



COMMONWEALTH OF PENNSYLVANIA

July 21, 2017

E-FILED

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

**Re: Pennsylvania Public Utility Commission v. Philadelphia Gas Works 2017
Base Rate Filing / Docket No. R-2017-2586783**

Dear Secretary Chiavetta:

Enclosed for filing is the Main Brief, on behalf of the Office of Small Business Advocate ("OSBA"), in the above-captioned proceeding.

Copies will be served on all known parties in this proceeding, as indicated on the attached Certificate of Service.

If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sharon E. Webb".

Sharon E. Webb
Assistant Small Business Advocate
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Enclosures

cc: Mr. Robert D. Knecht
Parties of Record

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
	:	
v.	:	Docket No. R-2017-2586783
	:	C-2017-2593497
Philadelphia Gas Works	:	
	:	

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing have been served via email and/or First-Class mail (*unless other noted below*) upon the following persons, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PENNSYLVANIA PUBLIC
UTILITY COMMISSION**

v.

PHILADELPHIA GAS WORKS

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:
:
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DOCKET NO. R-2017-2586783

**MAIN BRIEF
ON BEHALF OF THE
OFFICE OF SMALL BUSINESS ADVOCATE**

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Dated: July 21, 2017

TABLE OF CONTENTS

I. Introduction – Procedural History.....4

II. Burden of Proof.....6

III. Summary of Argument.....7

IV. Argument.....11

V. Conclusion.....17

 Proposed Findings of Fact.....18

 Proposed Conclusions of Law.....20

Proposed Ordering Paragraphs.....21

TABLE OF AUTHORITIES

Cases

<i>Samuel J. Lansberry, Inc. v. Pennsylvania Public Utility Commission</i> , 578 A.2d 600, 602 (Pa. Cmwlth. 1990).....	6
<i>Petition of Pennsylvania Power Company for Approval of Interim Default Service Supply Plan: Supply Procurement for Residential Customers</i> , Docket No. P-00072305 (Order entered March 13, 2008).....	6
Valley Energy, Inc. at Docket No. R-00049345; (b) Equitable Gas Company at Docket No. P-00052192.....	8
Equitable Gas Company at Docket No. P-00052192.....	8
PPL Gas Utilities Corporation at Docket No. R-00061398.....	8
PPL Electric Utilities Corporation at Docket No. R-00049255.....	8
Metropolitan Edison Company and Pennsylvania Electric Company at Docket Nos. R-00061366 and R-00061367.....	8
<i>Popowsky v. Pennsylvania Public Utility Commission</i> , 960 A. 2d 189 (Pa. Cmwlth. 2008).....	8
<i>Customer Assistance Programs: Funding Levels and Cost Recovery Mechanisms Final Investigatory Order</i> , Docket No. M-00051923 (Order entered December 18, 2006).....	8
<i>Pennsylvania Public Utility Commission v. Philadelphia Gas Works</i> , Docket Nos. M-00021612, M-00021612C0001, M-00021612C002, M-00021612C000 (Order Entered March 31, 2003) at 5 (“Restructuring Order”).....	11
Restructuring Order at 64 and <i>Customer Assistance Programs: Funding Levels and Cost Recovery Mechanisms Final Investigatory Order</i> , Docket No. M-00051923 (Ordered entered December 18, 2006) at 31.....	11
<i>Investigation into Financial and Collections Issues Regarding the Philadelphia Gas Works</i> , Docket Nos. P-00042090, R-00049157, M-00021612, P- 00032061, and P-00042117 (Order entered October 27, 2004) at 23-24.....	12
<i>Pennsylvania Public Utility Commission, et al. v. PPL Electric Utilities Corporation</i> , Docket No. R-00049255 (Order entered December 22, 2004), at 98.....	13
<i>Funding Levels and Cost Recovery Mechanisms</i> , Docket No. M-00051923 (Order entered December 18, 2006).....	13

Statutes

66 Pa. C.S. § 332(a).....	6
66 Pa. C.S. §§2201-2212.....	11

I. INTRODUCTION-PROCEDURAL HISTORY

On February 27, 2017, Philadelphia Gas Works (“PGW” or the “Company”) filed Tariff Supplement 100 to Gas Service Tariff – Pa. P.U.C. No. 2 (“Supplement No. 100”) to become effective February 28, 2017. The proposed Tariff, if approved by the Commission, would have increased the retail distribution rates of PGW by \$70 million per year.

The Office of Small Business Advocate (“OSBA”) filed a Complaint on March 13, 2017.

On March 16, 2017, the Pennsylvania Public Utility Commission (“Commission” or “PUC”) suspended Supplement No. 100 until November 28, 2017, in order to conduct an investigation into the lawfulness, justness, and reasonableness of PGW’s proposed rate increase. In addition, the Commission ordered that the investigation include consideration of the lawfulness, justness, and reasonableness of PGW’s existing rates. The matter was assigned to Administrative Law Judges (“ALJs”) Marta Guhl and Christopher P. Pell.

On March 29, 2017, a prehearing conference was held before ALJ Guhl and ALJ Pell.

The following parties are the known, active parties involved in this proceeding: the OSBA; the Office of Consumer Advocate (“OCA”); the Bureau of Investigation and Enforcement (“I&E”); Action Alliance of Senior Citizens of Greater Philadelphia (“Action Alliance”); Tenant Union Representative Network (“TURN”); the Philadelphia Industrial and Commercial Users Group (“PICGUG”); and the Retail Energy Supply Association (“RESA”).

Public input hearings were held on May 9 and May 10, 2017.

On May 16, 2017, the OSBA submitted the direct testimony of Robert D. Knecht.

On June 9, 2017, the OSBA submitted the rebuttal testimony of Mr. Knecht.

On June 22, 2017, the OSBA submitted the surrebuttal testimony of Mr. Knecht.

Evidentiary hearings were held before the ALJs on June 28, 2017.

Prior to the evidentiary hearings, the parties notified the ALJs that they had reached a settlement on many of the issues and that all parties had waived cross examination on all issues.

The testimony of OSBA Witness Knecht was moved into the record at the June 28th evidentiary hearing.

The OSBA submits this main brief pursuant to the procedural schedule as set forth in the ALJs' June 30, 2017, Briefing Order.

II. BURDEN OF PROOF

Section 332(a) of the Public Utility Code, 66 Pa. C.S. § 332(a), provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding. It is axiomatic that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. Pennsylvania Public Utility Commission*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990). *See also* *Petition of Pennsylvania Power Company for Approval of Interim Default Service Supply Plan: Supply Procurement for Residential Customers*, Docket No. P-00072305 (Order entered March 13, 2008) at 4.

III. SUMMARY OF ARGUMENT

The OSBA has an economic interest in PGW's universal service programs because non-residential firm service customers are required (at this time) to pay the Universal Service and Energy Conservation Surcharge ("USEC").¹ PGW currently has three universal service programs for low-income customers: the Customer Responsibility Program ("CRP"); a conservation program for low-income customers (alternatively called the "CRP Home Comfort Program," the "Enhanced Low-Income Retrofit Program," and the "Conservation Works Program"); and a grandfathered Senior Citizen Discount Program.² As Mr. Knecht testified, it is not reasonable to recover the costs of these programs from non-residential customers because non-residential customers are ineligible to participate in the universal service programs.³

As set forth more fully in the testimony of Mr. Knecht, PGW is the only natural gas distribution company ("NGDC") for which non-residential customers are required to pay universal service costs.⁴ Furthermore, the Commission has specifically declined to allocate universal service costs to non-residential customers in numerous proceedings and has adopted a policy that the cost of universal service programs should be borne entirely by the residential

¹ OSBA Statement No. 1 at 33.

² OSBA Statement No. 1 at 33.

³ OSBA Statement No. 1 at 33.

⁴ OSBA Statement No. 1 at 35.

customers of NGDCs and of electric distribution companies (“EDCs”).⁵ Furthermore, the Commission’s policy of not allocating universal service costs to non-residential customers was appealed to the Commonwealth Court and affirmed.⁶

The OSBA has participated in each of PGW’s last two base rate proceedings, the emergency rate relief proceeding in 2007 (Docket Nos. R-00061931), and the follow-up base rates proceeding in 2009 (R-2009-2139884). The OSBA, through the testimony on Mr. Knecht, advanced a similar proposal in both of those proceedings. In the 2007 base rates case, the Administrative Law Judges concluded:

The arguments and authorities cited by OSBA and PICGUG are reasonable. However, PGW, OCA and Action Alliance also have valid arguments. It is clear that the Commission is moving to have the costs of universal service programs assigned to the residential customers. In the previous proceedings, a cost of service study was not available. Therefore, the issue can be addressed in this proceeding. Nevertheless, based on the amount of the increase and the revenue allocation that we are proposing, OSBA’s proposal would be overwhelming to the residential customers. Although that the entire cost would not be reassigned at one time, when we look at the final year, the increase of 3.8% in addition to the current base rate increase and any increases in the GCR result in

⁵ The Commission has specifically declined to allocate universal service costs to non-residential customers in numerous gas proceedings, including the following: (a) Valley Energy, Inc. at Docket No. R-00049345; (b) Equitable Gas Company at Docket No. P-00052192; and (c) PPL Gas Utilities Corporation at Docket No. R-00061398. The Commission has also declined to allocate universal service costs to non-residential customers in numerous electric proceedings, including the following: (a) PPL Electric Utilities Corporation at Docket No. R-00049255, and (b) Metropolitan Edison Company and Pennsylvania Electric Company at Docket Nos. R-00061366 and R-00061367. The OCA appealed the Commission’s decision in the Metropolitan Edison Company and Pennsylvania Electric Company case to the Commonwealth Court. The Commonwealth Court affirmed the Commission’s decision with regard to allocating universal service costs solely to the residential class. *Popowsky v. Pennsylvania Public Utility Commission*, 960 A. 2d 189 (Pa. Cmwlth. 2008). Furthermore, in the *Customer Assistance Programs: Funding Levels and Cost Recovery Mechanisms Final Investigatory Order*, Docket No. M-00051923 (Order entered December 18, 2006), the Commission decided it will continue its current policy of allocating CAP costs only to residential customers, in that only residential customers are eligible for universal service programs. Specifically, the Commission stated: “*After careful consideration of the comments and the arguments presented, the Commission will continue its current policy of allocating CAP costs to the only customer class whose members are eligible for the program – residential customers. The Commission believes that we should not initiate a policy change that could have a detrimental impact on economic development and the climate for business and jobs within the Commonwealth.*” (emphasis added).

⁶ *Popowsky v. Pennsylvania Public Utility Commission*, 960 A. 2d 189 (Pa. Cmwlth. 2008).

rate shock. This is not gradualism. It should be noted that we are recommending First Dollar Relief which means that the residential customers will be assigned the majority of the rate increase. We cannot burden these customers with an increase in the universal service costs also. Consequently, we are recommending that PGW's current allocation of universal service costs be retained and OSBA's proposal be rejected.⁷

In its Order approving the 2007 base rates case, the Commission approved both the ALJs' recommendation and the ALJs' accompanying rationale:

We will adopt the ALJs' recommendation regarding allocation of the USEC program. We agree with the ALJs' reasoning that a realignment of the costs in this proceeding would simply overburden the residential classes given that we are adopting the ALJs' recommendation regarding allocation of the \$25 million increase. Because that substantial realignment goes far to bring all rate classes closer to a cost of service basis, we find that our decision on this one issue is consistent with the principles enunciated in Lloyd. As we have noted, Lloyd has not eliminated the principles of rate shock and gradualism, but it has required that we be guided primarily by cost of service. In the over-all context of this proceeding, one can hardly argue that application of the principles of gradualism and rate shock concerns to this one issue depart from Lloyd given the revenue allocation approach adopted for the primary \$25 million increase.

In ruling on the USEC issue in the 2007 base rates case, the Commission agreed that cost causation is an appropriate measure for universal service, but rejected the OSBA's proposal on the basis of rate shock. The 2010 base rates case was resolved by settlement. As part of the settlement in the 2010 case, the OSBA agreed not to pursue the argument any further in that proceeding.⁸ However, the Settlement provides that the withdrawal of any argument by a party to the Settlement (*e.g.*, the OSBA's argument against non-residential customers paying for universal service) is without prejudice and allows the OSBA to raise its argument about the

⁷ Recommended Decision, Docket No. R-00061931, July 24, 2007, pages 80-81.

⁸ See Settlement at Paragraph 38, R-2009-2139884.

allocation of universal service costs in a future proceeding.⁹

⁹ *Id.*

IV. ARGUMENT

A. Partial Payment Allocation Practices

The OSBA takes no position on this issue.

B. Allocation of Universal Service Cost Recovery.

1. Commission Precedent

PGW is an NGDC which was previously regulated by the Philadelphia Gas Commission, a local agency of the City of Philadelphia.¹⁰ On June 22, 1999, the Natural Gas Choice and Competition Act (“Gas Choice Act”), 66 Pa. C.S. §§2201-2212, was enacted to provide a competitive and non-discriminatory market for natural gas supply services within the Commonwealth.¹¹ Pursuant to the Act, the Commission assumed jurisdiction over the natural gas services provided by PGW on July 1, 2000.¹² On July 1, 2002, PGW filed its Restructuring Petition as required by the Gas Choice Act.¹³

Prior to becoming subject to the Commission’s jurisdiction, PGW allocated its universal service costs to all firm sales service rate classes.¹⁴ PGW did *not* allocate any universal service costs to either PGW’s interruptible sales service rate classes or to PGW’s large volume

¹⁰ *Pennsylvania Public Utility Commission v. Philadelphia Gas Works*, Docket Nos. M-00021612, M-00021612C0001, M-00021612C002, M-00021612C000 (Order Entered March 31, 2003) at 5 (“Restructuring Order”).

¹¹ Restructuring Order at 2.

¹² Restructuring Order at 5.

¹³ Restructuring Order at 2.

¹⁴ Restructuring Order at 64 and *Customer Assistance Programs: Funding Levels and Cost Recovery Mechanisms Final Investigatory Order*, Docket No. M-00051923 (Ordered entered December 18, 2006) at 31.

transportation service rate classes (“GTS/IT”)¹⁵

During PGW’s Restructuring Proceeding, PGW proposed to continue to collect universal service costs from firm sales service customer classes.¹⁶ The Commission agreed that universal service costs should continue to be allocated to all firm sales service rate classes. Specifically, the Commission stated:

These [universal service] costs have traditionally been included in PGW’s gas cost rate (‘GCR’) and that such a cost allocation [to the residential classes only] would involve massive cost shifting between classes prohibited by Sections 211(e) and (h) of the Act. This is a restructuring proceeding and not a base rate case. Therefore, the record does not contain a cost study that would support a shift in rate design.¹⁷

The issue of how PGW’s universal service costs should be allocated among rate classes arose again in *Investigation into Financial and Collections Issues Regarding the Philadelphia Gas Works*, Docket Nos. P-00042090, R-00049157, M-00021612, P- 00032061, and P-00042117 (Order entered October 27, 2004) at 23-24. However, the Commission stated in that Investigation that it did not “intend to address [universal service] cost allocation. Cost allocation is an issue best left to a base rate proceeding. At PGW’s next base rate proceeding, the OSBA will have sufficient opportunity to raise the issue of the proper size of PGW’s CRP and argue its position regarding the proper cost allocation for Universal Service Programs.”

As set forth more fully below, the OSBA is proposing that non-residential customers be relieved of having to contribute toward PGW’s universal service costs. The OSBA has an

¹⁵ If PGW had any smaller retail “Choice” customers who took gas supply service from an alternative natural gas supplier (“NGS”), these customers would also be assigned universal service costs. PGW Exhibit HSG-6T indicates that all retail customers take gas supply service from PGW. For convenience, this brief refers to PGW’s policy as allocating universal service costs to all firm sales service customers.

¹⁶ Restructuring Order at 62.

¹⁷ Restructuring Order at 62.

economic interest in PGW's universal service programs because non-residential firm service customers are required (at this time) to pay the USEC. Except for the PGW, the PUC has generally not required business ratepayers to pay for universal service programs.¹⁸ In the case of PGW, the universal service funding model was *inherited* by the Commission, *i.e.*, the funding program was approved by the Philadelphia Gas Commission prior to PGW becoming subject to regulation by the Commission. The PUC has, thus far, deferred consideration of whether non-residential customers should be relieved of paying for PGW's universal service programs.

However, this issue was raised in PPL's 2004 distribution rate case. In response to OCA's effort to spread the costs to all rate classes, the Commission expressly held that universal service program costs should be funded only by the residential class. In reaching that conclusion, the Commission noted that the advocates of spreading the costs more broadly had failed to support their position with "concrete evidence in the form of cost studies."¹⁹

In addition to ruling in specific cases, the Commission has also conducted a generic proceeding on cost recovery and other issues related to universal service and energy conservation programs.²⁰ In that generic proceeding, the Commission voted to continue the policy of allocating CAP costs to the only customer class whose members are eligible to participate in the program, *i.e.*, residential customers.

In reaffirming its prior policy, the Commission specifically disagreed with the OCA's interpretation of legislative intent regarding recovery of CAP costs from business customers. While acknowledging that there are a few exceptions in which CAP costs are recovered from

¹⁸ OSBA Statement No. 1 at 35.

¹⁹ *Pennsylvania Public Utility Commission, et al. v. PPL Electric Utilities Corporation*, Docket No. R-00049255 (Order entered December 22, 2004), at 98.

²⁰ See *Customer Assistance Programs: Funding Levels and Cost Recovery Mechanisms*, Docket No. M-00051923 (Order entered December 18, 2006).

customers other than the residential class, the Commission recognized that none of the exceptions constitutes legal precedent because each involves a settlement or, in the case of PGW, a mechanism that was constructed prior to the Commission's having jurisdiction over the utility. Finally, the Commission referred to its PPL ruling that "[u]niversal service programs [such as CAP], by their nature, are narrowly tailored to the residential customers and therefore, should be funded only by the residential class."²¹

2. The OSBA's Proposal

In the current proceeding, the OSBA proposes to decouple the issue of cost responsibility for the USEC from the issue of the overall allocation of revenue responsibility among the rate classes.

To that end, Mr. Knecht set forth a detailed change in the cost allocation and rate design methodology that would ultimately have no impact on residential rates in the context of this proceeding.²² As explained above, in the past, the Commission has declined to harmonize PGW's treatment of the USEC with the practices of other Pennsylvania utilities on the grounds that the impact on the residential class would violate the principles of gradualism and the avoidance of rate shock. In this proceeding, Mr. Knecht recommended simply accepting the Company's overall revenue allocation proposal for the residential class, thereby rendering any claims of rate shock moot.²³ Unless the Company's revenue allocation proposal were determined to violate the rate gradualism principle, Mr. Knecht's proposal necessarily passes that test.

²¹ *Id.*

²² OSBA Statement No. 1 at 36.

²³ OSBA Statement No. 1 at 48.

As shown in Exhibit IEC-S2 pages 1 and 7, both the Company and Mr. Knecht proposed to assign an increase of \$59.0 million to the residential rate class. The Company proposed to do so in a rate design with a USEC of \$1.1335 per mcf, a delivery charge of \$6.7275 per mcf, and MFC/GPC charges of \$0.2393, or a combined volumetric rate of \$8.1003 per mcf. In contrast, Mr. Knecht proposed to achieve the \$59 million with a USEC of \$1.5597 per mcf, a delivery charge of \$6.3645 per mcf, and MFC/GPC charges of \$0.1761 per mcf, or the identical combined rate of \$8.1003 per mcf.²⁴ Similarly, Mr. Knecht proposed that USEC revenues for the other firm service classes be set to zero, but with offsetting large percentage increases to the volumetric delivery charges.

The revenue allocation in the Joint Petition for Partial Settlement now supersedes the Company's original revenue allocation proposal. Nevertheless, the OSBA proposes that, if the Commission adopts the OSBA's proposal to recover all USEC costs from the residential class, it do so on a revenue neutral basis consistent with the mechanism laid out by Mr. Knecht.²⁵ Thus, the issue to be resolved in this litigation is *whether revenue allocation should be effectuated by retaining the existing USEC charge mechanism, or by modifying the USEC charges in conjunction with balancing adjustments to the volumetric distribution charges.*

Furthermore, adopting the OSBA's proposal for the USEC is *revenue neutral* within the context of this proceeding. Going forward, the cost responsibility for the USEC programs will remain with the residential class.

To achieve that end, the Commission would start with the proof of revenues as presented in the Partial Settlement in Exhibit 2. It would then eliminate the \$1.1335 per mcf USEC

²⁴ Mr. Knecht adjusted the residential MFC/GPC rates to reflect errors acknowledged by PGW. OSBA Statement No. 1-SR at 23.

²⁵ It is OSBA's interpretation of the Partial Settlement that this was the understanding of the parties.

charges for all non-residential firm service customers, and increase the volumetric delivery charges by \$1.1335 per mcf. In effect, the revenue responsibility for those classes would remain unchanged. Similarly, the Commission would increase the USEC for the residential classes to the value necessary to recover all USEC costs. (This value would be modestly different from the \$1.5597 per mcf calculated by Mr. Knecht, due to the effect of changes in loads resulting from the use of 20-year weather normalization in the Joint Petition.) The residential class delivery charge would then be reduced by the magnitude of the increase in the USEC charge. Again, the net revenue effect on the residential class of adopting the OSBA's proposal would be zero.

Therefore, the impact of both rate shock and gradualism while moving rate responsibility for universal service costs to the residential class are considered in the context of overall revenue allocation for the proceeding. As the OSBA's proposal results in the same overall increase for all rate classes as that agreed upon in the Joint Petition, rate shock simply cannot be a reason not to adopt the OSBA's recommendation in this proceeding, as all parties have agreed that the revenue allocation in the Joint Petition is reasonable.

Thus, the OSBA respectfully submits that the issue as to whether universal service costs should be borne by non-residential customers can and should be evaluated on its merits in this proceeding, and should not be constrained by gradualism and rate shock concerns.

Historically, PGW's universal service costs have been recovered from all classes of customers despite the fact that only residential customers are permitted to participate in the Company's universal service programs. Under Commission policy, and the precedent with regard to other utilities, non-residential customers are not required to contribute toward universal service costs. Therefore, the requirement that PGW's commercial customers contribute toward universal service costs should cease.

V. CONCLUSION

In view of the foregoing, the OSBA respectfully requests that the Commission rule that PGW's universal service costs should solely be recovered from residential customers.

Respectfully submitted,



Sharon E. Webb
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Office of Small Business Advocate
300 North Second Street, Ste. 202
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Dated: July 21, 2017

PROPOSED FINDINGS OF FACT

1. Prior to becoming subject to the Commission's jurisdiction, PGW allocated its universal service costs to all rate classes. See Restructuring Order at 64 and *Customer Assistance Programs: Funding Levels and Cost Recovery Mechanisms Final Investigatory Order*, Docket No. M-00051923 (Ordered entered December 18, 2006) at 31.

2. The issue of how PGW's universal service costs should be allocated was deferred in PGW's Restructuring Proceeding until PGW's next base rate case. See Restructuring Order at 64 and *Investigation into Financial and Collections Issues Regarding the Philadelphia Gas Works*, Docket Nos. P-00042090, R-00049157, M-00021612, P-00032061, and P-00042117 (Order entered October 27, 2004) at 23-24.

3. In ruling on the USEC issue in the 2007 base rates case, the Commission agreed that cost causation is an appropriate measure for universal service, but rejected the OSBA's proposal on the basis of rate shock. Docket No. R-00061931.

4. The 2010 base rates case was resolved by settlement. As part of the settlement in the 2010 case, the OSBA agreed not to pursue the argument any further in that proceeding without prejudice.

5. In *Pennsylvania Public Utility Commission v. Equitable Gas Company*, Docket No. R-901595, 73 Pa. PUC 301 (Order entered November 21, 1990); *Pennsylvania Public Utility Commission v. PPL Electric Utilities Corporation*, Docket No. R-00049255 (Order entered December 22, 2004) at 97-98; and *Application of UGI Utilities, Inc., UGI Utilities Newco, Inc., and Southern Union Company for approval of: 1) the transfer by sale of all property used or useful in providing natural gas service to the public to UGI Corporation; 2) the immediate retransfer of all such property, by UGI Corporation, including gas supply and pipeline and*

storage capacity contracts, by UGI Corporation to UGI Newco Utilities, Inc., 3) the initiation by UGI Utilities Newco, Inc. of natural gas service in all territory in this Commonwealth where Southern Union Company does or may provide natural gas service; 4) the abandonment by Southern Union Company of all natural gas service in this Commonwealth; and 5) transfer by UGI Corporation of all stock of UGI Utilities Newco, Inc. to UGI Utilities, Inc., Docket Nos. A-120011F2000, A-125146F5000, A125146 (Order entered August 18, 2006) at 31-32 (hereinafter called "UGI/PGE Merger"), the Commission allocated universal service costs solely to the residential class.

6. In the UGI/PGE Merger case, the Commission recognized that its well-established precedent is to allocate universal service costs to only the residential class. *UGI/PGE Merger* at 32.

7. In *Customer Assistance Programs: Funding Levels and Cost Recovery Mechanisms Final Investigatory Order*, Docket No. M-00051923 (Order entered December 18, 2006), the Commission decided to continue its current policy that CAP costs should be allocated to residential customers only.

PROPOSED CONCLUSIONS OF LAW

1. Commission precedent requires allocating universal service costs solely to the residential class.

2. Allocating universal service costs to non-residential customers would be inconsistent with Sections 2203(6) of the Public Utility Code, 66 Pa. C.S. §§ 2203(6), which requires the Commission to establish cost recovery mechanisms that are “appropriate” and are implemented in a manner that does not “unreasonably discriminate” against one customer class to benefit another.

PROPOSED ORDERING PARAGRAPHS

THEREFORE, IT IS ORDERED:

1. That PGW's non-residential customers be relieved of having to contribute toward PGW's universal service costs.