



COMMUNITY LEGAL SERVICES
OF PHILADELPHIA

June 26, 2017

Via Electronic Filing

Rosemary Chiavetta, Secretary
PA Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265

Re: Pennsylvania Public Utility Commission v. PGW, Docket No. R-2017-2586783

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Answer of Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia to Philadelphia Gas Works' Motion to Strike Certain Portions of Testimony Submitted by Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia with regard to the above captioned matter. Copies have been served in accordance with the attached Certificate of Service.

Sincerely,

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Enclosures

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

| | | |
|--|---|----------------|
| Pennsylvania Public Utility Commission | : | R-2017-2586783 |
| v. | : | |
| | : | |
| Philadelphia Gas Works | : | |

Certificate of Service

I hereby certify that I have this day served copies of the **Answer of Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia to Philadelphia Gas Works' Motion to Strike Certain Portions of Testimony Submitted by Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia** upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

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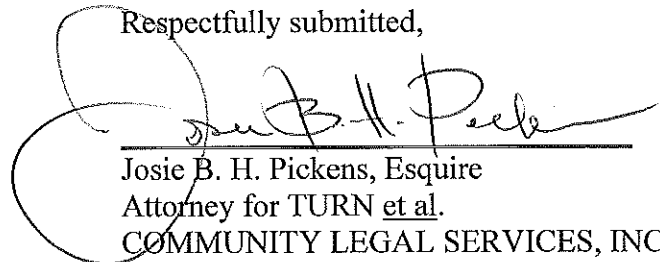
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Respectfully submitted,



The image shows a handwritten signature in black ink, which appears to read "Josie B. H. Pickens". The signature is written over a horizontal line.

Josie B. H. Pickens, Esquire
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June 26, 2017

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

| | | |
|--|---|---------------------------|
| Pennsylvania Public Utility Commission | : | |
| | : | |
| v. | : | Docket No. R-2017-2586783 |
| | : | |
| Philadelphia Gas Works | : | |

ANSWER OF THE TENANT UNION REPRESENTATIVE NETWORK AND
ACTION ALLIANCE OF SENIOR CITIZENS OF GREATER PHILADELPHIA
TO THE MOTION TO STRIKE OF PHILADELPHIA GAS WORKS

Pursuant to Section 5.103 of the Pennsylvania Public Utility Commission’s (“PUC”) rules regarding Motions, 52 Pa. Code Section 5.103, and the Commission’s Prehearing Order No. 1 dated March 30, 2017, the Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (“TURN *et al.*”) provide the following Answer to Philadelphia Gas Works’ (“PGW”) Motion to Strike certain portions of the pre-served surrebuttal testimony of Harry S. Geller, submitted on behalf of TURN *et al.* on June 22, 2017. For the reasons set forth below, TURN *et al.* submit that PGW’s Motion to Strike should be denied.

I. INTRODUCTION

On June 22, 2017, TURN *et al.* submitted the pre-served surrebuttal testimony of Harry S. Geller, TURN *et al.* Statement No. 1-SR. In his testimony, Mr. Geller responds to issues and positions raised in the rebuttal testimonies of PGW’s witnesses Adamucci, Cummings and Peach, as well as issues raised in the rebuttal testimony of OCA witness Colton and I&E witness Maurer. PGW’s Motion to Strike should be denied, as TURN *et al.* did not attempt to introduce evidence during the surrebuttal phase of this proceeding. Mr. Geller’s surrebuttal testimony directly rebuts the positions set forth in other parties’ rebuttal testimony and is appropriately

presented. Further, PGW's Motion to Strike should be denied because it is submitted in bad faith and is intended to harass and further impede the participation of TURN *et al.* in this proceeding.

II. ANSWER

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. It is admitted that Mr. Geller's surrebuttal testimony was served on June 22, 2017. It is denied that Mr. Geller's testimony inappropriately responds to the direct testimony of OCA witness Colton regarding LIURP funding issues and a low-income heater repair or replacement pilot proposal. Mr. Geller's testimony specifically rebuts positions raised in the rebuttal testimony of PGW witness Adamucci and I&E witness Maurer regarding the LIURP budget (TURN *et al.* St. No. 1SR at 17-21 rebutting positions in PGW St. No. 9-R and I&E St. No. 1-R at 3-5) and to positions raised in the rebuttal testimony of PGW witnesses Adamucci and Peach regarding Mr. Colton's heater repair or replacement proposal (TURN *et al.* St. No. 1SR at 21-23 rebutting positions in PGW St. No. 9-R and PGW St. No. 11-R). PGW incorrectly categorizes this testimony as only responsive to Mr. Colton's proposals in direct testimony. However, Mr. Geller's testimony is appropriately responsive to the positions of PGW witnesses Adamucci and Peach, and I&E witness Maurer that were raised in their rebuttal testimony.
6. This is a conclusion of law to which no response is required.
7. This is a conclusion of law to which no response is required.

8. Denied. Mr. Geller's surrebuttal testimony directly rebuts positions set forth in other parties' rebuttal testimony and is therefore appropriately presented.
9. Denied. Mr. Geller's surrebuttal testimony directly rebuts positions set forth in other parties' rebuttal testimony and is appropriately presented.

III. ARGUMENT

A. Legal Standard

The Commission's regulations provide, in relevant part, that a party has the right of presentation of evidence. 52 Pa. Code § 5.243(a). The regulations further state that the taking of evidence shall proceed with reasonable diligence and with the least practicable delay. *Id.* The regulations prohibit a party from introducing evidence during a rebuttal phase when the evidence is repetitive, should have been included in the party's case-in-chief, or substantially varies from the party's case-in-chief. 52 Pa. Code § 5.243(e). Black's Law Dictionary defines surrebuttal as "the response to the opposing party's rebuttal in a trial or other proceeding; a rebuttal to a rebuttal" Black's Law Dictionary (10th ed. 2014). In *PUC v. City of Lancaster – Sewer Fund*, the City, in rebuttal, introduced a rate claim that it left out of its original case. *PUC v. Lancaster Sewer Fund* (Docket No. R-00049862)(2007 WL 517134). There, the PUC concluded that the City's evidence was a further claim that the City had failed to previously make and did not relate to an opposing party's position. *Id.* at 14. The circumstances in the instant proceeding are easily distinguished. Mr. Geller's testimony is responsive to positions raised in the rebuttal testimony of other parties in this proceeding and does not raise any new claims.

B. TURN et al. Submit that Mr. Geller's Surrebuttal Testimony Directly Rebuts Positions Set Forth in the Other Parties' Rebuttal Testimony and is Appropriately Presented, And PGW's Motion to Strike Should be Denied

PGW submits that the contested portions of Mr. Geller's surrebuttal testimony "were submitted for the clear purpose of raising issues that should have been included in TURN's case-in-chief....The Contested Portions of Mr. Geller's surrebuttal testimony do not rebut any opinion, position or statement in rebuttal testimony." PGW Motion to Strike at ¶8. PGW is grossly incorrect in all respects. Mr. Geller acknowledges not previously submitting testimony on the subject of LIURP funding, in order to focus his surrebuttal testimony on rebutting the rebuttal testimony of I&E witness Maurer and PGW witness Adamucci. Introducing the relevant sections of his surrebuttal, Mr. Geller explains, "I did not raise [LIURP funding issues] in direct and I did not raise them in rebuttal because I agreed with OCA witness Roger Colton's suggestion..." TURN *et al.* St 1SR at 17:14-15. Immediately following that statement, Mr. Geller provides a summary of each rebuttal witness's testimony (TURN *et al.* St. 1SR at 17:20-18:11), then proceeds to respond, with specificity to the rebuttal testimony of those witnesses (TURN *et al.* St. 1SR at 18:13-21:13). Mr. Geller then provides further surrebuttal testimony regarding PGW's opposition, expressed in rebuttal testimony of PGW witnesses Adamucci and Peach, to a proposal that PGW implement a new low-income heater repair or replacement program. TURN *et al.* St. 1SR at 21:16-23:4. In each regard, Mr. Geller's surrebuttal testimony directly responded to rebuttal testimony of other witnesses, and is advanced solely for the proper and legitimate purpose of rebutting those positions.

PGW's argument that Mr. Geller's testimony should have been included in TURN *et al.*'s case-in-chief is illogical. Mr. Geller cannot reasonably be expected to anticipate all of the rebuttal testimony of all other parties to this proceeding. To the extent that PGW seeks to advance a position that TURN *et al.*'s witness may only submit surrebuttal testimony to address other parties' rebuttals of issues raised in TURN *et al.*'s direct testimony, that argument is

without precedent and should be swiftly and properly rejected. PGW cites no authority for this proposition, which would have the effect of limiting any party from filing surrebuttal testimony, unless that party could stake out a position on each and every conceivable topic its adversaries may raise in rebuttal. In the process of surrebuttal, it is appropriate to support the initial argument that was rebutted. TURN *et al.* submit that PGW's motion is completely without merit and frivolous.

PGW's Motion to Strike also fails to acknowledge that in his direct testimony Mr. Geller repeatedly expressed his position that PGW's policies severely limit the options that low-income customers have to connect to, maintain and restore service. TURN *et al.* St. No. 1. (Revised). In light of this testimony, it is reasonable and appropriate for Mr. Geller to rebut other parties' positions which would further exacerbate the harm to PGW's low-income customers. This would include PGW and I&E's position that the LIURP budget should not be discussed in this proceeding and PGW's opposition to a low-income heater repair or replacement proposal.

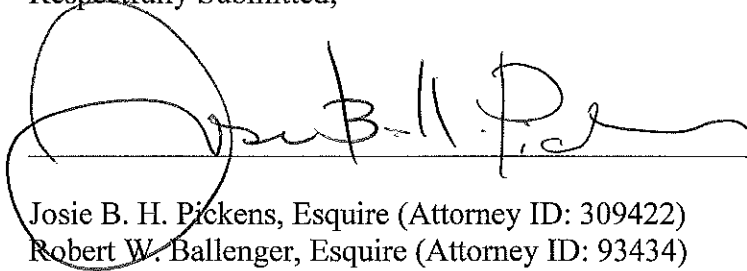
As with PGW's opposition to TURN *et al.*'s Petition to Intervene in this proceeding, TURN *et al.* submit that PGW's Motion to Strike is interposed for an improper purpose, e.g., to harass, cause unnecessary or needless delay, and to increase TURN *et al.*'s burden in this litigation. 52 Pa. Code § 1.35(c). As the ALJs correctly concluded, TURN *et al.* provided sufficient information regarding their interests to satisfy the requirements of the PUC's standards for intervention in this proceeding. Prehearing Order No. 2 at 10. Moreover, as the ALJs are aware, PGW delayed responding to TURN *et al.* discovery, impeding TURN *et al.*'s ability to produce direct testimony on the agreed upon timeline and requiring that TURN *et al.* direct testimony be submitted on a delayed basis. Now PGW advances a Motion to Strike based on a distortion of the facts and a wholly implausible legal theory. PGW's Motion to Strike fails to

acknowledge numerous references throughout Mr. Geller's testimony to the rebuttal testimony of other parties. Further, PGW provided counsel for TURN *et al.* with less than five minutes notice of its intent to file its Motion to Strike, denied TURN *et al.*'s request to discuss possible resolution prior to filing its Motion, and submitted its Motion at 3:59PM on a Friday. In other words, PGW's motion to strike is the epitome of bad faith. TURN *et al.* submit that PGW has displayed repeated and flagrant conduct in this proceeding that is clearly targeted toward discouraging the participation of organizations comprised of and serving PGW customers of low- and lower-means. PGW and its counsel should be subjected to sanctions authorized by 52 Pa. Code § 1.35(c).

III. CONCLUSION

WHEREFORE, for the reasons set forth above, the Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia respectfully request that Philadelphia Gas Works' Motion to Strike certain portions of the pre-served surrebuttal testimony of Harry S. Geller be denied.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Robert W. Ballenger", is written over a horizontal line. The signature is stylized and cursive.

Josie B. H. Pickens, Esquire (Attorney ID: 309422)
Robert W. Ballenger, Esquire (Attorney ID: 93434)
Jennifer Collins, Esquire (Attorney ID: 312108)

Counsel for TURN *et al.*

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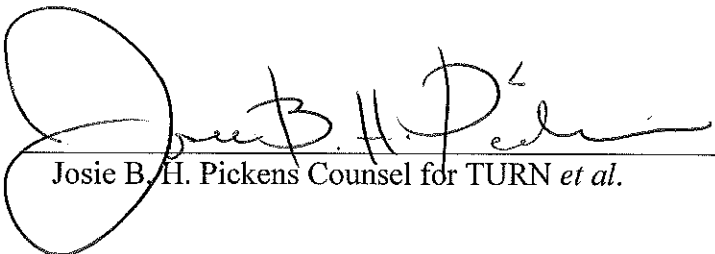
Telephone: 215-227-4378
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DATE: June 26, 2017

VERIFICATION

I, **Josie B. H. Pickens**, Counsel for Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (“TURN *et al.*”) hereby state that the facts contained in the foregoing pleading 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).

Date: 6/26/17



Josie B. H. Pickens Counsel for TURN *et al.*