29, 2017. At that prehearing conference, PGW notified the ALJs that it would be objecting to the intervention of CAUSE-PA and TURN et al. ostensibly because the interests of both organizations were represented through the participation of the OCA and I&E. Tellingly, PGW did not object to the intervention of RESA³ or PICGUG on the same or similar grounds, but rather acquiesced to their participation. In a March 30, 2017 Prehearing Order, the ALJs established a deadline of Friday, March 31, 2017 for PGW to file an Answer in Opposition to CAUSE-PA and TURN et al.’s respective petitions to intervene, and permitted CAUSE-PA and TURN et al. to file a response to the answer by no later than April 5, 2017. PGW filed separate, yet substantively identical, answers to CAUSE-PA’s and TURN et al.’s respective petitions to intervene on March 31, 2017. Through this filing, CAUSE-PA submits its Reply to PGW’s Answer.

² A complaint was also filed by an individual complainant, Mr. William Dingfelder.

³ It bears noting that counsel for PGW in this proceeding is the law firm of Eckert Seamans Cherin and Mellot, LLC., and specifically Mr. Daniel Clearfield, Esquire and Ms. Deanne O’Dell, Esquire. These counsel are frequently, although not exclusively, counsel for RESA in a host of contested matters before the Commission.

II. RESPONSE

PGW asserts that it objects to CAUSE-PA's intervention because CAUSE-PA has not "adequately demonstrated that its members have a sufficiently direct interest in the outcome of the proceeding" nor demonstrated that it meets "the PUC's rules for intervention." PGW Answer at 1. PGW further asserts that CAUSE-PA does not have a discrete interest in the proceeding because there is "not a 'low income or moderate income rate class' for CAUSE-PA to represent", PGW Answer at 4, and that CAUSE-PA has failed to show that its interests are not adequately represented by the participation of I&E and the OCA, PGW Answer at 5. PGW is wrong as to each assertion.

A. Legal Standard for Intervention in Commission Proceedings

As a threshold matter, it is significant that the right to participate in proceedings before an administrative agency is primarily within the discretion of the agency. *See City of Pittsburgh v. Pa. P.U.C.*, 153 Pa. Super. 983, 33 A.2d 641 (1943); *NAACP, Inc. v. Pa. P.U.C.*, 290 A.2d 704 (Pa. Commw. Ct. 1972); *see also Pa. Nat'l Gas Assoc. v. T.W. Phillips Gas & Oil Co.*, 75 Pa. P.U.C. 598, 603 (1991). This discretion is exercised on a case-by-case basis, and given the quasi-judicial nature of the Commission, allows for intervention determinations that are less strict than those imposed by courts. *See Appalachian Gas Sales, Inc. v. Phila. Elec. Co.*, 67 Pa. P.U.C. 246, 250 (1988) *quoting In Re Radio Broadcasting Co.*, 57 Pa. P.U.C. 399 (1983). The Commission exercises this discretion through application of its regulations found at 52 Pa. Code §§ 5.71 through 5.76, specifically § 5.72 which states:

§ 5.72. Eligibility to intervene.

(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 paragraphs (1)—(3).

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

52 Pa. Code § 5.72.

CAUSE-PA is an unincorporated association of low-income individuals that advocates on behalf of its members to enable consumers of limited economic means to connect to and maintain affordable water, electric, heating and telecommunication services.⁴ Petition to Intervene at 6. CAUSE-PA membership is open to moderate and low income individuals residing in the Commonwealth of Pennsylvania who are committed to the goal of helping low-income families maintain affordable access to utility services and achieve economic

⁴ In its opposition to CAUSE-PA's intervention, PGW disparages CAUSE-PA and its members by saying that it "is simply a vehicle used by [the Pennsylvania Utility Law Project], a low income policy advocacy organization, to become involved in contested, on the record proceedings, such as this rate case, to attempt to advance PULP's policy goals." PGW Answer at 2. This characterization is incorrect and offensive. CAUSE-PA represents its own interests and sets its own policy priorities for which it retains PULP, a legal aid office, as its counsel to pursue those interests. Simply because CAUSE-PA's membership is comprised of low-to-moderate income individuals does not make them subservient to the interests of their counsel. CAUSE-PA is not a "vehicle" for PULP any more than PICGUG is a vehicle for McNees Wallace and Nurick or RESA is a vehicle for Eckert Seamans in the normal course of its business or, as in this case, a vehicle for Hawke McKeon & Sniscak which is representing RESA in this proceeding.

independence. *Id.* at 7. Given its status as an association, CAUSE-PA sought intervention in this proceeding pursuant to § 5.72(a)(2).

Even though Section 5.72 speaks of the rights of a “person” to intervene, the Commonwealth Court has consistently stated that “an association may have standing as a representative of its members ...as long as an organization has at least one member who has or will suffer a direct, immediate, and substantial injury to an interest as a result of the challenged action, [i.e., is aggrieved, the organization] has standing.” *Energy Cons. Council of Pa. v. Pa. P.U. C.*, 995 A.2d 465, 476 (Pa. Commw. 2010) (alteration in original) (citing *Tripps Park v. Pa. P.U. C.*, 415 A.2d 967 (Pa. Commw. 1980); *Parents United for Better Schools v. School District of Phila.*, 646 A.2d 689 (Pa. Commw. 1994)). Thus, CAUSE-PA need only demonstrate that at least one of its members will suffer a “direct, immediate, and substantial injury to an interest as a result of the challenged action.” *Energy Cons. Council of Pa.*, 995 A.2d at 476.

The requirement that an interest be “direct” requires a showing that the matter complained of caused harm to the party’s interest. *Wm. Penn Parking Garage, Inc. v. City of Pittsburgh*, 346 A.2d 269, 282 (1975). The requirement that an interest be an “immediate” interest involves “the nature of the causal connection between the action complained of and the injury to the party challenging it.” *Id.* at 283. Finally, for an interest to be “substantial” it “must have substance – i.e., there must be some discernable adverse effect to some interest other than the abstract interest of all citizens in having others comply with the law.” *Municipal Auth. Of West View v. Pa. P.U.C.*, 41 A.3d 929, 933 (Pa. Commw. 2012), citing *Wm. Penn Parking Garage Inc.*, 346 A.2d 269 at 282. CAUSE-PA has met each requirement.

B. CAUSE-PA has standing because at least one of its members will be directly, substantially, and immediately affected by the outcome of the proceeding.

In its Petition to Intervene, CAUSE-PA sets forth verified facts⁵ sufficient to demonstrate that its members will be directly, substantially, and immediately affected by PGW's decision to raise its rates by \$70 million per year, as well as its proposed residential rate design that seeks to increase its customer charge by 50% from \$12 per month to \$18 per month.

CAUSE-PA listed seven (7) of its members who are PGW customers. CAUSE-PA Petition to Intervene ¶ 10, n 5. PGW asserts that this is deficient because CAUSE-PA "never states whether these customers would actually be affected by the rate increase." PGW Answer at 3. This is not true. CAUSE-PA plainly states the following:

10. At least one member of CAUSE-PA is a current PGW customer, as will be directly affected by the outcome of this proceeding. ***Particularly, this proceeding will affect the price that CAUSE-PA members pay for natural gas service as well as the reliability and quality of that service.***

CAUSE-PA Petition to Intervene, ¶ 10 (footnote omitted) (emphasis added). This statement was verified as true and correct by a member of the Executive Committee of CAUSE-PA. *See* Verification of Mr. Carl Bailey attached to CAUSE-PA Petition to Intervene. For purposes of meeting the "direct", "immediate", and "substantial" requirements of standing this verified statement is sufficient. The petition alleged, and it is in fact the case, that CAUSE-PA members are customers of PGW. PGW is seeking to raise rates and increase its customer charge. An increase in rates will cause harm to low-income customers, including members of CAUSE-PA, because it will increase that amount that they have to pay for service and, for low income

⁵ It is worth noting that PGW's Answer to CAUSE-PA's Petition was not verified and it thus fails to satisfy the requirements of 52 Pa. Code § 1.36(a).

customers, will increase the likelihood that they will face loss of service because of unaffordable bills. CAUSE-PA made the following additional assertions in its Petition:

14. CAUSE-PA has preliminarily reviewed the PGW rate filing, and objects to the request on the grounds that the proposed rate increase is likely to result in unjust and unreasonable rates that would impose severe hardship on low and moderate income residential customers and consumers.
15. Continued delivery of safe, affordable, and accessible natural gas service based on reasonable terms and conditions is of critical importance to the safety, welfare, and economic stability of all Pennsylvanians – particularly those with limited financial means – and is subject to significant regulatory and statutory protections. See, e.g., 66 Pa. C.S. § 2203(3), (8); 52 Pa. Code Chs. 56 & 58.
16. CAUSE-PA asserts that the PGW rate filing, and any future modifications presented by intervening parties, must be thoroughly reviewed to ensure that all customers are able to access safe, affordable natural gas service within the PGW service territory.

CAUSE-PA Petition to Intervene ¶¶ 14-16.

PGW also contends that “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.” PGW Answer at 3. As a threshold matter, CAUSE-PA is not required to identify whether its members are or are not enrolled in CAP, this is immaterial to a determination of CAUSE-PA’s standing. That said, CAUSE-PA membership consists of customers of PGW who at the present time are enrolled in CAP **and** customers of PGW who at the present time are not enrolled in CAP.

At a more fundamental level, PGW’s basic contention is false because a CAP customer may well be affected by the outcome of this proceeding. The Office of Small Business Advocate has identified as an issue that it wishes to address in this proceeding “whether PGW’s non-residential customers should be required to contribute towards PGW’s universal service costs.”

OSBA Prehearing Memo at 3. A change in the universal service funding mechanism could directly affect the size and scope of PGW's universal service programs, which – in turn – would directly affect low income ratepayers – including members of CAUSE-PA – who utilize those programs to assist with affordability.

Additionally, in its prehearing memorandum, I&E indicated that it would seek to address, among other things, PGW's CAP and LIURP programs. I&E Prehearing Memorandum at 4. PGW attempts to use this fact as a shield to bar participation in this proceeding by CAUSE-PA and TURN et al.,⁶ based on its unsubstantiated, unverified belief that the changes I&E seeks would be positive to low-income customers. While CAUSE-PA cannot speculate as to what issues I&E might explore concerning LIURP and CAP, in past proceedings I&E has taken positions that CAUSE-PA considers to be materially adverse to low-income customers such as advocating for maximum CAP credits and limitations on LIURP increases.⁷ Indeed, were I&E to pursue similar policies in this case, CAP customers, including members of CAUSE-PA would be significantly, directly, and immediately affected by any such change. Like I&E, the OCA specifically states in its prehearing memorandum that it intends to raise Universal Services as a potential issue in this proceeding, noting that “[t]he OCA will examine the Company’s proposed universal services program costs and cost recovery mechanisms.” OCA Prehearing Memorandum at 5. Again, while CAUSE-PA cannot speculate as to what issues OCA might

⁶ The issue of whether I&E and OCA's participation should prevent participation by CAUSE-PA is addressed below in subsection II.C, below.

⁷ See e.g., *Pa. P.U.C. v. PPL Electric Utilities Corporation*, Docket No. R-2015-2469275 in which CAUSE-PA advocated for an increase in PPL Electric Utilities (PPL)'s maximum CAP credits, a position that was initially opposed by I&E in testimony. While the case ultimately settled based on a compromise reached by the parties to that proceeding, the point remains that from CAUSE-PA's perspective the interests of I&E and CAUSE-PA were not aligned. To be clear, I&E took a position that it believed advanced its overall mission to protect the public interest whereas CAUSE-PA took a position to advance the affordability of bills for low-income customers. While these matters sometimes align, they are not co-extensive.

explore concerning universal services programs and cost recovery mechanisms, in past proceedings OCA also has taken positions, such as advocating in rate cases for a CAP-Plus payment structure,⁸ that CAUSE-PA considers to be materially adverse to low-income customers. Indeed, while the OCA’s statutory charge is to represent all residential ratepayers, which includes low income ratepayers, the interests of residential ratepayers as a group are sometimes at odds with the specific and unique needs of a subset of that group – low income customers. Given these realities, PGW’s simplistic assertion that CAP customers would be unaffected by this proceeding, and that I&E and OCA adequately represent the interests of low-income customers to the exclusion of all other parties, is simply false.

Furthermore, CAUSE-PA’s interests in this proceeding are not limited to CAP customers. CAUSE-PA membership includes PGW CAP customers and non-CAP customers. It also includes individuals who at *one point in time were CAP customers or may become CAP customers*. The reality of both poverty and programs like CAP that are meant to assist those in poverty is that one’s status as a participant in such programs is not static. Households cycle in and out of CAP⁹ because their income increases or decreases, they fail to recertify, or they are

⁸ See *Pa P.U.C. et al. v. Columbia Gas of Pennsylvania Inc.*, Joint Petition for Settlement, Docket No. R-2009-2149262 (Order entered August 18, 2010) (adopting OCA witness’ proposal for adoption of CAP-Plus, which added additional costs to CAP customer bills based on the total dollar amount of LIHEAP received by Columbia in the prior year).

⁹ Even a cursory glance at publically available information shows that PGW’s CAP participation rates are *precipitously declining at a rate of thousands of customers every year*.

CAP Participation Rate for PGW			
As of 12/31/12	As of 12/31/13	As of 12/31/14	As of 12/31/15
75,224	68,458	61,319	58,282

Sources: Report on Universal Service Programs & Collection Performance of the Pennsylvania Electric Distribution Companies & Natural Gas Distribution Companies, report years 2013-2015. Available at: http://www.puc.pa.gov/filing_resources/universal_service_reports.aspx

subject to one of the many “stay out” provisions that PGW imposes.¹⁰ Thus, any and all low-income customers of PGW would be affected by the rate increase even if that customer were presently enrolled in CAP.

Based on the foregoing, it is apparent that CAUSE-PA has demonstrated that its members have a “direct” interest in the outcome of this proceeding because PGW’s rate increase would impact a low-income household’s ability to afford service. *See Wm. Penn Parking Garage, Inc.*, 346 A.2d at 282. This “direct” impact is also “immediate” in that it would be caused by PGW’s rate increase request and residential rate design, as well as the other advocacy positions advanced by other intervenors in the proceeding. *Id.* at 283. As mentioned above and discussed more thoroughly below, this direct and immediate impact is not adequately protected through the interventions of I&E and OCA.

Incredibly, PGW asserts that CAUSE-PA’s interests in ensuring that PGW’s low-income customers are protected against more unaffordable bills that would result from the rate increase is somehow “too general to confer standing.” PGW Answer at 4 (footnote omitted). PGW’s argument is flawed. CAUSE-PA is an association comprised of members, some of whom are low-income PGW customers. Its interest in ensuring that its members, and others like them, have adequate access to universal service programs that promote affordability is not an abstract or general interest. This is particularly true in a service territory such as PGW’s, where 34.4% of its customers are confirmed to be low-income, and where the termination rate for these

¹⁰ PGW has implemented various CAP rules that require certain low income customers who would otherwise be eligible for CAP based on income and payment troubled status to “stay out” of CAP for a period of time. For example, among other reasons, PGW will not allow for re-enrollment into CAP if a customer has “[h]as him/herself removed from [CAP] even though based on household size and income they are still eligible for the program and it is more affordable than the budget billing/payment arrangement” or if a household “refuses free [LIURP] weatherization services.” *See Phila. Gas Works Universal Service and Energy Conservation Plan for 2017-2020*, submitted in Compliance with 52 Pa. Code § 62.4, Docket No. M-206-2542415 at 8.

customers is more than double the termination rate for all residential customers.¹¹ *See* 2015 Report on Universal Service Programs & Collection Performance of the Pennsylvania Electric Distribution Companies & Natural Gas Distribution Companies (“2015 Universal Service Report”) at 7, 12. As such, given that CAUSE-PA’s membership consists of low-income PGW customers, it has shown that it has an interest that is “substantial” in that is a “discernable adverse effect to some interest other than the abstract interest of all citizens in having others comply with the law.” *See Municipal Auth. Of West View*, 933.

Further, the issue of continued delivery of safe, affordable, and accessible natural gas service based on reasonable terms and conditions is of critical importance to the safety, welfare, and economic stability of all individuals and entities within PGW service territory— particularly those with limited financial means – and is subject to significant regulatory and statutory protections. *See, e.g.*, 66 Pa. C.S. § 2203(3), (8); 52 Pa. Code Chs. 56 & 58. CAUSE-PA has asserted in its Petition to Intervene that the PGW rate filing, and any future modifications presented by intervening parties, must be thoroughly reviewed to ensure that all customers are able to access safe, affordable natural gas service within the PGW service territory. *See* CAUSE-PA Petition to Intervene ¶¶ 15-16. A utility must adopt policies which give customers and applicants a reasonable opportunity to maintain continuous service without unreasonable interruptions or delays, and its terms and conditions within its tariff – as well as its internal policies and practices, must be aligned with all statutory and regulatory provisions. Within PGW’s service territory this has not always been the case. One need only look at the level of PGW’s service terminations generally,¹² and, in particular, the number of PGW customers who

¹¹ In 2015, the termination rate for PGW’s residential customers as a whole was 6.3% compared to 12.8% for confirmed low-income customers. 2015 Universal Service Report at 12.

¹² According to the most recent data submitted by PGW pursuant to 66 Pa. C.S. § 1415, PGW terminated 29,602 households accounts in 2015. *See 2015 Chapter 14 Biennial Report Pursuant to § 1415*. Available at:

once terminated have been unable to obtain restoration of critical heat-related service at the approach of winter.¹³ Both call into significant question whether PGW's service, particularly to its low income residents, are reasonable and consistent with its obligations under law.

Finally, rate proceedings often involve negotiation and compromise among parties to reach a settlement regarding issues that may affect low income customers' interests, but which are not initially apparent at the commencement of the proceedings. If barred from participating in this rate proceeding, CAUSE-PA's members will have no input into those negotiations and no standing to object, file exceptions, or appeal.

C. CAUSE-PA's interests in this proceeding are not adequately represented by any other party in this proceeding.

PGW asserts that CAUSE-PA has not demonstrated that its interests are not adequately represented by I&E or the OCA, both of whom have indicated that they will seek to address issues affecting low-income customers, including universal service programs. PGW Answer at 4-5. Specifically, PGW asserts that CAUSE-PA's interest in representing its members, and other similarly situated low-income customers, is encompassed within the Commission's determination of whether the proposed rates are just and reasonable for residential customers in general. *Id.* at 4. This is a ridiculous claim, and is fundamentally at odds with PGW's position regarding the intervention of other non-statutory parties in this proceeding: namely, PICGUG

http://www.puc.pa.gov/General/publications_reports/pdf/Chapter14-Biennial_2015RCD.pdf. These numbers are consistent with the numbers that PGW reported in response to the PUC's annual Universal Service Report and are, by far, the largest of all of the NGDCs. Of this number, 20,788 were confirmed low-income terminations, which means that 70% of all of PGW's terminations in 2015 were of a confirmed low-income household. *See* 2015 Report on Universal Service Programs & Collection Performance of the Pennsylvania Electric Distribution Companies & Natural Gas Distribution Companies at 11. Available at: http://www.puc.pa.gov/General/publications_reports/pdf/EDC_NGDC_UniServ_Rpt2015.pdf

¹³ The PUC Cold Weather Survey indicated that, as of December 15, 2016, the number of households within PGW service territory without heat related gas service was 9,574. Of these households, 7,305 – 76% of the December number – remained without heat related gas service as of February 1, 2017. *See Electric and Gas Cold Weather Survey Results* published by the Commission at: http://www.puc.pa.gov/filing_resources/gas_and_electric_cold_weather_survey_results.aspx.

and RESA. While it may be that low-income customers are served under the same rate schedule as other residential customers, it does not mean that the proposed rate increase would affect all residential customers similarly. As noted above, more than 1/3 of all of PGW's residential customers are confirmed to be low-income – some 161,000 customers – and these households face double the termination rate as residential customers as a whole. *See* 2015 Universal Service Report at 7. Additionally, of the 161,000 confirmed low-income customers, only slightly more than 58,000 are enrolled in CAP. *Id.* at 12.

Families and individuals with limited economic resources – those households who make up CAUSE-PA's membership – have the highest energy burdens,¹⁴ but have the least ability to satisfy or reduce that burden to a level comparable to the energy burden of median income households. **In 2015, the average income of a natural gas customer enrolled in CAP was 2015 was just \$12,223.**¹⁵ Yet the self-sufficiency wage for Philadelphia – meaning the level of income necessary to meet all of life's essentials, food, medicine, housing, transportation, and childcare – is between \$40,000 and \$44,999, more than three times the average household income of a CAP customer.¹⁶ Even with the assistance of universal service programs, low income households are energy insecure, and must decide each month which of life's basic

¹⁴ Low income households in Pennsylvania face staggering energy burdens. For households with income less than 150% of the federal poverty level, these energy burdens are anywhere from 9-30% of their income. Roger Colton, Home Energy Affordability Gap for Pennsylvania, 2nd Ser. (April 2016), www.homeenergyaffordabilitygap.com. LIHEAP-eligible households pay between 17 and 22 percent of their income on energy costs. Economic Opportunity Studies, Meg Power, The Burden of Residential Energy Bills on Low-Income Consumers (Mar. 20, 2008), *available at* http://www.opportunitystudies.org/repository/File/energy_affordability/Forecast_Burdens_08.pdf

¹⁵ Pa. PUC, BCS, 2015 Report on Universal Service & Collections Performance, at 36 (2016) (hereinafter 2015 Universal Service Report), *available at* http://www.puc.state.pa.us/filing_resources/universal_service_reports.aspx.

¹⁶ Pa. Pathways, Overlooked and Undercounted: How the Great Recession Impacted Household Self-Sufficiency in Pennsylvania, at 7 (2012), <http://selfsufficiencystandard.org/sites/default/files/selfsuff/docs/PA2012.pdf>.

essentials they will be able to afford, and which they will go without. Surely, an increase in gas rates will impact these households differently than median-to-above median households.

Moreover, PGW myopically focuses on **its** proposed tariff changes as if this is the totality of issues in this proceeding. In so doing, PGW ignores the fact that the Commission's suspension order in this, and all rate cases, notes that "this investigation shall include consideration of the lawfulness, justness, and reasonableness of the Philadelphia Gas Works' **existing rates, rules, and regulations.**" Pa. P.U.C v. PGW, Docket No. R-2017-2586783, March 16, 2017, Order at ¶ 4 (emphasis added). Thus, in rendering a decision about whether CAUSE-PA's interests are discrete and not represented by others, the Commission must also look beyond the issues presented by PGW to the issues also raised by others.

As noted above, the OSBA appears to be seeking changes to the universal service funding mechanism in this proceeding, and OCA has noted that it will examine the Company's proposed universal services program costs and cost recovery mechanisms. Low-income organizations and I&E and OCA have been on the opposite side of universal service issues in the past. *See supra*, n.7 and n.8. It strains credulity to say that either I&E or OCA's presence in this case is sufficient to address the interests of CAUSE-PA and its members given these realities.

Furthermore, the presence of OCA and I&E in this case – even assuming there was an identity of interest on specific discrete issues between those entities and CAUSE-PA – would be an insufficient basis to deny CAUSE-PA's requested intervention. In previous rulings, the Commission has explicitly noted that the interests of a subset of consumers are not always addressed when addressing consumers as a whole. In *Re Morris-Rospond Assocs.* the PUC found that 52 Pa. Code § 5.72(a)(2) "is not intended to preclude participation in a proceeding by a party simply because it has some identity of interest with another participant. Indeed, parties to a

proceeding often have an identity of interest with other parties, **and it would be absurd to read this requirement so expansively as to preclude intervention in such cases.**” *Re Morris-Rospond Assocs.*, 61 Pa. P.U.C. 227 (Mar. 6, 1986) (emphasis added).

Furthermore, the Commission has previously found that the interests of an organization specifically representing a subset of low-income customers are not necessarily duplicative of the interests represented by OCA. In a 2009 proceeding regarding the Energy Efficiency and Conservation Plans of Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company (the Companies), Pennsylvania Communities Organizing for Change (PCOC), an advocacy group representing low income individuals sought to intervene in the proceeding. The Companies opposed PCOC’s intervention in part because “the interests of low income customers are sufficiently represented by the OCA.” *Joint Petition of Metro. Edison Co., Pennsylvania Elec. Co. & Pennsylvania Power Co. for Consolidation of Proceedings & Approval of Energy Efficiency & Conservation Plans*, Pa. P.U.C. Docket No. M-2009-2092222, 2011 WL 765626 (Jan. 27, 2011). After noting that PCOC had intervened in similar proceedings involving the Companies and their intervention was unopposed and granted, the Commission found that PCOC “has an adequate interest...that is not represented by the OCA...PCOC solely represents the interests of low income customers while OCA represents the interests of all residential customers.” *Id.* While there may be some overlap, the PUC recognized that they might also have some differing positions on the relevant issues. *Id.* Here, CAUSE-PA represents low and moderate income customers who have differing interests than the broad base of consumers represented by OCA and I&E.¹⁷

¹⁷ Indeed, the only case about which counsel is aware in which a low-income advocacy organization had its petition to intervene denied because its interests were already adequately represented by others was not even cited by PGW. Perhaps this is so because the holding applied only to the unique facts of that proceeding and did not involve the OCA and I&E. In *PPL Electric Utilities Corporation’s Universal Service and Energy Conservation Plan for 2011-*

I&E is charged with looking at the broad public interest and its role in this proceeding will not be to serve as private counsel to individual customers or associations – such as CAUSE-PA – seeking intervention on behalf of its members. *See Pa. P.U.C., v. West Penn Power Company*, Docket No. C-2012-2304244, 2013 WL 4761265, *6, Opinion and Order dated Aug. 29, 2013 (finding that I&E’s broad public interest in protecting public safety does not coincide with the Petitioners’ interests as property owners and customers of the utility).

As to the participation of the OCA, it is clear that parties may not be excluded from a proceeding simply because the OCA is participating in that same proceeding. Specifically, the Consumer Advocate’s authorizing legislation specifies that: “Nothing contained herein shall in any way limit the right of any consumer to bring a proceeding before either the commission or a court.” 71 P.S. § 309-6. Furthermore, in *South River Power Partners, L.P. v. Pa. P.U.C.*, 673 A.2d 422, 426 (Pa. Commw. 1996), the Commonwealth Court stated that:

While the majority of [the utility’s] customers would undoubtedly be content to allow the Office of Consumer Advocate to fight their battle for them, due process requires at a minimum that [the utility’s] customers be notified of the PUC hearing and *be afforded the opportunity to participate in that proceeding if they so choose.*

Id.

Both the OCA and I&E represent the broad interests of all of PGW’s customers, both those who are low-income and those who are not. CAUSE-PA on the other hand seeks to

2013, Docket No. M-2010-2179796, the Commission denied Pennsylvania Communities Organizing for Change c/b/a Action United (PCOC)’s petition to intervene because counsel for PCOC also represented in that proceeding a low income individual complainant *who was also a member of PCOC*. Because the case progressed to the point where PCOC had exchanged testimony but had not had its intervention approved by the time of the hearing, the individual complainant adopted the testimony and introduced it into evidence. Based on this direct alignment of interests – the individual was a member of PCOC and represented by the same counsel – the Commission found that PCOC’s interests were adequately represented by the individual complainant. *See PPL Electric Utilities Corporation Universal Service and Energy Conservation Plan for 2011 through 2013*, Docket No. M-2010-2179796, May 5, 2011 Opinion and Order at 13-14. These facts were unique to the case and are in no way analogous to whether CAUSE-PA’s interests would be adequately represented by other parties with far broader interests who are represented by other counsel.

represent the interests of low income households who are struggling to remain connected to PGW's service. The fact that a Venn diagram would show an overlap of some of these interests with those of the OCA and I&E cannot be used to exclude CAUSE-PA's participation.

In a last ditch effort to support its argument, PGW makes the unverified claim that it has a limited budget, and that the standing rules are meant to protect participants from expending resources to litigate against multiple parties on the same issues. Without questioning the veracity of these statements, they miss the point. This is true of almost every proceeding before the Commission and the Commission's intervention rules already empower ALJs to ensure that efforts of parties are not duplicative. *See* 52 Pa. Code § 5.76. Moreover, given that PGW did not object to the intervention of other parties – parties whose interests also arguably fall within the scope of interests represented by the statutory advocates and I&E – its efforts to limit low income representatives participation in this proceeding appears to be an opening gambit in an effort to quell any discrete representation of low income households. The Commission should not condone PGW's selective objection to intervention.

D. PGW's selective objection to the intervention of *only* representatives of its low-income customers calls into question whether PGW's objections were made in good faith.

In this proceeding, PGW has selectively decided to object to the intervention of representatives of its low income customers – both CAUSE-PA and TURN et al. – on the basis that the interests of these entities are adequately represented by other parties in the proceeding. The speciousness of this argument is apparent by the fact that PGW chose *not* to object to the intervention of RESA, PICGUG, or the lone individual Complainant on the same grounds. None of the arguments advanced by PGW is compelling, and a review of applicable regulations and case law demonstrates that PGW had no basis for the objection. Indeed, the logic employed by

PGW – while clearly erroneous – would be equally applicable to the other intervenors in this case, yet PGW choose to single out the two entities who represent the interests of low income households within its service territory.

PGW’s hostile approach to CAUSE-PA and TURN et al. here is consistent with a pattern of recent litigative strategies employed in its efforts to limit the involvement and input by low-income representatives. In this case, PGW contends that it is “not the proper forum” for CAUSE-PA to advance concerns about PGW’s low-income customers’ ability to afford gas service. PGW Answer at 3. Through its objection in this proceeding, PGW seeks to prevent CAUSE-PA from advancing legitimate issues in formal, adjudicated proceeding in which discovery can be obtained and witnesses can be cross-examined. This comes on the heels of PGW’s efforts to squelch any legitimate inquiry into its universal service programs in the context of the Commission’s review of PGW’s Universal Service and Energy Conservation Plan filing at Docket No. M-2016-2542415. In that proceeding, the Commission explicitly urged parties to cooperate in the exchange of information: “We urge the parties to be cooperative in the exchange of information and data relative to this formal proceeding.” *Phila. Gas Works Universal Service and Energy Conservation Plan for 2017-2020, submitted in Compliance with 52 Pa. Code § 62.4*, Docket No. M-206-2542415, January 26, 2017 Tentative Order at 1 (“PGW 2017-2020 USECP”). In response, CAUSE-PA sent PGW questions that would aid in the filing of comments. PGW refused to produce any information. While the specifics of that dispute are not necessarily relevant here, the rationale employed by PGW for its refusal to provide information in its USECP proceeding helps contextualize PGW’s attempt to exclude low income representatives from participating in this proceeding. Specifically, PGW asserted that CAUSE-PA’s request for information was “not consistent with the Commission’s discovery rules or the

process established in this case for the Commission to review PGW's USECP," and the proceeding was "non-adjudicatory." *PGW 2017-2020 USECP*, March 7, 2017 Ltr. by PGW at 1-2. Furthermore, in reply comments in that proceeding, PGW asserted that CAUSE-PA's data requests would turn USECP proceedings into a "mini-rate case". *PGW 2017-2020 USECP*, PGW Reply Comments at 9. Now, PGW seeks to prevent CAUSE-PA – while not objecting to the participation of other parties – from participating in its *actual* base rate case where even it would agree that discovery rules apply. PGW should not be permitted to assert in every forum that some *other forum* is the best place to resolve the myriad concerns of its low income customers.

Had PGW objected to the intervention of *all* non-statutory parties in this case, it could possibly have been viewed as an aggressive litigation tactic within the bounds of the rules. However, PGW's selective objection to only certain parties with whom it has had a recent history of aggressive and hostile tactics begs the question of whether its objection was made in good faith.¹⁸ Given this history, PGW's selective objection of only low income representatives participation in this proceeding, its apparent failure to reasonably investigate whether its objection was well grounded, along with its failure to properly verify its Answer, CAUSE-PA submits that the Commission would be well within its authority to consider imposing appropriate sanctions against PGW pursuant to 52 Pa. Code § 1.35(c).

¹⁸ PGW's decision to object to CAUSE-PA's intervention caused unnecessary expense and time by an already understaffed legal aid organization. In fact, in order to properly respond to its motion, counsel for CAUSE-PA had to cancel his planned attendance at a conference on April 3-4, which caused his employer to incur costs associated with non-refundable airfare.

CONCLUSION

For the reasons stated for fully herein, CAUSE-PA respectfully requests that the Administrative Law Judges issue an order granting CAUSE-PA full status as an intervener in this proceeding with active party status. CAUSE-PA also submits that there is an ample basis for the Commission to consider appropriate sanctions against PGW for its frivolous objection which caused the needless expenditure of time and resources by two non-profit legal aid offices.

Respectfully submitted,

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Date: April 5, 2017

Verification

I, **Carl Bailey**, a member of the Executive Committee of the Coalition for Affordable Utility Services and Energy Efficiency (CAUSE-PA”), on behalf of CAUSE-PA, hereby state that the facts contained in the foregoing **REPLY OF CAUSE-PA TO PGW’S OBJECTION TO CAUSE-PA INTERVENTION** are true and correct to the best of my knowledge, information and belief, that I am duly authorized to make this Verification, and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 10 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).


Mr. Carl Bailey

On behalf of the Executive Committee of the
Coalition for Affordable Utility Services and
Energy Efficiency in Pennsylvania (CAUSE-PA)

Date: April 5, 2017