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 :

# **PREHEARING ORDER #5**

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 annualrevenues. PGW also filed a Petition for Waiver 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.

On March 6, 2017, Carrie B. Wright, Esq., entered a Notice of Appearance on behalf of the Commission’s Bureau of Investigation and Enforcement (BI&E).

On March 6, 2017, the Office of Consumer Advocate (OCA) filed a Public Statement, a Notice of Appearance on behalf of Kristine E. Marsilio, Esq., Harrison W. Breitman, Esq., Darryl A. Lawrence, Esq., and Christy M. Appleby and a formal Complaint. The Complaint was docketed at C-2017-2592092.

On March 13, 2017, the Office of Small Business Advocate (OSBA) filed a Verification, Public Statement, a Notice of Appearance on behalf of Sharon E. Webb, Esq., and a formal Complaint. The Complaint was docketed at C-2017-2593497.

On March 16, 2017, William Dingfelder (“Mr. Dingfelder” or “Complainant”) filed a formal Complaint. The Complaint was docketed at C-2017-2593903.

 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.A. § 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, the Retail Energy Supply Association (RESA) filed a Petition to Intervene in this proceeding.

 In accordance with the Commission’s March 16, 2017 Order, the matter was assigned to Deputy Chief Administrative Law Judge Christopher P. Pell and Administrative Law Judge Marta Guhl.

 On March 22, 2017, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), through its counsel, filed a Petition to Intervene in this proceeding.

 On March 23, 2017, the Philadelphia Industrial and Commercial Gas Users Group filed a formal Complaint. The Complaint was docketed at C-2017-2595147.

 On March 24, 2017, the Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (TURN et al.) filed a Petition to Intervene in this proceeding.

 In compliance with the Commission’s March 16, 2017 Order, on March 27, 2017, PGW filed Supplement No. 103 to Gas Service Tariff – Pa P.U.C. No. 2, suspending the effectiveness of rates proposed in Supplement No. 100 to Tariff Pa.P.U.C. No. 2 until November 28, 2017.

 In accordance with a Prehearing Conference Order dated March 17, 2017, PGW, I&E, OCA, OSBA, RESA, CAUSE-PA, PICGUG and TURN et al. submitted prehearing memoranda to the presiding officers.

 A call-in telephonic prehearing conference was held on March 29, 2017. The presiding officers were in the Philadelphia Office for the prehearing conference. Counsel for PGW, I&E, OCA, OSBA, RESA, CAUSE-PA, PICGUG and TURN et al. participated.

In our Prehearing Order #1 dated March 30, 2017, we granted RESA’s Petition to Intervene and established the procedural schedule and the procedures applicable to this proceeding.

On March 31, 2017, PGW filed a Motion for Protective Order (Motion) pursuant to 52 Pa.Code § 5.423(a). There was no formal opposition to the request and we granted the Protective Order via Prehearing Order #3 dated April 19, 2017.

Also On March 31, 2017, PGW filed its Answers opposing the Petitions to Intervene of both CAUSE-PA and TURN et al.

On April 5, 2017, CAUSE-PA and TURN et al. each filed a response to PGW’s Answer opposing their respective Petitions to Intervene. Additionally, OCA and I&E each, separately, filed responses to PGW’s Answers. We granted the Petitions to Intervene of CAUSE-PA and TURN et al. via Prehearing Order #2 dated April 7, 2017.

Public Input hearings were held in this matter on May 9 and May 10, 2017.

 On May 10, 2017, Ms. Pickens from TURN et al. contacted us via electronic mail indicating that there was a discovery dispute and requesting a modification of the procedural schedule. We responded via electronic mail to the parties indicating that they had until noon on Friday, May 12, 2017 to provide a solution to the discovery dispute.

 On May 11, 2017, a Hearing Notice was issued setting the evidentiary hearings for this matter for Wednesday, June 28, 2017, Thursday, June 29, 2017 and Friday, June 30, 2017 starting at 10:00 a.m. each day.

 Later on May 11, 2017, counsel for PGW informed us that PGW and TURN et al. had reached a resolution that involved a proposed modification to the procedural schedule. PGW proposed that TURN et al. be allowed to submit its Direct Testimony on Friday, May 19, 2017 and that PGW be allowed to submit Rejoinder Testimony to TURN et al.’s testimony on Tuesday, June 13, 2017.

 On May 16, 2017, the non Company parties, excluding TURN et al., submitted their witnesses’ direct testimony. Specifically, as it relates to this Order, OCA submitted the direct testimony of Roger D. Colton.

By Prehearing Order #4 dated May 17, 2017, we granted the proposed modifications to the procedural schedule.

On May 19, 2017, TURN et al. submitted its direct testimony.

 On May 22, 2017, PGW filed its 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 (Motion).

 On May 25, 2017, OCA filed its Response to PGW’s Motion.

 This matter is ripe for disposition.

DISCUSSION

 Through its Motion, PGW has challenged a portion of the testimony of OCA Witness Roger D. Colton. PGW has requested that we 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 customer’s partial payments to prior balances, including late payment charges. To that end, PGW has requested that we strike the testimony of OCA Statement No. 4, at page 4, line 25, through page 5, line 2, and also the testimony at page 35, line 13, through page 43, line 22, and Schedule RDC-1.

 PGW indicated that through the testimony that is the subject of its Motion, OCA’s witness has addressed PGW’s long-standing practice of applying customers’ partial payments to their balances due for prior services, including late payment charges, before applying them to charges for current services. PGW further indicated that OCA’s witness recommended 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.”[[1]](#footnote-1)

 PGW argued that these issues do not involve PGW’s base rates or any existing or proposed tariff provisions and thus are beyond the permissible scope this proceeding, which was initiated pursuant to Section 1308 of the Public Utility Code. PGW further argued that 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. PGW maintained that given the compressed litigation schedule required by 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. PGW argued that insufficient time exists in the context of this proceeding to fairly litigate this issue.

 PGW also argued that these issues are currently pending before the Commission on reconsideration in a separate proceeding. PGW indicated that the recent 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.[[2]](#footnote-2) PGW further indicated that on December 23, 2016, it filed a timely Petition for Reconsideration, Clarification and/or Rehearing relating to Commission’s *SBG Order*, and that by Order entered December 28, 2016, the Commission granted its Reconsideration Petition pending further review of, and consideration on, the merits of the *SBG Order*. Accordingly, PGW argued that the *SBG Order* is not a final, appealable order, and as such, is not enforceable.

 PGW indicated that as part of its argument on reconsideration of the *SBG Order*, it suggested that the Commission should initiate a rulemaking proceeding in which the issues could be fully evaluated, including operational or policy impacts. Alternatively, PGW proposed that the Commission should schedule a further hearing in the SBG case so that the Company may offer evidence of operational and financial impacts of the Commission’s directives regarding its partial payment allocation practices.

 Lastly, PGW argued that the to the extent that a party such as OCA would wish to have the *SBG Order* retroactively applied to other customers, provided the 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 would afford PGW the opportunity to respond and fully address such a request for relief. PGW maintained that the Commission’s Order initiating this proceeding did not include any reference to this issue, and that to include it now would be beyond the scope of this proceeding and a violation of PGW’s due process rights.

 OCA responded that in its March 16, 2017 Order in this proceeding, the Commission stated that an investigation “shall include consideration of the lawfulness, justness, and reasonableness of the Philadelphia Gas Works’ existing rates, rules, and regulations.” *Pa. Pub. Util. Comm’n v. Philadelphia Gas Works*, Docket No. R-2017-2586783, Order at 3 (Order entered March 16, 2017) (*Suspension Order*). OCA identified a review of the Company’s existing tariff provisions as part of its Formal Complaint in this proceeding. OCA contends that as part of any base rate proceeding, in addition to the Company’s request for additional revenues, the Commission must examine the Company’s tariff to ensure that the tariff provisions are just and reasonable and consistent with Pennsylvania law. OCA notes that according to Mr. Colton’s direct testimony, the Company’s existing tariff is inconsistent with the Commission’s regulations at Section 56.22, 66 Pa.C.S. § 56.22.

 Further, OCA distinguished the present matter from the cases cited by PGW in its Motion. OCA submits that there is no pending rulemaking or on-going proceeding that will provide a remedy for all residential ratepayers or address the needed modifications to PGW’s tariff. OCA argues that PGW incorrectly relies on a pending complaint case of a commercial customer to argue that the issue should not be considered here by citing *SBG Management Services/Colonial Garden Realty Company v. Philadelphia Gas Works*, Docket No. C-2012-2304183, C-2012-2304324 (consolidated), (Order entered December 8, 2016). OCA notes that while the issue of late payment charges is currently being addressed in the cases involving SBG Management Services/Colonial Realty Company, the complainants in that case are individual commercial landlords, OCA is not a party, and the issues raised in that case only addressed the way that PGW addressed commercial late fees. OCA distinguishes the *SBG* case from the present matter because this deals with residential late fees and PGW’s tariff provision as it concerns residential late fees and Section 56.22 of the Commission’s regulations. OCA concludes that the Commission’s decision in the *SBG Order* does not address residential customer payment posting, will not provide a remedy for residential customers, and may not result in modification to the tariff.

OCA further argues that the issues related to PGW’s existing tariff are to be addressed in the context of the base rate proceeding, citing the *Suspension Order* at 3. OCA asserts that contrary to the cases cited by PGW in its Motion, the present case is the most expedient and appropriate forum to address the issue of whether PGW’s current late fee payment tariff provision is consistent with the Commission’s regulations and Section 1501 of the Public Utility Code, 66 Pa.C.S. § 1501. OCA contends that the Commission should not approve a tariff provision for which evidence has been presented to show it is not in compliance with the Commission’s regulations.

Lastly, OCA indicates that upon review of PGW’s Motion, it and Mr. Colton became aware of an error in Mr. Colton’s Direct Testimony related to late payment posting. OCA attached Appendix A, Affidavit of Roger D. Colton, which notes that the inclusion of a request for refunds regarding the payment prioritization process was in error. *See,* Appendix A; *see also*, OCA St. 4 at 5, lines 1-2. OCA also indicates that Mr. Colton plans to revise his Direct Testimony accordingly, and OCA will re-serve his testimony to remove lines 1-2 on page 5 of his Direct Testimony. [[3]](#footnote-3) OCA notes that the removal of the refund language renders the Company’s arguments made in the last sentence of Paragraph 10 and Paragraph 13 of its Motion moot.

We agree with OCA that the Company’s late payment procedure, which appears in its current tariff, is subject to review pursuant to the Commission’s March 16, 2017 *Suspension Order*. Specifically, PGW’s procedure for assessing late payments appears at Section 4.2[[4]](#footnote-4) of their current tariff. As previously noted, the Commission instituted an investigation into the lawfulness, justness, and reasonableness of the proposed rate increase through the *Suspension Order*. More precisely, at ordering paragraph 4 the Commission specifically directed that this investigation “include consideration of the lawfulness, justness, and reasonableness of the Philadelphia Gas Works’ existing rates, rules, and regulations.” The Commission did not place any limitations on that directive in the March 16, 2017 Order. As the Commission did not impose any limitations, and since the procedure for assessing late payments is set out in PGW’s current tariff, consideration of this tariff provision is appropriate within the context of this proceeding. Accordingly, we will deny PGW’s Motion in Limine.

# ORDER

 THERERFORE,

 IT IS ORDERED:

1. That 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 is denied.

Date: May 26, 2017 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Christopher P. Pell

 Deputy Chief Administrative Law Judge

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Marta Guhl

 Administrative Law Judge

Pennsylvania Public Utility Commission v. Philadelphia Gas Works

Docket Number R-2017-2586783

# SERVICE LIST

Daniel Clearfield Esquire,

Deanne M O’Dell Esquire

Eckert Seamans Cherin & Mellot, LLC

213 Market Street 8th Floor

Harrisburg PA 17101

dclearfield@eckertseamans.com

dodell@eckertseamans.com

Brandon J Pierce Esquire

Philadelphia Gas Works

800 W Montgomery Avenue

Philadelphia PA 19122

Brandon.Pierce@pgworks.com

Carrie B Wright Esquire

Erika L McLain Esquire

Bureau of Investigation & Enforcement

Pennsylvania Public Utility Commission

Post Office Box 3265

Harrisburg PA 17105-3265

carwright@pa.gov

ermclain@pa.gov

Christy M Appleby Esquire

Darryl A Lawrence Esquire

Kristine E Marsilio Esquire

Harrison W Breitman Esquire

Office of Consumer Advocate

555 Walnut Street 5th Floor Forum Place

Harrisburg PA 17101-1923

CAppleby@paoca.org

DLawrence@paoca.org

KMarsilio@paoca.org

HBreitman@paoca.org

(C-2017-2592092)

Sharon E Webb Esquire

Office of Small Business Advocate

300 North Second Street - Suite 202
Harrisburg PA 17101

swebb@pa.gov

(C-2017-2593497)

Charis Mincavage Esquire

Adeolu Bakare Esquire

Allessandra L Hylander Esquire

McNees Wallace & Nurick, LLC

100 Pine Street

PO Box 1166

Harrisburg PA 17108-1166

cmincavage@mcneeslaw.com

abakare@mcneeslaw.com

ahylander@mcneeslaw.com

*Counsel for Philadelphia Industrial*

*and Commercial Gas Users Group*

Todd S Stewart, Esquire

Hawke McKeon & Sniscak LLP

100 North Tenth Street

Harrisburg PA 17101

tsstewart@hmslegal.com

*Counsel for the Retail Energy Supply Association*

Robert W Ballenger Esquire

Josie B H Pickens Esquire

Jennifer Collins Esquire

Community Legal Services, Inc.

1424 Chestnut Street

Philadelphia PA 19102

rballenger@clsphila.org

jpickens@clsphila.org

jcollins@clsphila.org

*Counsel for Tenant Union Representative Network and*

*Action Alliance of Senior Citizens of Greater Philadelphia*

Patrick M Cicero Esquire

Elizabeth R Marx Esquire

Pennsylvania Utility Law Project

118 Locust Street

Harrisburg PA 17101

pciceropulp@palegalaid.net

emarxpulp@palegalaid.net

*Counsel for Coalition for Affordable Utility Services and*

*Energy Efficiency in Pennsylvania*

William Dingfelder

645 W Sedgwick Street

Philadelphia PA 19119-3442

DingfelderGrants@gmail.com

(C-2017-2593903)

1. OCA Statement No. 5 at Pgs. 4-5. [↑](#footnote-ref-1)
2. *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*”). [↑](#footnote-ref-2)
3. Specifically, OCA intends to remove the following recommendation from OCA Witness Colton’s testimony:

 PGW be directed to provide a full accounting and refund of the late payment charges to the extent that they have been unreasonably and unlawfully imposed.

 OCA Statement 4, Pg. 5. [↑](#footnote-ref-3)
4. Section 4.2 of PGW’s tariff states:

Finance Charge on Late Payments. PGW will assess a late penalty for any overdue bill, in an amount which does not exceed 1.5% interest per month on the full unpaid and overdue balance of the bill. These charges are to be calculated on the overdue portions of PGW Charges only. The interest rate, when annualized, may not exceed 18% simple interest per annum. Late Payment Charges will not be imposed on disputed estimated bills, unless the estimated bill was required because utility personnel were unable to access the affected premises to obtain an Actual Meter Reading.

Section 4.2, Supplement No. 84, Gas Service Tariff – Pa. P.U.C. No. 2, Second Revised Page No. 26. [↑](#footnote-ref-4)