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May 22, 2017

Via Electronic Filing

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

Re: Pennsylvania Public Utility Commission v. Philadelphia Gas Works R-2017-2586783
Office of Consumer Advocate v. Philadelphia Gas Works – C-2017-2592092
Office of Small Business Advocate v. Philadelphia Gas Works – C-2017-2593497
PICGUG v. Philadelphia Gas Works – C-2017-2595147
William Dingfelder v. Philadelphia Gas Works – C-2017-2593903

Dear Secretary Chiavetta:

Enclosed for electronic filing please find Philadelphia Gas Works' Motion in Limine to Limit the Scope of the Evidentiary Hearing and this Proceeding and to Exclude Certain Portions of Testimony Submitted by the Office of Consumer Advocate with regard to the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,



Karen O. Moury

KOM/lww
Enclosure

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

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of PGW's Motion in Limine 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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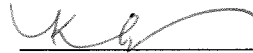
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Date: May 22, 2017



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* Notes signed Protective Order

**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 | : | |

**MOTION IN LIMINE OF PHILADELPHIA GAS WORKS
TO LIMIT THE SCOPE OF THE EVIDENTIARY HEARING AND THIS
PROCEEDING AND TO EXCLUDE CERTAIN PORTIONS OF
TESTIMONY SUBMITTED BY THE OFFICE OF CONSUMER ADVOCATE**

TO ADMINISTRATIVE LAW JUDGES PELL AND GUHL:

Pursuant to Section 5.103 of the regulations of the Pennsylvania Public Utility Commission (“Commission”),¹ Philadelphia Gas Works (“PGW” or “Company”) files this Motion in Limine to: (a) request that the scope of the evidentiary hearing and this proceeding be limited to exclude certain issues and proposals presented by the Office of Consumer Advocate (“OCA”) regarding the application by PGW of customers’ partial payments to balances for prior services, including late payment charges; and (b) strike certain portions of the pre-served direct testimony submitted on behalf of OCA relating to this topic. By this Motion, PGW contends that the issues raised by OCA concerning the Company’s partial payment allocation practices are beyond the scope of a

¹ 52 Pa. Code § 5.103.

base rate proceeding and are currently pending before the Commission in a separate proceeding. In support hereof, PGW states as follows:

I. BACKGROUND

1. On February 27, 2017, PGW filed Supplement No. 100 to the Company's Gas Service Tariff – PA. P.U.C. No. 2 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 for Waiver seeking a 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 on September 1, 2017, in this proceeding.

2. By Order entered March 16, 2017, the 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 (“Code”),² Supplement No. 100 to PGW's 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 PGW'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.

3. A call-in telephonic prehearing conference was held on March 29, 2017, which resulted in the issuance of a Prehearing Order dated March 30, 2017.

² 66 Pa. C.S. § 1308(d)

4. Pursuant to the March 30, 2017 Prehearing Order, other parties' direct testimony was required to be served on May 16, 2017.³ Rebuttal testimony is due on June 9, 2017. Surrebuttal testimony is due on June 22, 2017. Hearings are scheduled for June 28-30, 2017.

5. By this Motion, PGW respectfully requests that the ALJs shorten the time period for responses to this Motion so that a ruling may be made by the ALJs prior to the service of Rebuttal Testimony. Alternatively, PGW asks that it be permitted additional time beyond June 9, 2017, to respond to the portion of the OCA testimony that is identified by this Motion if it is not stricken by the ALJs.

II. APPLICABLE LEGAL STANDARDS

6. Section 5.403(a) of the Commission's regulations authorizes presiding officers to control the receipt of evidence, including ruling on the admissibility of evidence, confining the evidence to the issues in the proceeding and limiting the scope of direct testimony and cross-examination.⁴ Section 5.403(b) of the Commission's regulations requires presiding officers to "actively employ these powers to direct and focus the proceedings consistent with due process."⁵

7. Upon the filing of Motions in Limine, ALJs have employed the authority granted by Section 5.403 to exclude evidence that is beyond the proper scope of Commission proceedings and focus the evidence on the matters properly at issue. In *Pa. Public Utility Commission v. PPL Electric Utilities Corporation*,⁶ the ALJ struck pre-served written testimony regarding proposals to undertake a cost-benefit analysis and other studies, noting that other Commission proceedings

³ Pursuant to an agreement among the parties, the due date for serving the direct testimony of the Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia was extended to May 19, 2017 and rebuttal by June 13. *See*, Interim Order dated May 17, 2017.

⁴ 52 Pa. Code § 5.403(a).

⁵ 52 Pa. Code § 5.403(b).

⁶ Docket No. R-2015-2469275 (Sixth Prehearing Order dated July 14, 2015).

were available for addressing those issues and that challenges could also be effectively pursued in complaint proceedings. The ALJ expressly refused to permit the re-litigation of issues that are presently pending before the Commission in another proceeding.⁷

8. The Commission also recently rejected OCA's attempt to pursue issues in a base rate proceeding that are properly addressed in other proceedings.⁸ In the underlying Recommended Decision, the ALJ found that OCA had not presented a compelling reason for addressing an issue in the base rate proceeding that was already pending in an ongoing proceeding where the issue could be considered in the proper context.⁹

III. ARGUMENT

9. PGW respectfully requests that the ALJs: (a) limit the scope of the exhibits and evidence introduced at the hearing and offered into the evidentiary record to exclude evidence pertaining to PGW's application of customers' partial payments to prior balances, including late payment charges; and (b) strike the testimony appearing in OCA Statement No. 4, at page 4, line 25, through page 5, line 2, and at page 35, line 13, through page 43, line 22, and Schedule RDC-1.

10. Through the testimony that is the subject of this Motion, without any reference to PGW's base rate filing, including testimony and exhibits, OCA's witness addresses PGW's long-standing practice of applying customers' partial payments to their balances due for prior services,

⁷ See also *Pa. Public Utility Commission, et al. v. Pennsylvania American Water Co.*, Docket No. R-00932670 *et al.*, 1994 Pa. PUC LEXIS 120 at *158 (Final Order entered July 26, 1994) (adopting ALJ's conclusion that the issues raised by OCA were outside the scope of the rate case and would be better addressed in a statewide rulemaking proceeding); *Re Gas Cost Rate No. 5*, 57 Pa. P.U.C. 158 (1983) ("The testimony stricken by the ALJ addresses, in part, matters broader than the scope of the instant proceeding.").

⁸ See *Pa. Public Utility Commission, et al. v. Metropolitan Edison Company, et al.*, Docket No. R-2016-2537349 *et al.* (Order entered January 19, 2017 at 39).

⁹ *Id.* Recommended Decision at 95.

including late payment charges, before applying them to charges for current services. The testimony specifically challenges PGW's partial payment allocation practices as they relate to late payment charges and cites to a recent Commission decision addressing PGW's payment posting process.¹⁰ In addition to seeking prospective changes to PGW's partial payment allocation practices, OCA's witness also recommends that PGW be required to provide a full accounting and refund of late payment charges "to the extent that they have been unreasonably and unlawfully imposed."¹¹

11. These issues do not involve PGW's base rates or any existing or proposed tariff provisions and thus are beyond the permissible scope of a proceeding initiated pursuant to Code Section 1308.¹² Notably, the OCA witness does not raise any issues about the amount of the late payment charges imposed by PGW; rather, the concerns of the OCA witness center on the proper application of the partial payments made by customers that are insufficient to cover all charges for prior basic services, including late payment charges.

12. Due to the statutory timeframe within which a base rate case must be decided by the Commission under Code Section 1308, it is not possible or feasible for PGW to sufficiently address the issues raised by OCA's witness or adequately respond to the proposals that would necessitate significant, complex and expensive changes to its existing billing system. In short, this base rate proceeding does not provide a sufficient opportunity to fully vet the operational impacts of OCA's proposals, including the timeframe for implementation and the costs that would be involved – costs that would be borne by PGW's customers.

¹⁰ OCA Statement No. 4 at 36-37.

¹¹ OCA Statement No. 5 at 4-5.

¹² 66 Pa. C.S. § 1308.

13. Further, given the compressed litigation schedule required by Code Section 1308, it would be a fundamental violation of PGW's due process rights to address the proposal of OCA's witness for PGW to issue refunds to all customers who have been affected by its existing partial payment allocation practices. Before PGW may be directed by the Commission to issue refunds to customers, Section 1312 of the Public Utility Code requires a finding that "rates" are "unjust and unreasonable."¹³ Simply, insufficient time exists in the context of this proceeding to fairly litigate that issue and to show that the OCA witness' claims are wholly without merit.

14. Moreover, these issues are currently pending before the Commission on reconsideration in a separate proceeding. The recent Commission decision referenced by OCA's witness is a complaint proceeding involving commercial customers, in which the Commission entered an Order on December 8, 2016, addressing PGW's partial payment allocation practices in the context of late payment charges and finding that these practices violate the Commission's regulations at 52 Pa. Code § 56.24.¹⁴

15. On December 23, 2016, PGW timely filed a Petition for Reconsideration, Clarification and/or Rehearing ("Reconsideration Petition") relating to the *SBG Order*. By Order entered December 28, 2016, the Commission granted PGW's Reconsideration Petition pending further review of, and consideration on, the merits of the *SBG Order*. Consequently, the *SBG Order* is not a final, appealable order, and as such, is not enforceable.¹⁵

¹³ 66 Pa. C.S. § 1312. See *National Fuel Gas Distribution Corporation v. Pa. Public Utility Commission*, 76 Pa. Cmwlth. 102, 464, A. 2d 546 (1983).

¹⁴ *SBG Management Services, Inc. / Colonial Garden Realty Co., L.P. v. Philadelphia Gas Works*, Docket No. C-2012-2304183 and *SBG Management Services, Inc. / Simon Garden Realty Co., L.P. v. Philadelphia Gas Works*, Docket Nos. C-2012-2304183 and C-2012-2304324 (Order entered December 8, 2016) ("*SBG Order*").

¹⁵ See Pa. R.A.P. 1701(b)(3).

16. Although the OCA testimony claims that PGW's payment posting process "has been held to be unlawful,"¹⁶ no such Commission findings are currently in effect and the validity of PGW's partial payment allocation practices are still pending before the Commission. As part of its argument on reconsideration, PGW suggested that the Commission should initiate a rulemaking proceeding in which the issues could be fully evaluated, including operational or policy impacts. At a minimum, PGW proposed that the Commission should schedule a further hearing so that the Company may offer evidence of operational and financial impacts of the Commission's directives regarding its partial payment allocation practices.¹⁷ Even after the Commission issues a final order on the merits of PGW's Reconsideration Petition, it will be subject to appellate review. Therefore, it is premature to be considering any impacts resulting from the *SBG Order* on the remaining customer base as part of this base rate proceeding.

17. Requiring PGW to litigate these issues as part of the base rate proceeding while they are pending before the Commission in a separate proceeding would also be wasteful of ratepayer and administrative resources. Both PGW and the Commission would be duplicating the use of resources to address the same issues. Particularly since issues regarding PGW's partial payment allocation practices are not relevant to PGW's request for a base rate increase, this duplication of resources should be avoided.

18. To the extent that a party such as OCA would wish to have the *SBG Order* retroactively applied to other customers – if its conclusions are not modified by the Commission on reconsideration or by the Courts during appellate review – it would be necessary to initiate a complaint or some other separate proceeding specifically for that purpose, which affords PGW the

¹⁶ OCA Statement No. 4 at 37.

¹⁷ Reconsideration Petition ¶¶ 53-58.

opportunity to respond and fully address such requests for relief. The Commission's order initiating this proceeding did not include any reference to this issue and it would be beyond its scope – and a violation of PGW's due process rights – to now include this issue here.

IV. CONCLUSION

WHEREFORE, on the basis of the foregoing, Philadelphia Gas Works respectfully requests that the Administrative Law Judges issue an interim order that: a) limits the scope of this proceeding to exclude certain issues and proposals presented by the Office of Consumer Advocate regarding the application by PGW of customers' partial payments to late payment charges; and (b) strikes certain portions of the pre-served direct testimony submitted on behalf of OCA relating to this topic.

Respectfully submitted,



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Dated: May 22, 2017

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