

COMMONWEALTH OF PENNSYLVANIA



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August 4, 2017

Rosemary Chiavetta, Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg.
400 North Street
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Re: Pa. Public Utility Commission
Office of Consumer Advocate
Office of Small Business Advocate
v.
Philadelphia Gas Works (PGW)
Docket Nos: R-2017-2586783
C-2017-2592092
C-2017-2593497

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Reply Brief in the above-referenced proceeding.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

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cc: Honorable Christopher Pell, ALJ
Honorable Marta Guhl, ALJ
Certificate of Service

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CERTIFICATE OF SERVICE

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| | : | |
| v. | : | Docket No. R-2017-2586783 |
| | : | |
| Philadelphia Gas Works | : | |

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Reply Brief, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code §1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 4th day of August 2017.

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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| Office of Small Business Advocate | : | C-2017-2593497 |
| v. | : | |
| | : | |
| Philadelphia Gas Works | : | |

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I. INTRODUCTION

On July 21, 2017, Main Briefs were filed by Philadelphia Gas Works (PGW or Company), the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA), and the Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (TURN *et al.*). On July 21, 2017, the parties to the case also filed a Joint Petition for Partial Settlement and reserved two issues for litigation related to payment prioritization practices and the allocation of universal service costs. The OCA now files its Reply Brief in response to PGW and OSBA. Many of the arguments raised by PGW and OSBA were addressed in the OCA's Main Brief and will not be repeated here. Nothing contained in PGW's or OSBA's Main Brief changes the OCA's positions regarding PGW's payment prioritization practice or the historic allocation of universal service costs. The OCA incorporates by reference the arguments in its Main Brief and responds as follows to PGW's and OSBA's Main Brief.

II. BURDEN OF PROOF AND LEGAL STANDARD

As discussed in the OCA's Main Brief, PGW bears the burden of proof to establish the justness and reasonableness of every element of its requested rate increase. See, OCA M.B. at 7-

8. As set forth in Section 315(a) of the Public Utility Code:

Reasonableness of rates – In any proceeding upon the motion of the Commission, involving any proposed or existing rate of any public utility, or in any proceedings upon the complaint involving any proposed increase in rates, the burden of proof to show that the rate involved is just and reasonable shall be upon the public utility.

66 Pa. C.S. § 315(a). The Commonwealth Court has stated:

Section 315(a) of the Public Utility Code, 66 Pa. C.S. § 315(a), places the burden of proving the justness and reasonableness of a proposed rate hike squarely on the utility. It is well-established that the evidence adduced by a utility to meet this burden must be substantial.

Lower Frederick Twp. v. Pa. PUC, 48 Pa. Commw. 222, 226-27, 409 A.2d 505, 507 (1980) (citations omitted). See also, Brockway Glass v. Pa. PUC, 63 Pa. Commw. 238, 437 A.2d 1067 (1981).

PGW argues that the party proposing an adjustment to a ratemaking claim bears the burden of presenting evidence or analysis tending to demonstrate the reasonableness of the adjustment. PGW M.B. at 8. The OCA is in agreement with this contention. According to PGW, however, this means that a party that offers a proposal not included in the Company's original filing bears the burden of proof for such a proposal. PGW M.B. at 8.

The OCA submits that the burden of proof does not shift from the utility. In Pa. PUC v. Duquesne Light Company, the Commission stated as follows:

In this proceeding, the burden of proof lies squarely with Duquesne. Duquesne is the public utility seeking permission from the Commission to increase its base rates and to implement and/or alter programs. The burden of proof does not shift to a statutory party or individual party (whether an entity or an individual party (whether an entity or an individual) which challenged the requested rate increase. Instead, the utility's burden, to establish the justness and reasonableness of every component of its rate request, is an affirmative one and remains with the public utility throughout the course of the rate proceeding.

Pa. PUC v. Duquesne Light Company, Docket No. R-2013-2372129, Opinion and Order at 19 (April 23, 2014).

To provide further clarity to the above statement, the Commission stated the following in a footnote to the above statement: "There is no similar burden placed on parties which challenge a proposed rate component." See, Berner v. Pa. PUC, 382 Pa. 622, 631, 116 A.2d 738, 744 (1955)." Id. at 19, note 2.

The Commission was clear in regards to the burden of proof and stated as follows:

[W]hile **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. Pa. P.U.C. v. Duquesne Light Company, Docket No. R-2013-2372129, Opinion and Order (entered April 23, 2014) at 20 *citing Pa. PUC v. PECO*, 1990 Pa. PUC Lexis 155; *Pa. PUC v. Breezewood Telephone Company*, 1991 Pa. PUC Lexis 45 (emphasis added).

The Suspension Order in this current proceeding states as follows:

That this investigation shall include consideration of the lawfulness, justness, and reasonableness of the Philadelphia Gas Works' *existing* rates, rules, and regulations.

Pa. PUC v. Philadelphia Gas Works, Docket No. R-2017-2586783, Suspension Order at ¶

4 (March 16, 2017) (emphasis added).

As to the payment posting issue, the finance charges on late payments are set forth in Section 4.2 of PGW's tariff. Section 4.2 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. It is this existing tariff and its implementation that is at issue here.

The OCA submits that it has presented evidence and analysis in this matter which demonstrates that PGW is not posting payments in a manner consistent with Chapter 56 and has established the reasonableness of the OCA's adjustment to PGW's partial payment posting process. See, OCA St. 4 (Revised) at 35-43; OCA St. 4-S at 17-23, Sch. RDC-1SR. Moreover,

the OCA submits that there is nothing in particular that would change the burden of proof standards in the immediate case. The OCA is not offering a new proposal or rule. Instead, the OCA is requesting an adjustment to an existing rule in PGW's tariff to bring it into compliance with the Commission's regulations. Accordingly, the OCA submits that PGW bears the burden of proof and that the burden remains with PGW to establish the lawfulness, justness and reasonableness of its existing rates, rules, and regulations. PGW has not met that burden here.

As PGW stated in its Main Brief regarding the burden proof on cost allocation for universal service costs, OSBA bears the burden of going forward with evidence on its proposals. PGW M.B. at 10. PGW bears the ultimate burden of proof to show the just and reasonableness of its tariff provisions. PGW M.B. at 10. As the OCA has shown, PGW's allocation of universal service costs is just and reasonable and should be maintained.

III. SUMMARY OF ARGUMENT

The OCA submits that as discussed below and in the OCA's Main Brief, PGW should be required to change its payment posting process to comply with the Commission's regulations and to modify its tariff to reflect the change. See, OCA M.B. at 11-22. The OCA submits that PGW should also maintain its 25-year historic practice of allocating the costs of its universal service program to all firm service customers. See, OCA M.B. at 22-38.

The OCA submits that PGW's payment posting sequencing is contrary to the Commission's regulations and Sections 1301 and 1303 of the Public Utility Code. See, 52 Pa. Code §§ 56.1, 56.22, 56.23, 56.24; 66 Pa. C.S. §§ 1301, 1303. PGW's payment posting results in the accumulation of interest on late payments which exceeds the Commission's requirements set forth in its regulations at Section 56.22. 52 Pa. Code § 56.22. Accordingly, the OCA submits

that the Commission should order PGW to change its payment prioritization process to comply with the Commission mandate set forth in Section 56.22 of the Commission's regulations that late fees represent annual simple interest, rather than posting payments to generate the same effect as compound interest. 52 Pa. Code § 56.22. The OCA also submits that the Commission should require PGW to apply payments against bills in the order and timing in which they occurred.

The historic allocation of universal service costs to all PGW firm service customers should be maintained. In its Main Brief, OSBA recommends that PGW's 25 year practice of allocating universal service costs to all firm service customers be changed in this proceeding. OSBA proposes to change the allocation of universal service costs from all firm service customers to only residential customers. In its Main Brief, the OSBA also discusses its proposed mechanism to reallocate the costs to only residential customers.

While under the jurisdiction of the Public Utility Commission for the last 17 years, and through numerous base rate cases, the Commission has maintained the historic allocation of universal service costs to all firm service customers. The OCA submits that maintaining the historic allocation to all firm service customers is fair and reasonable. Moreover, if OSBA's proposal to allocate the universal service costs to only residential customers were adopted, Mr. Knecht's proposal would shift approximately \$11.6 million on to the residential class in addition to the rate increase that residential customers will experience as a result of this case. The OCA submits that the OSBA's proposal would significantly impact PGW residential customers who do not have the financial ability to absorb the costs of the program alone.

IV. ARGUMENT

A. Partial Payment Allocation Practices

1. Introduction

The OCA submits that PGW's application of its tariff language regarding the sequencing of residential customer payments results in violations of Section 56.1, 56.22, 56.23, and 56.24 of the Commission's regulations and Sections 1301 and 1303 of the Public Utility Code. 52 Pa. Code §§ 56.1, 56.22, 56.23, 56.24; 66 Pa. C.S. §§ 1301, 1303. PGW sequences its payments to apply partial payments against newer non-interest-bearing late charges before applying the payments against older interest-bearing principal contrary to the requirements of the Commission's regulations and the Public Utility Code. OCA St. 4 (Revised) at 37-38. In its Main Brief, PGW attempts to make the issue about how the hierarchy of payments are applied alone, but the hierarchy of payments cannot be viewed in isolation from the impact on the rates paid by consumers. The undisputed effect of PGW's practice is that customers may pay more under PGW's prioritization than under Mr. Colton's proposed payment prioritization. PGW's posting practices result in an interest rate of 19.562%, which exceeds the 18% limit in the Commission's regulations.

In its Main Brief, PGW identifies a series of facts in support of its current payment prioritization practice regarding how the Company applies partial payments. See, PGW M.B. at 18-19, 23-24.¹ What PGW excludes from this list of facts are the most important factors—the impact of its payment prioritization practice on the consumer bills. This order of sequencing of the payments results in annual interest on arrearages that exceeds the maximum amount of interest allowed to be charged to consumers and increases the overall amount the consumer must

¹ As discussed below, the OCA disputes some of the Company's identified "facts." See, PGW M.B. at 18-19, 23-24.

pay. OCA M.B. at 11; OCA St. 4 at 36. As a direct result of the payment posting practices, the customer can end up effectively being charged an annual interest rate of 19.562%. OCA St. 4-S at 19; OCA St. 4 at 38. The interest rate charged will exceed the 18% level set forth in Section 56.22 of the Commission's regulations. OCA St. 4 (Revised) at 38); see also, 66 Pa. C.S. § 522. Moreover, contrary to PGW's arguments in its Main Brief, there is no cost basis for allowing PGW to sequence its payment posting in this manner. In spite of PGW's "policy" arguments identified in its Main Brief, the only difference between one unpaid balance comprised of a higher amount of unpaid principal and another unpaid balance comprised of a higher amount of unpaid late charges, all other things being equal, is that the balance with the higher amount of unpaid principal will generate higher interest revenue for the Company. OCA St. 4 at 40.

In order to address the problem created by PGW's payment sequencing methodology, the OCA recommends that PGW should be required to change its payment prioritization process to comply with the Commission mandate set forth in Section 56.22 of the Commission's regulations that late fees represent annual simple interest rather than posting payments to generate the same effect as compound interest. 52 Pa. Code § 56.22. The OCA also submits that the Commission should require PGW to apply payments against bills in the order and timing in which they occurred.

2. PGW's Partial Payment Allocation Practices Do Not Comply With The Commission's Regulations And Violate The Late Payment Charge Provisions Of The Company's Tariff.

PGW sequences its payments to apply a partial payment first to the security deposit, then to any outstanding late payment charges, and finally to the remaining balance on the oldest

balance due. PGW M.B. at 16; PGW St. 10-R at 7.² The OCA submits that the order of the application of a partial payment will impact the overall amount that the customer is charged. See, OCA M.B. at 11-12; PGW M.B. at 17-18. PGW argues that the Commission's regulations are silent on the hierarchy, and that the OCA cites no provisions in the Commission's regulations that prohibit the application of partial payments in the manner that the Company applies them. PGW M.B. at 17, 20-23. The OCA does not agree. The OCA has identified that the hierarchy of partial payments, as PGW applies them, results in violations of Sections 56.22, 56.23, and 56.24 of the Commission's regulations and Sections 1301 and 1303 of the Public Utility Code. 52 Pa. Code §§ 56.22, 56.23, 56.24; 66 Pa.C.S. §§ 1301, 1303.

As the OCA discussed in its Main Brief, the problem with PGW's sequencing of partial payments to the customer bill is twofold. First, PGW sequences residential payments to apply partial payments against newer non-interest-bearing late charges before applying the payments against older interest-bearing principal contrary to the requirements of the Commission's regulations and the Public Utility Code. OCA M.B. at 11-12; OCA St. 4 at 35. Second, PGW does not apply the payments to the older balances first, so therefore, the amount of interest charged to the customer is increased. OCA M.B. at 12; OCA St. 4 at 37-38; see, revised schedule, OCA St. 4-S at Sch. RDC-1SR.

PGW claims that the Company follows Section 56.24 "to the letter." PGW M.B. at 21 (emphasis in original). The OCA submits that PGW cannot be following Section 56.24 to the letter when the effect of the Company's application of its partial payments causes the total amount of interest charged to the customer to exceed the requirements of Section 56.22 of the

² PGW is correct that the OCA does not dispute the application of the customer's partial payment to an outstanding security deposit first. The issue presented by applying the partial payment next to the late fees is that the interest paid over the course of a year will exceed the maximum allowed under the Commission's regulations.

Commission's regulations. Instead, the OCA submits it is Mr. Colton's proposed sequencing of payments that is consistent with the requirements in the Commission's regulations.

The applicable regulations and the Company's tariff must apply together as a comprehensive whole. Section 56.24 must also be applied consistent with Sections 56.22 of the Commission's regulations. Section 56.24 of the Commission's regulations states:

In the absence of written instructions, a disputed bill or payment agreement, payments received by a public utility which are insufficient to pay a balance due both for prior service and for service billed during the current billing period shall first be applied to the balance due for prior service.

52 Pa. Code § 56.24.

Section 56.22 and the Company's tariff provide for the maximum monthly and annualized interest rates that may be charged on late payments. Section 56.22 of the Commission's regulations states:

(a) Every public utility subject to this chapter is prohibited from levying or assessing a late charge or penalty on any overdue public utility bill, as defined in § 56.21 (relating to payment), in an amount which exceeds 1.5% interest per month on the overdue balance of the bill. These charges are to be calculated on the overdue portions of the bill only. The interest rate, when annualized, may not exceed 18% simple interest per annum.

52 Pa. Code § 56.22. Similarly, 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.

The OCA's concern is that, when annualized, PGW's application of partial payments results in interest rates on late payment charges that exceed the maximum levels set forth in Section 56.22 of the Commission's regulations and Section 4.2 of the Company's tariff. PGW argues that OCA witness Colton's testimony does not support the premise that PGW's partial payment allocation practice generates the same effect as charging compound interest. PGW M.B. at 24-26. It is important to note that Mr. Cummings never challenged OCA witness Colton's calculation of 19.562%. His only argument is that the Company does not compound the interest. That is correct, and OCA witness Colton has not argued that the Company compounds the interest. See, OCA St. 4-S at 19. What OCA witness Colton states is that "PGW's payment posting practices 'generate the same effect as compounded interest.'" OCA St. 4-S at 19 (emphasis in original).

PGW claims that several identified facts support its argument that its partial payment allocation practices do not violate the late payment charge provisions of Section 4.2 of the Company's tariff or the Commission's regulations. PGW M.B. at 23.³ First, PGW argues that PGW's tariff at Section 4.2 permits the Company to assess a 1.5% late payment charge on a customer's unpaid balance. PGW M.B. at 23. PGW also asserts that PGW's late payment charge results in 18% simple interest per annum on a customer's unpaid balance for gas service. PGW M.B. at 23. The OCA submits that the crucial fact is that the calculation has the effect of

³ The Commission has addressed the reasonableness of PGW's payment posting process regarding commercial customers. In the SBG Order, the Commission adopted the Initial Decision in a commercial customer complaint proceeding. The Initial Decision in the SBG case held that "PGW's application of partial payments out of order so that the most recent late payment charges are paid before the gas charges due for prior service constitutes a failure to provide adequate and reasonable service in accordance with 66 Pa. C.S.A. § 1501, as well as a violation of 52. Pa. Code [§] 56.22." SBG Management Services, Inc./Colonial Garden Realty Co., LP v. Philadelphia Gas Works, Docket Nos. C-2012-2304183, C-2012-2304324, Order at 3 (December 8, 2016) (SBG Order). The OCA notes that PGW argues that the Order for Reconsideration in the SBG Management case is not final because a Petition for Reconsideration has been filed by PGW. PGW M.B. at 22. The OCA submits that while the Company is correct that a Petition for Reconsideration is pending before the Commission, the Commission has previously issued an Order in that matter. No stay has been placed on that Commission Order. The only effect of the Company's Petition for Reconsideration is to stay an appeal process and does not change the Commission's underlying determination that the payment posting process is unlawful.

compounded interest. Compounded interest and PGW's method create the same result. OCA witness Colton's testimony does in fact demonstrate that the result of PGW's methodology is that customers may be overcharged beyond the limits provided under Section 56.22 of the Commission's regulations. OCA witness Colton testified:

Q. WHAT IS THE DIFFERENCE IN ANNUAL INTEREST BETWEEN A 1.5% RATE SIMPLE INTEREST AND A 1.5% RATE COMPOUNDED?

A. PGW charges a 1.5% monthly late payment charge. If charged on a non-compounded basis, it results in an annual percentage rate interest of 18%. If charged on a compounded basis, it results in an annual percentage rate interest of 19.562%.

OCA St. 4 at 38 (Revised). OCA witness Colton clarified the difference between PGW's practice and compounded interest in his Surrebuttal Testimony. He testified:

Contrary to what Mr. Cummings asserts (PGW St. 10-R, pages 12-13), I have not ever asserted that PGW charges compound interest. Instead, what I state is that PGW's payment posting practices "generate the same effect as compounded interest." (OCA St. 4, pages 4, 43). This difference is significant. The PGW payment posting process generates the same effect as charging an interest rate of 19.562%. (OCA St. 4, page 38).

By regulation, PGW is prohibited from charging compound interest, being instead limited to charging simple interest. (52 Pa. Code § 56.22). Moreover, in statutory language, Pennsylvania has declared that: "no public utility shall, directly or indirectly, by any device whatsoever, or in anywise, demand or receive from any person, corporation, or municipal corporation a greater or less rate for any service rendered or to be rendered by such public utility than that specified in the tariffs of such public utility applicable thereto. (66 Pa. C.S. § 1303). (emphasis added). The question presented is whether, when the PUC prohibits the charging of compound interest, PGW's payment posting practices generate the same result "indirectly, by any device whatsoever."

OCA St. 4-S at 19.

The OCA submits that the issue is the *effect* of the application of the partial payments. The effect of PGW's partial payment allocation is to increase the customer's interest payments above what is allowed under the Commission's regulations. The OCA submits that PGW's tariff

and Section 56.22 cap the interest rate to be charged to customers at 1.5% per month, and when annualized, may not exceed 18% simple interest per annum. 52 Pa. Code § 56.22. As demonstrated by Mr. Colton's testimony, PGW's application of partial payments results in late payment charges that may exceed the maximum 18% set forth in the Commission's regulations and the Company's tariff. See, OCA St. 4 (Revised) at 35-43; OCA St. 4-S at Schedule RDC-1 (SR). PGW witness Cummings acknowledged this fact and testified that "I do not disagree that a customer may ultimately pay more for services when late payment charges are zeroed out before partial payments are posted to 'principal.'" PGW St. 10-R at 15. OCA witness Colton recommends that instead "Charges appearing on a customer's bill in January, for example, will be retired before charges appearing on a customer's bill in April (and so on) irrespective of whether they are charges for current service or late payment charges." OCA St. 4-S at 22.

Under Section 1303 of the Public Utility Code, PGW cannot either indirectly or directly charge more than the maximum identified in its tariff. 66 Pa. C.S. § 1303. PGW argues that OCA witness Colton provides no support for the claim that Section 1303 applies to the consequences of a customer's actions and the actions of the utility, but instead, "it is the customer's actions that effectively result in a different interest rate." PGW M.B. at 27, citing 66 Pa. C.S. § 1303. The OCA submits that it is PGW's practice that is directly generating the result. If the Company were to apply partial payments in the manner identified in OCA witness Colton's testimony, the OCA submits that the interest that the customer pays would never, when annualized, exceed 18% simple interest per annum.

Ultimately, the OCA submits that the partial payment practices result in rates that are not just and reasonable. PGW disagrees that the partial payment allocation practices violate the just

and reasonable requirement of the Public Utility Code. PGW M.B. at 28-31.⁴ The OCA submits that PGW has presented no substantive cost basis for PGW's methodology for posting payments in the manner that it does. OCA witness Colton testified:

[T]here is no cost basis for allowing PGW to sequence payment posting to apply payments against more recent non-interest-bearing late charges before applying them against older interest-bearing principal.

- The time it takes to engage in collection efforts does not differ based upon the composition of an unpaid balance as between unpaid principal and unpaid late charges.
- The type of collection effort invoked does not differ based on the composition of an unpaid balance between unpaid principal and unpaid late charges.
- Different staff persons are not used for collections based upon the composition of an unpaid balance (between late charges and principal).
- The cost of money does not differ based upon the composition of an unpaid balance (between late charges and principal).

In short, from a cost and revenue perspective, the only difference between one unpaid balance comprised of a higher amount of unpaid principal and another unpaid balance comprised of a higher amount of unpaid late charges, all other things being equal, is that the balance with the higher amount of unpaid principal will generate higher late fee revenue for the Company. In short, no cost basis exists to justify sequencing the customers' payments so as to apply the customers' payments to utility bills out-of-time. The lack of a cost basis is one more element demonstrating that the PGW practice of sequencing payments fails the just and reasonable test.

OCA St. 4 at 39-40 (Revised).

⁴ In support of its position, PGW argues that in a contract where interest is allowed on unpaid principal amounts, it is the "common business practice" for partial payments to be first applied against any "accrued interest," which PGW equates to "late charges." PGW M.B. at 31, fn. 62. The cases cited by PGW are not relevant to this proceeding. None of the cited cases relate to regulated entities or involve the Public Utility Commission's regulations or the Public Utility Code. PGW M.B. at fn. 62, citing Katzeff v. Fazio, 628 A.2d 425 (Pa. Super. Ct. 1993); Cusati v. Dellisanti, 31 A.2d 604 (Pa. Super. 1943); Buck v. Mutual Building & Loan Association of Altoona, 49 Pa. Super. 128 (1912) (regarding interest assessed on a partial payment towards the purchase of land). PGW also cites a case relating to the application of interest to be assessed on a personal injury judgment. PGW M.B. at 31, fn. 62, citing Woods v. Dep't of Transportation, 641 A.2d 633 (Pa. Commw. 1994). The OCA submits that these cases have no bearing on this matter. The issue raised here is whether the Company's application of partial payments violates the Commission's regulations regarding interest payments, and not whether an unregulated business would be required to assess the partial payments in the same manner.

PGW states that Mr. Colton does not quantify the impact of the Company's prioritization process and argues that the effect on the individual customer is "relatively minimal." PGW M.B. at 29-30. The OCA submits that charging a customer any amount more than what is permitted under the Commission's regulations should not be permitted; however, the OCA submits that the evidence presented by OCA witness Colton demonstrates that the impact is not insignificant. Moreover, due to their financial situation, low-income customers are likely to be disproportionately impacted by PGW's payment sequencing methodology. Mr. Colton testified:

In 2015, the last year for which BCS has reported data (published in 2016). PGW had 80,205 residential customers in debt, owing an average monthly arrears of \$48.3 million. Of these total residential customers in debt, 13,169 were Confirmed Low-Income customers, owing an average of \$14.96 million each month. Clearly, to the extent that PGW is resequencing customer payments to post those payments against unpaid bills out-of-time with the date on which those bills were accrued, the financial impact on residential customers generally, and on Confirmed Low-Income customers specifically, would be substantial.

OCA St. 4 at 42-43.

PGW identifies several policy objectives achieved through its payment prioritization practice. PGW M.B. at 28-33. In particular, PGW claims that its approach is consistent with the policy objectives identified in Chapter 14. PGW M.B. at 29. PGW cites to Chapter 14's declaration of policy that states "it is appropriate to provide additional collection tools to city natural gas distribution operations to recognize the financial circumstances of the operations and protect their ability to provide natural gas for the benefit of the residents of the city." 66 Pa. C.S. § 1402(4). The OCA submits that PGW has been provided additional collection tools under Chapter 14 such as a different standard for winter termination procedures, a different standard for reconnection of service, requirements for the reporting of delinquent customers, and use of municipal liens. See, 66 Pa. C.S. §§ 1405(e)(2), 1407(c)(2)(iii), 1412, 1414. What Chapter 14

does not do is create a different level of interest that PGW can charge contrary to Section 56.22. Chapter 14 also does not provide for different payment prioritization for PGW.

PGW argues that OCA witness Colton's proposed payment allocation would somehow remove an important collection tool for the Company and allow a customer to avoid late payment charges. PGW M.B. at 33. The OCA submits that PGW's payment prioritization practices are actually inconsistent with Chapter 14 and PGW's responsibility to effectively manage customer accounts to prevent the accumulation of large balances. OCA witness Colton testified:

The following argument of Mr. Cummings can be seen to be a red herring, when he states "if PGW would be required to first allocate partial payments to basic charges before any payments could be posted to outstanding late payment charges, this practice would permit delinquent account customers to systematically avoid paying late payment charges..." (PGW St. 10-R, page 19).

Mr. Cummings, in other words suggests that I recommend that PGW post customer payments so as to retire all interest-bearing balances before retiring any late payment charges irrespective of the dates the charges were imposed.

There are, in other words, Mr. Cummings offers two diametrically opposed options. On the one hand, the Company's current practice is to retire all non-interest bearing late payment charge balances before applying payments to any interest-bearing balances, irrespective of the date on which the balances were incurred. On the other hand, Mr. Cummings suggests that I recommend the opposite: i.e., that the Company retire all interest-bearing balances before applying payments to any non-interest bearing balances.

In fact, I recommended neither of these two alternatives. My recommendation, instead, was "that the PUC...require PGW to apply payments against bills in the order and timing in which they were incurred." Charges appearing on a customer's bill in January, for example, will be retired before charges appearing on a customer's bill in April (and so on) irrespective of whether they are charges for current service or late payment charges.

OCA St. 4-S at 21-22.

Contrary to PGW's policy arguments in support of the benefits of its payment prioritization practices, the OCA submits that the Commission has consistently tried to minimize

late payment charges for customers. Section 56.1 provides that “[p]ublic utilities shall utilize the procedures in this chapter to effectively manage customer accounts to prevent the accumulation of large, unmanageable arrearages.” (emphasis added). 52 Pa. Code § 56.1. OCA witness Colton testified:

When given alternative choices on how to treat customer payments, the PUC has consistently chosen the alternative that would minimize the need to impose late charges. The PUC’s regulations, for example, provide that:

- For remittances by mail, “payment shall be deemed to have been made on the date of the postmark.” The PUC, in other words, does not allow PGW to maximize fees by assigning the payment date to the date a payment was received (let alone to the date when a customer payment was both received and processed).
- In the absence of payment by mail, “the effective date of payment to a branch office or authorized payment agent . . . is the date of actual receipt of payment at that location.” Again, the regulations are designed to apply money against an account in as expeditious manner as possible to meet the objective, quoted above, of “prevent[ing] the accumulation of large, unmanageable arrearages.” The regulations do not allow a holding period by the branch office (or payment agent) before payments are applied against a customer’s balance. Nor does the PUC allow for a delay between when payments are “actually received” and when those payments are applied against customer accounts.

These principles are applied across-the-board. If a utility payment is made by check, the payments must be credited on the day the check is delivered, not when it is cashed. If a check is delivered “after hours” to the utility, the payment is as of the date of delivery. Checks received on one day may not be dated on the following day for purposes of administrative convenience.

OCA St. 4 (Revised) at 40-42, citing 52 Pa. Code § 56.1, 56.21(2)(i), 56.21(3). OCA witness Colton testified:

It would be inconsistent, at best, for the PUC to address the day of payment receipt by PGW, and then to allow PGW to apply that payment out-of-time by months. It would be inconsistent to require PGW to post a mailed payment upon mailing rather than a few days later upon receipt, and then to allow PGW to apply that payment to bills out-of-time by months. It would be just as inconsistent to require PGW to deem a payment received upon receipt by a third-party payment agent, but then to allow PGW to maximize late fees by applying that payment to more recent non-interest bearing late fees before posting those payments against

older interest-bearing principal. It would be inconsistent for the PUC to require that a payment be deemed received “today” rather than “tomorrow” when received late in the day, but then to allow PGW to post that payment to pay bills months out-of-time.

OCA St. 4 (Revised) at 42.

Finally, PGW opposes the proposed change to its payment prioritization practices because it will cost time and money to make the changes. PGW M.B. at 30-33. The OCA submits that the Company cannot be permitted to continue a practice that violates the Commission’s regulations and the Public Utility Code simply because it will cost the Company time and money to come into compliance with the law. PGW argues that there are substantial costs to making changes to its billing system. PGW M.B. at 29-30; 33. PGW witness Cummings testified that the Commission should not hold PGW’s payment posting practices to be unlawful because the payment posting practices “have been in place for many years and are embedded in PGW’s billing system...The timeframe and costs involved – which will be passed along to customers --- are significant.” PGW St. 10-R at 20. OCA witness Colton responded:

This assertion has two problems associated with it. First, to the extent that Mr. Cummings suggests that PGW should be allowed to continue an unlawful posting of customer payments out-of-sequence to the time those bills were incurred because it might, in the opinion of the Company, cost too much to change the Company’s processes and procedures, I disagree. The cost of changing an unlawful process and/or procedure does not justify continuing that unlawful process and/or procedure. Second, Mr. Cummings errs when he suggests that the costs associated with changing an unlawful practice “will be passed along to customers.” Just as fines for unlawful practices are not chargeable to ratepayers, the costs associated with changing the Company’s payment posting practices (to the extent the PUC finds that payment posting practice to be unlawful) should not be chargeable to ratepayers either.

OCA St. 4-S at 22-23.

The OCA submits that PGW’s payment posting practices are wholly inconsistent with the Commission’s regulations and the Public Utility Code. See, 52 Pa. Code § 56.1, 56.22, 56.23,

56.24; 66 Pa. C.S. §§ 1301, 1303. PGW should be required to change its payment posting methodology and provide customers with effective notice of that payment posting methodology in the Company's tariff. The OCA recommends that the Commission eliminate PGW's practice of posting payments out of sequence in a manner that maximizes the interest on late payment charges. PGW should be required to apply payments against bills in the order and timing in which they occurred.

3. The Company's Base Rate Proceeding Is The Appropriate Forum To Address The Company's Payment Prioritization Process.

In its Main Brief, PGW argues that the Company's base rate proceeding is not the appropriate forum to address the Company's payment prioritization process. PGW M.B. at 33. The Company argues that its partial payment allocation method is not set forth in its tariff, and therefore, partial payment allocation should not be addressed in the base rate proceeding. PGW M.B. at 33. The Company states that the OCA "has relied on the flawed theory" that the partial payment allocation practices have the effect of imposing compound interest in violation of the Company's Section 4.2 tariff provision and the Section 56.22 of the Commission's regulations. PGW M.B. at 34-35.

The issues raised by PGW in its Main Brief are the exact issues that have already been decided in this proceeding by Deputy Chief ALJ Pell and ALJ Guhl in their Prehearing Order Number 5. PGW M.B. at 33-35.⁵ On May 22, 2017, PGW filed a Motion in Limine to strike the testimony of OCA witness Colton regarding payment prioritization and made the exact same arguments.⁶ In Prehearing Order Number 5, the ALJs' held:

⁵ The OCA notes that PGW does not reference the ALJs' Prehearing Order Number 5 in its Main Brief, either in the Procedural History at pages 2 to 5 or in its discussion at pages 33 to 35.

⁶ The OCA notes that the Company has neither appealed the Order nor has the Company requested interlocutory review of the Motion in Limine Order, and therefore, the determination should be considered final.

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 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.

Pa. PUC v. Philadelphia Gas Works, Docket Nos. R-2017-2586783, C-2017-2592092, C-2017-2593497, Prehearing Order #5 (May 26, 2017) (footnote omitted).

As the OCA stated in its Answer to the Company's Motion in Limine, the issues presented by OCA witness Colton are directly related to this proceeding. In his Direct Testimony, Mr. Colton recommends that PGW should: (1) modify its tariff and practices to comply with the PUC mandate that late fees represent annual simple interest rather than posting payments to generate the same effect as compounded interest and (2) that the PUC bar PGW's unreasonable out-of-sequence payment posting to maximize late payment charges and to require PGW to apply payments against bills in the order and timing in which they were incurred. OCA St. 4 at 4-5. The OCA submits that the testimony presented by OCA witness Colton is directly related to PGW's existing tariff, Section 4.2, and as such is relevant to this base rate proceeding.

The OCA also identified a review of the Company's existing tariff provisions as part of its Formal Complaint in this proceeding. In its *Suspension Order* in this proceeding, the Commission states that an investigation "shall include consideration of the lawfulness, justness, and reasonableness of the Philadelphia Gas Works' existing rates, rules, and regulations." Pa. PUC v. PGW, Docket No. R-2017-2586783, *Suspension Order* at 3 (March 16, 2017).

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. As Mr. Colton has identified, the Company's existing tariff and its implementation is inconsistent with the Commission's regulations at Section 56.22. 52 Pa. Code § 56.22. Moreover, the OCA submits that the Commission should not approve a tariff provision for which evidence has been presented to show the Company's application of the tariff provision is not in compliance with the Commission's regulations.

PGW also proposes that the issue should be deferred to a rulemaking because Section 56.24 regarding application of partial payments is silent, and therefore, a rulemaking is necessary to determine the issue. PGW M.B. at 35-38. The OCA submits that a rulemaking is not necessary because the existing regulations are clear. As discussed above, under Section 56.24, the Company must first apply a partial payment to the amount due for prior services. The Company, instead, applies the partial payments first to the late payment charges, which results in a violation of Section 56.24 of the Commission's regulations, as the evidence presented in this case demonstrates that PGW's methodology does not first apply to the amount due for prior service. In addition, Section 56.24 must be applied consistent with the requirements of Section 56.22, which PGW's methodology does not achieve.

The OCA is not proposing that the Commission's regulations should be changed, rather that PGW come into compliance with the regulations and the Public Utility Code. The OCA recommends that the Company adhere to Sections 56.1, 56.22, 56.23, and 56.24 of the Commission's regulations and Sections 1301 and 1303 of the Public Utility Code. 52 Pa. Code §§ 56.1, 56.22, 56.23, 56.24; 66 Pa. C.S. §§ 1301, 1303. The Company's Main Brief focuses on

the language of Section 56.24 of the Commission's regulations, but the payment prioritization must be read in conjunction with the impact of the interest charged for late payments.

4. Conclusion

The OCA submits that PGW's payment sequencing has the effect of compounding the interest on late payments, increases the costs to residential ratepayers in arrears, and results in a violation of the Commission regulations and the Public Utility Code. See, 52 Pa. Code §§ 56.1, 56.22, 56.23, 56.24; 66 Pa. C.S. §§ 1301, 1303. The OCA recommends that the Company should be required to change its method of posting payments to apply payments against bills in the order and timing in which they occurred. PGW should also be required to revise its tariff to explain its payment posting prioritization policies.

B. Allocation of Universal Service Cost Recovery

1. Introduction

Historically, PGW has allocated its universal service costs to all firm service customers and collects these costs through the Universal Service and Energy Conservation Charge (USEC). As discussed in PGW's Main Brief, the Company has proposed to continue the historic allocation of the USEC to all firm service customers. PGW M.B. at 38-39; see also, PGW St. 6-R at 2-5. In this case, OSBA witness Knecht again proposes that PGW should change the way in which the Company has historically allocated its universal service costs and recover those costs solely from residential customers. OSBA St. 1 at 32-36; OSBA M.B. at 11-17. PGW, OCA, and TURN *et al.* oppose OSBA's proposal to change the historic allocation of universal service costs in this proceeding. PGW M.B. at 38-47; OCA M.B. at 22-38; TURN *et al.* M.B. at 7-20.

As discussed in the Main Briefs of PGW, OCA, and TURN *et al.*, the continuation of this allocation is fully in accord with the Commission's decisions over the last 17 years in every

PGW proceeding. PGW M.B. at 38-46; OCA M.B. at 22-38; TURN *et al.* M.B. at 7-20; see also, Pa. PUC v. Philadelphia Gas Works, Docket No. M-00021612, Order at 89-93 (March 31, 2003) (PGW Restructuring Order); Pa. PUC v. Philadelphia Gas Works, Docket No. R-00061931, Order at 137 (September 28, 2007) (PGW 2006 Order).⁷ The OCA submits that OSBA has not presented any compelling evidence to demonstrate that 25 years of historic practice for this City-owned utility should be changed. PGW's proposal to continue to collect its universal service costs from all firm service customers should be approved.

2. OSBA's Proposal To Have Only Residential Customers Pay For Universal Service Costs Should Be Denied.

PGW's universal service costs have historically been allocated to all firm service customers. OCA witness Colton testified:

PGW's universal service costs have been allocated among all customer classes since the CRP program was first created in 1993. Even since the regulation of PGW was transferred to the PUC, the PUC has maintained this cost allocation policy for PGW through an interim base rate proceeding, two emergency rate proceedings, three full base rate cases, and the PGW restructuring proceeding. The last time this cost allocation decision was raised (in PGW's 2010 base rate proceeding), the case was resolved by settlement.

OCA St. 4-R at 7 (footnotes omitted.). As the OCA discussed in its Main Brief, the allocation of universal service costs is well-supported and promotes the public good. See, OCA M.B. at 23-30. Moreover, as the OCA discussed in Main Briefs, small commercial customers do derive a direct benefit through the Low Income Multifamily Energy Efficiency Program (LIME). OCA M.B. at 30-32.

In support of its position, OSBA cites to several Commission Orders. OSBA M.B. at 12-13, citing PGW Restructuring Order at 62; Investigation into Financial and Collections Issues

⁷ The OCA notes that a full settlement of all issues was approved in the Company's 2009 base rate proceeding at Docket No. R-2009-2139884, and the issue of allocation of the universal service costs was not changed.

Regarding the Philadelphia Gas Works, Docket Nos. P-00042090, R-00049157, M-0002161, P-00032061, and P-00042117, Order at 23-24 (October 27, 2004) (Investigation Order). In the Investigation Order, as the OSBA correctly stated, the Commission did not address the issue of cost allocation and left the issue to a base rate proceeding. OSBA M.B. at 12, citing Investigation Order at 23-24. In support of its position, the OSBA quotes the language of the Investigation Order which states:

Cost allocation is 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 the CRP and argue its position regarding the proper cost allocation for Universal Service Programs.

Investigation Order at 23-24; OSBA M.B. at 12. The issue was then addressed in PGW's 2006 base rate proceeding. PGW 2006 Order at 88.

In PGW's 2006 proceeding, OSBA again raised the issue of the historic cost allocation for universal service costs, and the Commission again did not change the historic allocation of PGW's universal service costs to all firm service customers, even though the Commission had the full record to consider in the 2006 base rate proceeding. OCA M.B. at 35, citing, PGW 2006 Order at 88. The Commission decided to maintain the historic cost allocation because of the impact that such a reallocation of costs would have on PGW's residential ratepayers. PGW 2006 Order at 88.

The key fact identified by the Commission's Order in the 2006 base rate proceeding, that one third of PGW's customers are below 150% of the Federal Poverty Level, has not changed. PGW 2006 Order at 85. Of the Company's approximately 500,000 customers, in 2015, PGW had nearly 180,000 estimated low-income customers (*i.e.* below 150% of the Federal Poverty Level) and nearly 162,000 Confirmed Low-Income customers. OCA St. 4 at 9. PGW stated that "Philadelphia is home to perhaps the greatest concentration of Pennsylvania's vulnerable

citizens; almost one in three households qualifies as low-income.” PGW M.B. at 39, citing PGW St. 4 at 19.

In each of the non-PGW case-related Orders relied upon by OSBA, the Commission found that universal service costs should be allocated to residential customers. Importantly, however, in those cases, the Commission was continuing the existing practice of each utility of allocating universal service costs to residential customers. The Commission found that it did not want to change the existing practice, and for PGW, that existing, historic practice has been to allocate the costs to all firm service customers.

In its Main Brief, OSBA also cites to PPL’s 2004 base rate proceeding. OSBA M.B. at 8, fn. 5, 13, citing Pa. PUC v. PPL Electric Utilities Corporation, Docket No. R-00049255, Order at 98 (December 22, 2004). OSBA argues that “the Commission expressly held that universal service programs should be funded only by the residential class.” OSBA M.B. at 13.⁸ Importantly, in the PPL Electric case, the Commission was continuing the existing practice of each utility of allocating universal service costs only to residential customers. The Commission found that it did not want to change the existing practice in the PPL case. It was the existing allocations in the cases relied upon by OSBA that the Commission did not want to change. Here, the existing allocation is to all firm service customers.

As the OCA discussed in its Main Brief, OSBA’s reliance on the CAP Order is similarly misplaced. OSBA M.B. at 11,13; OCA M.B. at 35-36, citing Customer Assistance Programs: Funding Levels and Cost Recovery Mechanisms, Docket No. M-00051923, Order (December

⁸ In its Summary of Argument, OSBA also cites to Valley Energy, Inc., Docket No. R-00049345, Order at 21 (April 21, 2005); Equitable Gas Company, Docket No. P-00052192, Order at 14 (December 15, 2005); and PPL Gas Utilities Corporation, Docket No. R-00061398, Order at 116 (February 8, 2007). OSBA also cites to Popowsky v. Pa. PUC, 960 A.2d 189 (Pa. Commw. 2008). The OCA submits that the same reasoning applies to these cases. The Commission found in each of the cases that it did not want to change the existing practice and relied upon the historic allocation for support.

18, 2006) (CAP Order). OSBA relies upon the CAP Order for the premise that the Commission disagreed with the OCA's interpretation of legislative intent regarding recovery of CAP costs for business customers. OSBA M.B. at 13. OSBA argues 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." OSBA M.B. at 14. In the CAP Order, however, the Commission specifically stated that it would "initiate a policy change." As the OCA stated in its Main Brief, the historic allocation was determined prior to the Commission assuming jurisdiction over PGW. Moreover, there is no showing here of any detrimental impact on economic development or climate for businesses and jobs due to the universal service cost allocation. Indeed, as discussed on pages 23 to 30 of the OCA's Main Brief, the contrary is true. It is the change in policy that would adversely affect economic development and the climate for business and jobs.

The OCA submits that PGW's historic allocation for the past 25 years, 17 of which have been under the Commission's jurisdiction, has included an allocation of the costs to firm service customers. The OCA submits that the Commission has determined in each of its prior litigated proceedings that PGW should maintain its historic allocation. There are a multitude of factors as discussed in the OCA's Main Brief, PGW's Main Brief, and TURN *et al.*'s Main Brief that support PGW's practice. OCA M.B. at 23-36; PGW M.B. at 38-41; TURN *et al.* M.B. at 8-16. The OSBA has not presented any evidence to demonstrate why the Commission should deviate from the historic treatment for the costs of the universal service program.

3. PGW's Residential Ratepayers Are Not Financially Able To Absorb The Costs Of The Entire CRP Program.

The OCA submits that OSBA's argument seriously understates the impact on residential customers. PGW, OCA, and TURN *et al.* support maintaining the historic universal service cost

allocation, in part, due to the financial impact on residential ratepayers if the costs were to be reallocated to only residential customers. As discussed in the OCA's Main Brief, Mr. Knecht's proposal would shift approximately \$11.6 million onto the residential class in addition to the rate increase that residential customers will experience as a result of this case. OCA M.B. at 32-34. The Settlement in this proceeding provides for a \$42 million rate increase, \$33 million of which will be borne by the residential customers. Pa. PUC v. Philadelphia Gas Works, Docket No. R-2017-2586783, Joint Petition for Partial Settlement at 17 (Partial Settlement). The proposed reallocation of the \$11.6 million in universal service costs would mean an overall increase for residential customers of \$44.6 million.

The OCA submits that PGW's residential ratepayers are not able to absorb the additional costs of the CRP program that would result from OSBA's proposal. OCA M.B. at 32-34. In its Main Brief, PGW quantifies the impact of the proposed reallocation on residential ratepayers:

Adopting the OSBA's proposal would add to the overall rate impact for residential customers. PGW St. 6-R at 2-5. The net effect of OSBA's proposal would be to impose 100% of the cost responsibility for universal service programs on residential customers. PGW St. 6-R at 5. PGW's residential customers already contribute a large portion of the USC revenues. PGW St. 6-R at 4. PGW estimated that exempting firm commercial and industrial customers would transfer an additional \$11.6 million in universal service costs to the residential class. PGW St. 6-R at 4. Transferring these costs would increase PGW's proposed overall rate increase for residential customers by 2.3%. PGW St. 6-R at 4. This would result in an overall increase for residential customers of about 8.6% (2.3% plus 6.3%).

PGW M.B. at 44.

Moreover, low-income customers will be disproportionately impacted by the proposed shift of costs to residential customers. Customers are also not protected by their participation in CRP. OCA witness Colton testified:

PGW's participation in CRP has declined by 30% (24,262 customers) from 2010 to 2015. This decline in CRP participation has occurred despite the fact that the

number of confirmed low-income customers on the PGW system has increased by more than 22,000 customers.

OCA St. 4-R at 33. As TURN *et al.* stated in its Main Brief:

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.

TURN *et al.* M.B. at 12.

The OSBA argues that the rate shock could be mitigated by witness Knecht's proposal. OSBA M.B. at 15. OSBA states that "if the Commission adopts 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."⁹ OSBA M.B. at 15, citing OSBA St. 1-SR at 23. OSBA argues that the proposed reallocation of costs could be done in a revenue neutral manner. OSBA M.B. at 15. OSBA proposes to achieve this end that:

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 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.

OSBA M.B. at 15-16.

As PGW discussed in its Main Brief, residential customers will experience a distribution increase of 6.3% in this base rate proceeding. Under OSBA's theory, the percentage increase

⁹ The OSBA asserts, "It is the OSBA's interpretation of the Partial Settlement that this was the understanding of the parties." OSBA M.B. at 15, fn 25. The OCA notes that the Partial Settlement speaks for itself, and the positions of the settling Parties are provided in their respective Statements in Support.

charged to residential customers would remain the same, but the amount of the distribution revenues collected from residential customers would decrease. The OCA submits that this could result in residential customers moving further away from their cost of service. In a future base rate proceeding, the difference would have to be made up by residential customers, so customers would see both the increase that should have been allocated in this proceeding and whatever base rate increase is approved for future rates, resulting in rate shock for customers. Moreover, if universal service costs would increase in the future, as they are likely to do if rates and natural gas prices increase and CAP participation increases, the entire burden would fall on the residential customer class.

The OCA submits that OSBA's a proposal, presented in Surrebuttal and its Main brief, is simply an attempt to temporarily hide the full impact of OSBA's proposal. OSBA's proposal would increase costs charged to residential ratepayers and further burden customers least able to pay.

4. Conclusion

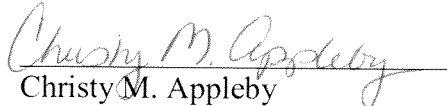
The OCA submits that OSBA witness Knecht's proposal to change PGW's 25 years of historic allocation of universal service costs to firm service customers should be denied. The Commission has declined to change that allocation even though PGW has been under the Commission's jurisdiction for 17 years. The OCA submits that the allocation of the universal service costs is consistent with the allocation of the costs and benefits of the universal service programs for the public good, follows cost-causation principles, and is consistent with sound regulatory policy. Mr. Knecht's proposal would shift approximately \$11.6 million on to the residential customer class. The OCA submits that PGW's residential ratepayers are not able to

absorb these additional costs of the CRP program. The OCA submits that OSBA's proposal to change the revenue allocation set forth in the Settlement should be denied.

V. CONCLUSION

For the reasons set forth above and in its Main Brief, the Office of Consumer Advocate respectfully requests the Commission require PGW to modify its payment posting practices to be consistent with the Commission's regulations and the Public Utility Code as identified above. The OCA respectfully requests that the Commission maintain the historic allocation of universal service costs to all firm service customers and deny the Office of Small Business Advocate's request to modify the allocation of universal service costs.

Respectfully Submitted,



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