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July 21, 2017

VIA ELECTRONIC FILING

Ms. Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, PA 17120

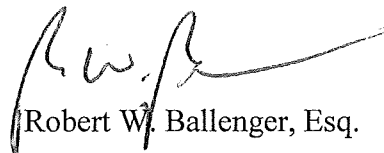
RE: PA Public Utility Commission et al. V. Philadelphia Gas Works, Docket No. **R-2017-2586783**.

Dear Secretary Chiavetta:

Enclosed please find the Joint Main Brief of Tenant Union Representative Network, Action Alliance of Senior Citizens of Greater Philadelphia, and the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania in the above-captioned matter.

A copy of the enclosed Brief is being served pursuant to the enclosed Certificate of Service. Please contact me with any questions or concerns.

Sincerely,



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CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of the Joint Main Brief of Tenant Union Representative Network, Action Alliance of Senior Citizens of Greater Philadelphia, and the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania in the Matter of PA Public Utility Commission et al. V. Philadelphia Gas Works, Docket No. R-2017-2586783.

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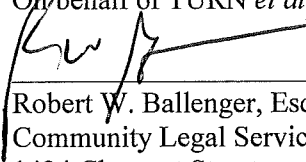
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Dated: July 21, 2017

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
v.	:	
	:	
Philadelphia Gas Works	:	

JOINT MAIN BRIEF OF TENANT UNION REPRESENTATIVE NETWORK, ACTION
ALLIANCE OF SENIOR CITIZENS OF GREATER PHILADELPHIA, and THE COALITION
FOR AFFORDABLE UTILITY SERVICES AND ENERGY EFFICIENCY IN
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I. INTRODUCTION AND PROCEDURAL HISTORY

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 in additional annual revenues. 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.

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 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.

On March 22, 2017, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) filed a Petition to Intervene in this proceeding. On March 24, 2017, the Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (collectively, TURN *et al.*) filed their Petition to Intervene.

On March 31, 2017, PGW filed Answers in opposition to the intervention of TURN *et al.* and CAUSE-PA.

On April 5, 2017, TURN *et al.* and CAUSE-PA filed their responses to PGW's Answers opposing their Petitions to Intervene, and on April 7, the ALJs granted both Petitions to Intervene.

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

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.

Also on May 11, 2017, TURN *et al.* and PGW proposed a resolution of a discovery dispute that would permit TURN *et al.* to submit its Direct Testimony on May 19, 2017 and for PGW to submit its Rebuttal testimony to TURN *et al.*'s testimony on June 13, 2017. The ALJs approved this proposed resolution in Prehearing Order 4, dated May 17, 2017.

On May 16, 2017, all non-company parties excepting TURN *et al.*, submitted direct testimony.

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

On June 9, 2017, the parties submitted their witnesses' rebuttal testimony, on June 22, 2017, the parties submitted their witnesses' surrebuttal testimony, and on June 26, 2017, PGW filed rejoinder testimony.

On June 23, 2017, PGW filed a motion to strike portions of TURN *et al.*'s surrebuttal testimony, and on June 26, 2017 TURN *et al.* filed its Answer to PGW's motion to strike. PGW's motion to strike was denied in Prehearing Order #6 on June 27, 2017.

On June 27, 2017, the parties agreed to waive cross-examination of all witness and to stipulate to the admission of testimony and exhibits into the record. On June 28, 2017 an evidentiary hearing was held and counsel waived cross-examination of all other party witness.

All parties' direct, rebuttal, surrebuttal, and rejoinder testimony and exhibits were admitted into the record.

At the June 28, 2017 hearing, the parties informed the ALJs that most issues had been settled. To that end, and concurrent herewith, a Joint Petition for Partial Settlement and accompanying Statements in Support are being filed by the following parties: PGW, the 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 Users Group (PICGUG), as well as TURN *et al.* and CAUSE-PA. The Joint Petition for Partial Settlement addresses the major issues of concern in this rate case, including PGW's Revenue Requirement, Revenue Allocation and Rate Design, Customer Service and Low-Income Issues, as well as Natural Gas Supplier Issues. The two issues reserved for litigation and briefing concern PGW's allocation of partial customer payments that was raised by the OCA, and the allocation of universal service cost recovery that was raised by the OSBA.

In this Joint Main Brief, TURN *et al.* and CAUSE-PA address only the appropriate allocation of universal service cost recovery raised by the OSBA, but reserve the right to address the allocation of partial customer payments in their Reply Brief, if needed, in response to the briefing of other parties.

On June 30, 2017, a briefing order was issued stating that a joint petition for partial settlement and statements in support of that partial settlement are due on or before July 21, 2017. It was further ordered that main briefs of the parties on the remaining unresolved issues are due on or before July 21, 2017. Reply briefs are due on or before August 4, 2017. TURN *et al.* and CAUSE-PA file this Joint Main Brief in Compliance with the ALJs June 30, 2017 briefing order.

II. BURDEN OF PROOF

It is well established that in the context of a rate case, the utility bears the burden of proof to establish the justness and reasonableness of every element of its requested rate increase.¹ However, as the Commonwealth Court has explained: “While it is axiomatic that a utility has the burden of proving the justness and reasonableness of its proposed rates, it cannot be called upon to account for every action absent prior notice that such action is to be challenged.”² Therefore, while the ultimate burden of proof does not shift from the utility, a party proposing an adjustment to a ratemaking claim bears the burden of presenting some evidence or analysis tending to demonstrate the reasonableness of the adjustment.³ Furthermore, a party that raises an issue that is not included in a public utility’s general rate case filing bears the burden of proof regarding that issue.⁴

The issue of universal service cost allocation was not raised by PGW in its rate filing and, thus, as the proponents of a shift in the decades long universal service cost allocation structure, OSBA bears the burden of the proof in this proceeding to establish that it is entitled to the relief sought.⁵ This burden must be satisfied by a preponderance of the evidence.⁶ Accordingly, OSBA must present evidence more convincing than that presented by opposing parties.⁷

¹ 66 Pa.C.S. §§ 315(a); 1308(d).

² Allegheny Center Assocs. v. Pa. PUC, 570 A.2d 149, 153 (Pa. Cmwlth. 1990).

³ See, e.g., Pa. PUC v. PECO, Docket No. R-891364, *et al*, 1990 Pa. PUC LEXIS 155 (Order entered May 16, 1990); Pa. PUC v. Breezewood Telephone Company, Docket No. R-901666, 1991 Pa. PUC LEXIS 45 (Order entered January 31, 1991).

⁴ Pa. PUC *et al.* v. Columbia Gas of Pennsylvania, Inc., R-2010-2215623 at 28 (Opinion and Order dated October 14, 2011).

⁵ 66 Pa.C.S. § 332(a).

⁶ Lansberry v. Pa. PUC, 578 A.2d 600 (Pa Commw. Ct. 1990).

⁷ Se-Ling Hosiery v. Marguiles, 70 A.2d 854 (Pa. 1950).

III. SUMMARY OF ARGUMENT

For the last 25 years since the inception of its CAP program in 1993, PGW has allocated the costs of its universal service programs to all firm service customer classes.⁸ This cost allocation policy has been maintained by the Commission throughout at least seven separate proceedings since regulation of PGW was transferred to the Commission,⁹ and was explicitly affirmed by the Commission in PGW's 2003 restructuring proceeding.¹⁰ In the restructuring proceeding, the Commission decided to continue the recovery of universal service costs from all firm service customers, recognizing that such recovery was in place prior to PUC jurisdiction, conferred via the Natural Gas Choice and Competition Act, 66 Pa. C.S. §§ 2201-2212 (hereinafter, Gas Choice Act).¹¹

Despite the fact that PGW has recovered universal service costs this way for several decades, and the Commission has approved of this structure of allocation in *every rate proceeding since that time*, the OSBA, through its witness Robert Knecht, proposes a change in universal service cost allocation. Mr. Knecht suggests that universal service costs only be allocated to residential firm service customers.¹² Mr. Knecht's proposal would effectively

⁸ See Recommended Decision in the Matter of proposed Changes to PGW's Customer Service Regulations, (September 22, 1993), affirmed, Order and Resolution of the Philadelphia Gas Commission (November 9, 1993).

⁹ See Pa. PUC v. Philadelphia Gas Works, Docket No. R-00005654 (Order Entered February 21, 2001); Petition of Philadelphia Gas Works for Extraordinary Rate Relief Pursuant to 66 Pa. C.S. § 1308(e), Docket No. R-00017034 (Emergency Order Entered April 12, 2002); Pa. PUC v. Philadelphia Gas Works - Petition for Emergency Rate Relief, Docket No. R-2008-2073938 (Order Entered December 19, 2008); Pa. PUC v. Philadelphia Gas Works, Docket No. R-00006042 (Order Entered October 4, 2001); Pa. PUC v. Philadelphia Gas Works, Docket No. R-00017034 (Order Entered August 8, 2002); Pa. PUC v. Philadelphia Gas Works, Docket No. R-00061931 (Order Entered September 28, 2007); Pa. PUC v. Philadelphia Gas Works, Docket No. R-2009-2139884 (Order Entered July 29, 2010).

¹⁰ Pa. PUC v. Philadelphia Gas Works, Docket No. M-00021612 (Order Entered April 17, 2003).

¹¹ Id. at 62, 64.

¹² OSBA St. 1 at 32.

increase residential customer bills by \$11.6 million¹³ while ignoring the benefits that universal service programs provide to all customers, including commercial and industrial ratepayers. Mr. Knecht fails to recognize that PGW's proposed allocation is supported by its unique position as a city owned Natural Gas Distribution Company. Universal service programs, for PGW, are not merely a part of doing business, but a part of running meaningful government. Critically, the fact that proposals to shift universal service cost allocation solely to residential customers have been rejected in the past is not simply history, but the continuing effectuation of the Gas Choice Act's provisions concerning universal service, as well as a policy determination by the Commission that these costs should be allocated broadly. Finally, in light of the fact that the Commission is currently undertaking a docketed proceeding addressing a comprehensive review of universal service programming, including cost recovery, for all Pennsylvania gas and electric distribution companies,¹⁴ the Commission should not change its longstanding policy of allocating universal service costs to all PGW firm customers in this proceeding. For the reasons outlined more fully below, the Commission should reject OSBA's proposal and instead maintain PGW's historical allocation of universal service costs and allocate those costs to all firm service customers.

¹³ PGW St. 6-R at 4-5.

¹⁴ See Review of Universal Service and Energy Conservation Programs, Docket No. M-2017-2596907 (Order entered May 10, 2017) (specifically identifying "cost recovery" as an issue it will consider in the proceeding).

IV. ARGUMENT

A. Partial Payment Allocation Practices

TURN *et al.* and CAUSE-PA did not submit testimony or other evidence on the issues regarding partial payment allocation practices in this proceeding and take no position on these issues in this Main Brief, but reserve the right to address these issues in Reply Brief(s) in response to the arguments made by the other parties filing Main Briefs.

B. Allocation of Universal Service Cost Recovery

In his Direct Testimony, OSBA witness Robert Knecht recommends changing the current allocation of PGW's universal service costs that are paid for by all firm customers, an allocation that has existed since 1993, and shifting all such costs to the residential rate class.¹⁵ In so doing, Mr. Knecht trots out well-worn arguments that have been raised and rejected by the Commission in every proceeding that has dealt with this issue regarding PGW. The OSBA presents no new evidence and no new facts to support why a change should be made at this time in this proceeding. In fact, all of the reasons the Commission has provided for continuing to allocate these costs across all firm customer classes remain applicable.

OSBA's proposal to allocate universal service costs to only residential customers should be rejected for each of the following reasons: (1) Allocating the total cost solely to residential customers would result in an additional \$11.6 million in costs borne by this customer class, which would violate the principles of gradualism and result in rate shock;¹⁶ (2) this rate shock would overburden the majority of PGW's low income customers, who do not participate in

¹⁵ OSBA St. 1 at 34-35.

¹⁶ The Commission specifically cited rate shock as a reason for rejecting Mr. Knecht's similar proposal in PGW's 2007 rate case. *Public Utility Commission v. PGW*, Opinion & Order Docket R-00061931 at 85-88.

PGW's CRP program; (3) as a municipal utility, PGW's differences from other utility service territories continue to justify maintaining the bargain made as to the allocation of costs; (4) the current allocation furthers the priorities of the Gas Choice Act and continues the status quo as it has existed for the last 25 years; and (5) the Commission's currently pending universal service review necessitates that the Commission not make changes in any one utility service territory at this time until it has thoroughly reviewed the record developed concerning, among other things, the appropriate cost allocation of universal service programs as a state-wide policy matter.

1. Reallocation of universal service costs to only residential customers will result in rate shock for those customers.

In PGW's 2007 rate case the ALJs recommended that Mr. Knecht's proposal shifting allocation of universal service costs solely to residential ratepayers be rejected, a recommendation that was adopted by the Commission.¹⁷ As Mr. Knecht cites in his own testimony,¹⁸ both the ALJs and the Commission agreed that such a shift would be "overwhelming for residential customers" and would result in rate shock.¹⁹ The Commission and the ALJs specifically cited rate shock in their rejection of OSBA's proposal noting that "the increase of 3.8% in addition to the current base rate increase and any increases in the GCR would result in rate shock... We cannot burden these customers with an increase in the universal service costs also."²⁰

Rate shock is no less a consideration in 2017 than it was in 2007. A shift in universal service costs from commercial/industrial firm service customers solely to residential customers

¹⁷ Id.

¹⁸ OSBA St. 1 at 35-36.

¹⁹ PUC v. PGW, Recommended Decision, Docket R-00061931, July 24, 2007, at 80-81.

²⁰ Id.

would increase residential customer bills by an estimated \$11.6 million.²¹ In his surrebuttal testimony, Mr. Knecht claims that a shift of universal service costs would not result in any increase over what PGW proposed because, based on *his* revenue allocation proposal, he would assign the same increase to the Residential rate class as was originally proposed by the Company inclusive of the effect of shifting all universal service cost responsibility to the Residential class.²² Under Mr. Knecht’s shell game, he claims to reduce the allocation of some distribution system costs to the residential class, creating “headroom” to accommodate his proposed shift in universal service costs by those customers.²³ From his perspective this mitigates any rate shock that would occur.

There are several problems with Mr. Knecht’s argument. First, his revenue allocation proposal was not adopted or supported by any of the other parties to this proceeding and was not included in the Joint Petition for Partial Settlement that is being filed on the same date as this Main Brief. Instead, the parties reached a compromise position on allocation of the rate increase which assigns \$33 million of the \$42 million increase to the residential class.²⁴ That allocation assumes no adjustment to the universal service cost allocation that would accommodate Mr. Knecht’s proposal. Thus, if OSBA’s proposal were adopted, it would disrupt the negotiated settlement and/or the residential class of customers would experience an actual rate increase of approximately \$44.6 million, which is significantly *in excess* of the amount of new revenues agreed to in the proposed settlement. Indeed, this shift would result in allocating additional charges amounting to 106% of the total new revenues solely to residential customers. Given the posture of this proceeding and the amounts involved, to suggest that such an allocation and

²¹ PGW St. 6-R at 4-5.

²² OSBA St. 1-SR at 5.

²³ *Id.* at 7.

²⁴ See Joint Petition for Partial Settlement at ¶ 17(a).

increase does not result in rate shock for residential customers, is unreasonable and unsupportable. Such a position also flies in the face of the Commission's 2007 decision on this very issue.²⁵

It is difficult to see a justification for requiring residential customers to bear such an unprecedented burden, and Mr. Knecht fails to address the reality of the increase for these customers.²⁶ In fact, given the PUC's commendable focus on customer assistance programs and broader universal service issues,²⁷ and possible changes that are necessary to meaningfully increase PGW's CRP participation,²⁸ universal service program costs may increase. This raises the second fundamental problem of Mr. Knecht's analysis – even assuming that his process of offsetting a universal service cost increase could be mitigated by decreasing a revenue allocation for residential customers, the only element in this equation that is reconcilable between rate cases is the universal service rider. The shift proposed by OSBA would have residential customers bearing all of the risk and costs of any increase in program expenses. This is unreasonable given the 25 year history of these costs being allocated to all firm customers.

Finally, as argued more fully in section IV.B.3, below, universal service programs do not only benefit low-income customers, rather, all customer classes benefit from these costs. Some of these benefits are direct – such as PGW's low-income multifamily program (LIME) that is designed to target master-metered, low-income multifamily housing. Indeed, given the

²⁵ Public Utility Commission v. PGW, Opinion & Order, Docket R-00061931 at 85-88

²⁶ See OSBA St. 1-SR at 4-8 (where Mr. Knecht responds to arguments that this proposal would cause rate shock for residential customers) and 12-14 (where Mr. Knecht addresses the number of low-income customers in PGW's service area).

²⁷ Review of Universal Services and Energy Conservation Programs, Opinion & Order, Docket M-2017-2596907 (May 10, 2017).

²⁸ The Commission cited low and decreasing CRP enrollment as a particular concern during PGW's ongoing universal service proceeding. Philadelphia Gas Works Universal Service and Energy Conservation Plan for 2017-2020 Submitted in Compliance with 52 Pa. Code § 62.4, Tentative Order, Docket No. M-2016-2542415 at 35 (Jan. 26, 2017).

underlying universal service review, there may well be program changes that create additional benefits for non-residential customers, like PGW's LIME program does.²⁹

2. Given PGW's high number of confirmed low-income customers not enrolled in CRP, OSBA's proposed shift would overburden and create rate shock for PGW's low-income residential customers.

In 2015 PGW had 178,899 confirmed low-income customers, more than any other natural gas utility in the state.³⁰ Yet, only 58,282 customers were enrolled in CRP, which represented a 30% decline from 2010 even as the number of confirmed low-income customers had increased by a more than 22,000.³¹ As OCA witness Roger Colton notes in his rebuttal testimony, "the fact that Philadelphia's low-income population simply cannot absorb a change in the nearly 25-year old policy regarding universal service costs is seen in the facts that low-income arrears (both in terms of dollars in arrears and accounts in arrears) are increasing faster than residential arrears generally."³² Low-income customers are already burdened with energy costs beyond their means, shifting allocation of universal service costs would only increase the already unwieldy pressure on these customers. What Mr. Knecht has argued is a small increase would be a significant portion of the already limited income of PGW's many low-income non-CRP customers.³³

²⁹ Philadelphia Gas Works Universal Service and Energy Conservation Plan for 2014-2016, Final Order, Docket No. M-2013-2366301 (August 22, 2014).

³⁰ See PUC 2015 Report on Universal Service Programs & Collections Performance, at 7, available at http://www.puc.state.pa.us/General/publications_reports/pdf/EDC_NGDC_UniServ_Rpt2015.pdf

³¹ OCA St. 4-R at 33.

³² Id. at 32.

³³ Mr. Knecht attempts to diminish this reality by questioning whether PGW's status as a NGDC with the highest proportion of low-income customers is worthy of recognition, instead asserting that PGW's proportion of estimated low-income customers is only slightly higher than other NGDC's. OSBA St. 1-SR at 12-15. Mr. Knecht presents no analysis as to why utility estimates are reliable for this purpose, which would be significantly at odds with the Commission's

PGW's circumstances continue to indicate that the Commission should reject OSBA's proposed allocation of universal service costs. PGW's status as the utility with the most confirmed low-income customers means that rate shock will ultimately impact an overwhelming number of low-income PGW customers. As the Commission has continued to recognize, rate shock remains a valid concern, even where it may allegedly conflict with cost of service principles.³⁴ In Lloyd v. Pennsylvania Public Utility Commission, the Commonwealth Court specifically noted that gradualism and rate shock are valid considerations for the Commission stating "gradualism is...one of many factors to be considered and weighed by the Commission in determining rate designs."³⁵ While the \$11.6 million increase would be a shock to all residential customers, it would be a particular shock to Philadelphia's most vulnerable residents. Most of PGW's low-income customers are not enrolled in CRP and thus pay the costs of PGW's universal service programs. Furthermore, many of these customers are already struggling to pay their gas bills and keep their service on.

Mr. Knecht never addresses the effect that his proposal would have on the large number of confirmed low-income customers not enrolled in CRP. Instead, he confines his testimony to reliance on a hypothetical cost allocation framework that was not agreed to by the parties in settlement, and cannot be adopted by the Commission without upsetting the other aspects of the carefully packaged settlement. Mr. Knecht is simply incorrect in his continued assertion that a shift in universal service costs would have no effect on the overall rates of PGW's residential customers including the more than 100,000 low-income residents that are not enrolled in CRP.³⁶

consistent use of confirmed low-income customer data in the examination of universal service program policy.

³⁴ Pa. PUC v. PGW, Opinion & Order, Docket R-00061931 at 85-88.

³⁵ Lloyd v. Pennsylvania Pub. Util. Comm'n, 904 A.2d 1010, 1020 (Pa.Cmwlth. 2006)

³⁶ OSBA St. 1-SR at 4-8.

3. The benefits of PGW’s Universal Service Programs to all customer classes must be examined in light of PGW’s status as a city-owned natural gas distribution company.

In the OSBA’s view, universal service programs are beneficial only to residential ratepayers because only those ratepayers have the potential to enroll in these programs. This argument is both incorrect and too simplistic. At its base, it is incorrect because non-residential customers can take advantage of PGW’s newly enacted energy efficiency and conservation program directed at non-residential, master-metered multifamily properties, the LIME program. While this program currently is limited to \$250,000 per year over a five year period,³⁷ there is nothing to guarantee that this program – or others like it – won’t increase in the future.

At a more fundamental level, OSBA’s analysis is too simplistic. In his surrebuttal testimony Mr. Knecht likens CRP to an insurance program that only low-income, residential customers can take advantage of in times of hardship.³⁸ He also suggests that in the context of ratemaking, the Commission should not try to further social policy that deviates from cost causation.³⁹ Both assertions are incorrect and misguided. CAP programs like CRP are not social insurance. Rather, they are part of the legal obligation of natural gas utilities to ensure that low-income customers have access to affordable gas service.⁴⁰ Furthermore, regarding issues of cost causation, it is not the case that the residential rate class causes universal service costs to increase. After all, as aptly pointed out by OCA witness Colton, it is businesses in Philadelphia that rely upon PGW to provide assistance (functioning as wage supplements) to employees who

³⁷ OSBA St. 1-SR at 3, n.3

³⁸ OSBA St. 1-SR at 9.

³⁹ OSBA St. 1-SR at 9.

⁴⁰ 66 Pa. C.S. § 2203(8).

are not provided living wages,⁴¹ and it is these same businesses the rely on both the City and PGW to provide social supports – such as CRP – that allow their employees to make ends meet. This fact was recognized by the Commission’s Bureau of Consumer Services (BCS) in its *Final Report on the Investigation of Uncollectible Balances*.⁴² There BCS stated that “the problem of the inability of some low-income customers to pay their entire home energy bills is caused primarily by societal economic conditions that are unrelated to any rate class.”⁴³ BCS continued:

The Bureau does not find any logic to the argument that because the larger societal economic conditions are negatively affecting the ability of some low income residential customers to pay their bills that the problem is *somehow caused by the residential rate class and should therefore be paid for by that class*. If the Commission, as a regulatory authority, decided that it is in the public interest to provide home energy services for necessities of life to disadvantaged ratepayers without full payment, *then the costs should be borne by all ratepayers who benefit from the companies operating as public utilities*.⁴⁴

BCS was correct then and these same facts are at play now. The simple reality is that universal service programs are beneficial to all PGW customer classes. These benefits are particularly relevant when determining allocation of universal service costs due to PGW’s status as a city-owned natural gas distribution company. The Public Utility Code recognizes that PGW is different in its ratemaking provisions.⁴⁵ OSBA attempts to challenge the rationale for recognizing the longstanding and appropriate methodology of allocating PGW’s universal service costs by minimizing those specific reasons claimed by TURN *et al.*, OCA, and PGW to support this practice, and without recognizing their common basis in fact.⁴⁶ In so doing, Mr. Knecht appears to argue that, notwithstanding each of these differences, there is nothing

⁴¹ OCA St. 4-R at 25-28

⁴² Bureau of Consumer Services, *Final Report on the Investigation of Uncollectible Balances*, Docket No. I-900002 (February 1992).

⁴³ *Id.* at 157.

⁴⁴ *Id.* at 157-58 (emphasis added).

⁴⁵ See 66 Pa. C.S. § 2212.

⁴⁶ See OSBA St. 1-SR at 2-14.

fundamentally different about PGW's universal service costs and programs that warrants an "alternative cost allocation."⁴⁷ For PGW, this so-called "alternative" cost allocation has been in place for decades, in recognition that the benefits of universal service programs and PGW's unique characteristics must be viewed in concert with one another.

As a municipal utility, PGW has different responsibilities to its customers that support allocating universal service costs to all firm service customers. The Commission has specifically recognized that PGW's status as a city-owned NGDC makes its cost recovery different from other natural gas distribution companies.⁴⁸ As OCA witness Mr. Colton noted in his direct testimony "the offer of programs to support universal service for all customers is part of a quid pro quo that was exacted in exchange for substantial—and continuing—public perquisites provided to the natural gas utility."⁴⁹ Commercial and industrial customers benefit from those public perquisites the same way that residential customers benefit from them. Since all classes of customers benefit from these perquisites they contribute to universal service costs in exchange for those benefits. To allocate those charges to a single class of ratepayers is patently unfair. It results in benefits being bestowed upon all ratepayers, but the total and significant cost being borne by only the residential ratepayers, and specifically, the largest concentration of low-income customers in the Commonwealth.

⁴⁷ See OSBA St. 1 at 34.

⁴⁸ Philadelphia Gas Works Universal Service and Energy Conservation Plan for 2014-2016, Final Order, Docket No. M-2013-2366301, at 7 (August 22, 2014).

⁴⁹ OCA St. 4-R at 7 (internal citations omitted).

Witnesses for PGW, OCA, and TURN *et al.* all outlined a number of benefits conferred on the public generally and commercial customers specifically by the universal service programs including:⁵⁰

- Increased employee productivity.⁵¹
- Decreased employee turnover.⁵²
- Promotion of economic development and job creation.⁵³
- Promotion of housing stability.⁵⁴
- Improved work and competitive environment of the utility and service area.⁵⁵
- Defraying the need for local government services.⁵⁶
- Improved health outcomes, particularly for children.⁵⁷
- Functioning as a wage supplement for low-income workers.⁵⁸
- Increased disposable income for low-wage workers.⁵⁹

Despite Mr. Knecht's claims that commercial customers do not benefit from these programs,⁶⁰ the record on this proceeding clearly demonstrates that they do. This alone justifies leaving the current universal service cost allocation intact.

⁵⁰ Most directly, some small business benefit from eligibility in PGW's Low-Income Multifamily Energy (LIME) program, which is directed towards commercial accounts. When approving this program the Commission specifically cited the fact that some portion of universal service funding comes from commercial customers. See Philadelphia Gas Works Universal Service and Energy Conservation Plan for 2014-2016, Final Order, Docket No. M-2013-2366301 (August 22, 2014).

⁵¹ TURN *et al.* St. 1-R at 2; OCA St. 4-R at 18; PGW St. 6-R at 4.

⁵² Id.

⁵³ Id.

⁵⁴ TURN *et al.* St. 1-R at 2; OCA St. 4-R at 24-25; PGW St. 6-R at 4.

⁵⁵ OCA St. 4-R at 19-21. PGW St 6-R at 4.

⁵⁶ TURN *et al.* St. 1-R-1 at 2. See also OCA St. 4-R at 24-25

⁵⁷ OCA St. 4-R at 18-20.

⁵⁸ OCA St. 4R1 at 20-21.

⁵⁹ OCA St. 4-R at 22.

4. The OSBA’s proposal should be rejected in order to continue to effectuate the Gas Choice Act’s provisions concerning universal service programs in PGW territory.

The Gas Choice Act does not support Mr. Knecht’s proposal that universal service costs be allocated only to residential firm service customers. Section 2212 of the Gas Choice Act entitled *City natural gas distribution operations*, states in relevant part:

In its restructuring proceeding, a city natural gas distribution operation may propose an automatic adjustment mechanism or mechanisms in lieu of or as a supplement to section 1307 (relating to sliding scale of rates; adjustments) to adjust rates for fluctuations in gas and nongas costs, including, but not limited to, an automatic adjustment mechanism or mechanisms *to recover the costs of providing programs for low-income ratepayers and other assisted ratepayers*. The commission may approve or modify the automatic adjustment mechanism or mechanisms proposed by the city natural gas distribution operation, or the commission may approve a section 1307 adjustment for a city natural gas distribution operation.⁶¹

For PGW the current structure of universal service cost allocation effectuates these requirements. Section §2203(6) of the Gas Choice Act states “the Commission shall establish for each natural gas distribution company an appropriate **nonbypassable**, competitively neutral cost-recovery mechanism which is designed to recover fully the natural gas distribution company’s universal service and energy conservation costs over the life of these programs.”⁶²

In Met-Ed Industrial Users Group v. Pennsylvania Public Utility Commission, the Commonwealth Court examined whether universal service charges were nonbypassable for all customer classes after Met-Ed proposed allocating universal service costs to all customer classes. The PUC ordered that the rider should only apply to residential customers. The OCA challenged that order. The Commonwealth Court found that “it [was] reasonable to interpret nonbypassable

⁶⁰ OSBA St. 1-R at 33.

⁶¹ 66 Pa.C.S. § 2212(h)(2) (emphasis added).

⁶² 66 Pa.C.S. § 2203(6)

in the context of deregulation.”⁶³ The court ultimately ruled that, consistent with the PUC’s final order and the ALJ’s recommendation, funding sources for universal service programs cannot be bypassed *by those ratepayers that contributed prior to deregulation*.⁶⁴ For PGW, prior to deregulation **all** firm service customers contributed to universal service costs. Therefore, Met-Ed demonstrates that one aspect of the core analysis to be performed in determining which customers must not bypass universal service funding obligations is the customers who paid prior to deregulation. For PGW, all firm service customers, including those represented by the Office of the Small Business Advocate, shared and continue to share this obligation.⁶⁵

Mr. Knecht submits that the restructuring mandate was hardly an endorsement of the status quo with regards to universal service cost allocation,⁶⁶ but *Met-Ed* appears to make clear that, in fact, tariff-based universal service costs are nonbypassable to those classes of customers who historically bore them. While the Commission undoubtedly has discretion to expand the class of customers who pay for universal service costs,⁶⁷ it cannot contract the class of customers

⁶³ Met-Ed Indus. Users Grp. v. Pa. PUC, 960 A.2d 189, 202 (Pa.Cmwlt. 2008).

⁶⁴ Id. at 202-203.

⁶⁵ Of course, the Met-Ed Court made it clear, in interpreting Lloyd that:

[T]he Competition Act “only provides that it be funded by ‘non-bypassable rates’ without any requirement that it be by a rate that is directly benefited by the program.” . . . Thus, under Lloyd, there is no statutory requirement that the funding for special programs come only from those who benefit from the programs.

Met-Ed Indus. Users Group v. Pa. PUC, 960 A.2d 189, 202 (Pa. Commw. Ct. Nov. 7, 2008) (citing Lloyd v. Pennsylvania Public Utility Commission, 904 A.2d 1010, 1027 (Pa. Cmwlt. 2006), appeal denied, 591 Pa. 676, 916 A.2d 1104 (2007)).

⁶⁶ OSBA St. 1-SR at 6 (“The Commission merely declined to change (then) existing methodology because the Restructuring Act mandated that there be no cost shifting. This is hardly a clear endorsement of PGW’s approach.”).

⁶⁷ See supra n. 65. As the decision in Lloyd and Met-Ed make clear, the PUC would be within its discretion to “appropriately fund” universal service programs from customers who have not traditionally paid for them. And we would support the OSBA argument that, if small and

from those who historically paid for them. The OSBA has not presented any evidence of a change in circumstance that would justify permitting a subset of customers, who historically paid for universal service costs, to now bypass them. The failure to make such a showing demonstrates OSBA has not satisfied its burden in this proceeding. As Mr. Colton notes “the Pennsylvania PUC has continued 25 years of allocating universal service costs to all PGW customer classes for good reasons...There is no reason to change those decisions in this proceeding.”⁶⁸

5. Given that the Commission’s pending Universal Service Program Review will be looking at cost allocation, the Commission should make no changes to PGW’s longstanding universal service cost allocation.

On May 10, 2017, the Commission issued an Order initiating a comprehensive review of the entire universal service and energy conservation paradigm.⁶⁹ The Commission explicitly set out that, among other issues, it will consider issues of “cost allocation.”⁷⁰ In light of this, it would be premature for any changes to be made to PGW’s longstanding cost allocation in this proceeding when the Commission may very well be expanding – or at least reviewing – its previous policy determinations as to the appropriate the class of customers who pay for universal service costs.

medium-sized businesses must contribute, Rate IT customers should contribute as well. See OSBA St. 1-SR 14.

⁶⁸ OCA St. 1-R at 10.

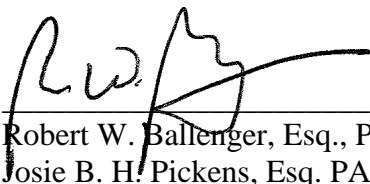
⁶⁹ Review of Universal Services and Energy Conservation Programs, Opinion & Order, Docket M-2017-2596907 (May 10, 2017).

⁷⁰ Id. at 4.

V. CONCLUSION

TURN *et al.* and CAUSE-PA oppose OSBA’s proposal to change the allocation of universal service costs to only residential customers. Limiting this allocation to residential customers, particularly given the high number of low-income customers within PGW’s service territory, would result in a rate shock, which the Commission specifically cited as a reason to reject a similar proposal during PGW’s 2006 rate case. Additionally, the benefits that universal service programs bestow on all PGW customers and PGW’s unique status should be looked at as a whole. As a municipal utility, PGW has a different set of responsibilities to its customers which is reflected in multiple statutory provisions applying solely to PGW. The Commission should continue to approve the allocation of these universal service costs across all firm service customers, consistent with the PGW-specific provisions of the Gas Choice Act. This is so particularly in light of the comprehensive state-wide review of universal service programs and cost responsibility that is currently underway.

Respectfully submitted,



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APPENDIX A

Proposing Findings of Fact

1. For the last 25 years, since the inception of its Customer Assistance Program (CAP), known as the Customer Responsibility Program (CRP) by the Philadelphia Gas Works (PGW), PGW has allocated the costs of its universal service programs to all firm service customer classes. Recommended Decision in the Matter of proposed Changes to PGW's Customer Service Regulations, (September 22, 1993), affirmed, Order and Resolution of the Philadelphia Gas Commission (November 9, 1993); see also, OCA St. No. 4R at 7:1-2.
2. This cost allocation policy has been maintained by the Commission throughout at least seven separate proceedings since regulation of PGW was transferred to the Commission, and was explicitly reaffirmed by the Commission in PGW's 2003 restructuring proceeding. *See* Pa. PUC v. Philadelphia Gas Works, Docket No. R-00005654 (Order Entered February 21, 2001); Petition of Philadelphia Gas Works for Extraordinary Rate Relief Pursuant to 66 Pa. C.S. § I 308(e), Docket No. R-00017034 (Emergency Order Entered April 12, 2002); Pa. PUC v. Philadelphia Gas Works - Petition for Emergency Rate Relief, Docket No. R-2008-2073938 (Order Entered December 19, 2008); Pa. PUC v. Philadelphia Gas Works, Docket No. R-00006042 (Order Entered October 4, 2001); Pa. PUC v. Philadelphia Gas Works, Docket No. R-00017034 (Order Entered August 8, 2002); Pa. PUC v. Philadelphia Gas Works, Docket No. R-00061931 (Order Entered September 28, 2007); Pa. PUC v. Philadelphia Gas Works, Docket No. R-2009-2139884 (Order Entered July 29, 2010); Pa. PUC v. Philadelphia Gas Works, Docket No. M-00021612 (Order Entered April 17, 2003).
3. Allocating all universal service costs solely to residential ratepayers would increase those ratepayers' bills by \$11.6 million. PGW St. 6R at 4-5.
4. Allocating all universal service costs solely to residential ratepayers would result in unacceptable rate shock to that customer class. PGW St. 6R at 4-5.

5. Of the Company's approximately 500,000 customers, in 2015, PGW had nearly 180,000 estimated low-income customers (below 150% of the Federal Poverty Level) and nearly 162,000 Confirmed Low-income customers. OCA St. 4 at 9.
6. PGW's Universal Service programs benefit rate classes other than the residential rate class in the following ways:
 - a. By directly providing services to master-metered multifamily properties through PGW's Low Income Multifamily Energy Efficiency program. OCA St. 4R at 12.
 - b. By increased employee productivity. *TURN et al.* St. R-1 at 2, OCA St. R-1 at 18, PGW St. R-6 at 4.
 - c. By decreased employee turnover. *Id.*
 - d. By promoting economic development and job creation. *Id.*
 - e. By promoting housing stability. *TURN et al.* St. R-1 at 2, OCA St. R-1 at 24-25, PGW St. R-6 at 4.
 - f. By improving the work and competitive environment of the utility and service area. OCA St. 1 at 19-21. PGW St. 6 at 4.
 - g. By defraying the need for local government services. *TURN et al.* St. R-1 at 2. See also OCA St. R-1 at 24-25
 - h. By improving health outcomes, particularly for children. OCA St. R-1 at 18-20.
 - i. By acting as a wage supplement for low-income workers. OCA St. R-1 at 20-21.
 - j. By increase disposable income for low-wage workers. OCA St. R-1 at 22.

APPENDIX B

Proposed Conclusions of Law

1. The OSBA has not met its burden of proof in this proceeding and presented no evidence and no new facts as to why PGW's current allocation of universal service costs to all PGW firm customers should be changed.
2. As a municipal utility, PGW has differences from other utility service territories that continue to justify maintaining the status quo allocation of costs.
3. The Commission's currently pending universal service review necessitates that the Commission not make changes to cost allocation in any one utility service territory at this time until it has thoroughly reviewed the record developed concerning, among other things, the appropriate cost allocation of universal service costs among all utilities. Review of Universal Services and Energy Conservation Programs, Docket M-2017-2596907 (Order entered May 10, 2017).
4. The Natural Gas Choice and Competition Act established that universal service programs are to be maintained at least at the levels in existence at the time of the Act, and they are to be appropriately funded and available in each natural gas distribution service territory. 66 Pa. C.S. 2203(7), (8).
5. The continuation of the historic allocation is fully in accord with the Commission's decisions over the last 17 years in every proceeding to continue the traditional recovery of these universal service costs from all firm service customers.⁷¹ Pa. PUC v. PGW, Docket No. M-00021612, Order at 89-93 (March 31, 2003); Pa. PUC v. Philadelphia Gas Works, Docket No. R-00061931, Order at 137 (September 28, 2007).

⁷¹ The issue of the allocation of the universal service costs was addressed by settlement in the 2009 base rate proceeding at Docket No. R-2009-2139884.

APPENDIX C

Proposed Ordering Paragraphs

It is hereby ORDERED THAT:

1. The partial settlement submitted by the Joint Petitioners is approved as proposed.
2. Philadelphia Gas Works will continue to allocate its universal service costs to all firm service customer classes and collect these costs through the Universal Service and Energy Conservation Charge.