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August 4, 2017

VIA ELECTRONIC FILING

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

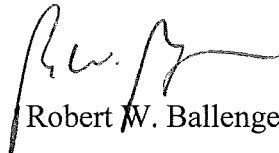
RE: PA Public Utility Commission et al. V. Philadelphia Gas Works, Docket No. **R-2017-2586783**.

Dear Secretary Chiavetta:

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

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

Sincerely,



Robert W. Ballenger, Esq.

RBallenger@CLSPHila.org ▪ Direct Dial: 215.981.3788 ▪ Fax: 267.765.6481

WWW.CLSPHILA.ORG

1424 CHESTNUT STREET PHILADELPHIA, PENNSYLVANIA 19102-2505 P 215.981.3700 F 215.981.0434

CERTIFICATE OF SERVICE

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

Via Email and/or First Class Mail

ALJ Christopher P. Pell
ALJ Marta Guhl
Kathy Niesborella
Pennsylvania Public Utility Commission
Office of Administrative Law Judge
801 Market Street, Suite 4063
Philadelphia, PA 19107
cpell@pa.gov
mguhl@pa.gov
kniesborel@pa.gov

Daniel Clearfield, Esq.
Deanne O'Dell, Esq.
Eckert Seamans Cherin & Mellott, LLC
213 Market St. 8th Floor
Harrisburg, PA 17101
dclearfield@eckertseamans.com
dodell@eckertseamans.com

Brandon J. Pierce, Esq.
Philadelphia Gas Works
800 W. Montgomery Avenue
Philadelphia, PA 19122
Brandon.Pierce@pgworks.com

Christy M. Appleby, Esq.
Darryl Lawrence, Esq.
Kristine Marsilio, Esq.
Harrison Breitman, Esq.
Office of Consumer Advocate
5th Floor, Forum Place Building
555 Walnut Street
Harrisburg, PA 17101-1921
PGW2017TEAMOCA@PAOCA.ORG

Elizabeth R. Marx, Esq.
Patrick Cicero, Esq.
The Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101
pulp@palegalaid.net

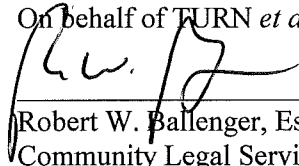
Todd S. Stewart, Esq.
Hawke McKeon & Sisnack LLP
100 North Tenth Street
Harrisburg, PA 17101
tssteward@hmslegal.com

Charis Mincavage, Esq.
Adelou A. Bakare, Esq.
Alessandra L. Hylander, Esq.
McNees, Wallace, and Nurick
100 Pine Street
PO Box 1166
Harrisburg, PA 17108-1166
cmincavage@mcneeslaw.com
abakare@mcnesslaw.com
ahyldnader@mcnesslaw.com

Sharon Webb, Esq.
Office of the Small Business Advocate
300 North Second Street, Suite 202
Harrisburg, PA 17101
swebb@pa.gov

Carrie Wright, Esq.
Erika McLain, Esq.
Bureau of Investigation and Enforcement
Pa Public Utility Commission
Commonwealth Keystone Building
PO Box 3265
400 North Street, 2nd Floor
Harrisburg, PA 17120
carwright@pa.gov
ermclain@pa.gov

On behalf of TURN *et al.*



Robert W. Ballenger, Esq., PA ID #93434
Community Legal Services, Inc.
1424 Chestnut Street
Philadelphia, PA 19102
215-981-3788
rballenger@clsphila.org

Dated: August 4, 2017

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	:	R-2017-2586783
Office of Consumer Advocate	:	C-2017-2592092
Office of Small Business Advocate	:	C-2017-2593497
v.	:	
	:	
Philadelphia Gas Works	:	

JOINT REPLY BRIEF OF TENANT UNION REPRESENTATIVE NETWORK, ACTION
ALLIANCE OF SENIOR CITIZENS OF GREATER PHILADELPHIA, and THE COALITION
FOR AFFORDABLE UTILITY SERVICES AND ENERGY EFFICIENCY IN
PENNSYLVANIA

COMMUNITY LEGAL SERVICES, INC.

***Counsel for Tenants Union Representative
Network and Action Alliance for Senior Citizens
of Greater Philadelphia***

Robert W. Ballenger, Esq., PA ID: 93434
Josie B. H. Pickens, Esq. PA ID: 309422
Jennifer Collins, Esq. PA ID: 312108

1424 Chestnut Street
Philadelphia, PA 19102

Telephone: 215-981-3700
Facsimile: 215-981-0434

THE PENNSYLVANIA UTILITY LAW PROJECT

***Counsel for the Coalition for Affordable
Utility Services and Energy Efficiency in
Pennsylvania***

Patrick M. Cicero, Esq., PA ID: 89039
Elizabeth R. Marx, Esq., PA ID: 309014
Joline Price, Esq., PA ID 315405

118 Locust Street
Harrisburg, PA 17101

Tel.: 717-236-9486
Fax: 717-233-4088

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I. INTRODUCTION AND PROCEDURAL HISTORY

The Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (TURN *et al.*), together with the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) filed their Joint Main Brief (Main Brief) on July 21, 2017. TURN *et al.* and CAUSE-PA incorporate by reference the background and procedural history set forth in their Main Brief. Main Briefs were also filed by the Office of Small Business Advocate (OSBA), the Office of Consumer Advocate (OCA), and the Philadelphia Gas Works (PGW). This Reply Brief responds to the Main Brief of the OSBA concerning its proposal to shift all non-residential firm customers' universal service program cost responsibility to residential customers.

II. BURDEN OF PROOF

TURN *et al.* and CAUSE-PA incorporate by reference the statement concerning burden of proof set forth in their Main Brief.

III. SUMMARY OF REPLY ARGUMENT

As explained in TURN *et al.* and CAUSE-PA's Main Brief, PGW's cost allocation of universal service program responsibility has been in place for at least the last 25 years. The Commission has maintained this allocation after the Commission's acquisition of jurisdiction over PGW and the restructuring of the natural gas utility market in Pennsylvania.¹ OSBA witness Mr. Robert Knecht proposed that this cost allocation be abandoned, in order that non-residential firm customers, including small businesses OSBA represents, may cease to contribute to PGW universal service programs despite the fact that these costs have been recognized as vital public purpose programs by the Natural Gas Choice Act, 66 Pa. C.S. §§ 2201-2212 (the Gas

¹ Main Brief at 5, 8, 10, 11, 18-19.

Choice Act). TURN *et al.* and CAUSE-PA contended that this shift would create rate shock for residential customers,² but OSBA submits that its proposal is “revenue neutral” at least for a short time.³

In fact, however, OSBA has altered its proposal in its main brief, seeking to accomplish its policy goals without presenting an adequate cost of service allocation model and fundamentally disrupting the allocation agreed to by the parties, including OSBA, in the Joint Petition for Partial Settlement, filed on July 21, 2017 (Joint Petition). In so doing, OSBA effectively leaves the Commission with three options: (1) approve the cost allocation in the Joint Petition, but separately approve the shift in universal service costs causing immediate rate shock to residential customers; (2) modify the cost allocation in the Joint Petition, undermining the agreement of the parties and generating potential rate shock in the near future along with the attendant risk that one or more parties may abandon the settlement; or (3) reject the OSBA’s proposal in its entirety. TURN *et al.* and CAUSE-PA assert the Commission should adopt the third approach, rejecting OSBA’s proposal.

Ultimately, OSBA has presented no new evidence and no new theory supporting its rehashed proposal to exempt non-residential firm customers from “nonbypassable” universal service costs. Such an exemption is not supported by the Gas Choice Act, and the Commission’s prior decisions interpreting it, and the OSBA fails to satisfy its burden to provide an adequate basis for departure from the consistently approved funding approach for PGW universal services

² Main Brief at 8-12.

³ OSBA M.B. at 15.

programs,⁴ including the explicit approval of this model in PGW's restructuring proceeding⁵ and rejection of OSBA's identical proposal in PGW's 2007 rate case.⁶

IV. ARGUMENT

A. Partial Payment Allocation Practices

TURN *et al.* and CAUSE-PA did not submit testimony or other evidence on the issues regarding partial payment allocation practices in this proceeding and take no position on these issues in this Reply Brief.

B. Allocation of Universal Service Cost Recovery

In its Main Brief, OSBA proposes changing the current allocation of PGW's universal service costs that are paid for by all firm customers, an allocation that has existed since 1993, in order to shift all such costs to the residential rate class. On the record before the Commission are effectively two different OSBA proposals. OSBA's original proposal, set forth in the testimony of Mr. Robert Knecht, was to shift universal service funding responsibility within the revenue requirements of PGW's original rate increase request. That proposal was addressed in TURN *et al.* and CAUSE-PA's Main Brief, and is impossible to implement given the terms of the Joint Petition and reduced revenue requirements submitted for PUC approval by all parties. Indeed, as explained in TURN *et al.* and CAUSE-PA's Main Brief, implementing OSBA's original

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

⁵ Pa. PUC v. Philadelphia Gas Works, Docket No. M-00021612 (Order Entered April 17, 2003).

⁶ Public Utility Commission v. PGW, Opinion & Order Docket R-00061931 at 85-88.

proposal could only now be accomplished by further increases to residential customer rates, beyond what was agreed to in the Joint Petition.⁷

OSBA's revised proposal, described in its Main Brief, attempts to shift from the one that Mr. Knecht presented in testimony by submitting that the Commission effectively restructure the terms of the Joint Petition, allocating universal service costs away from non-residential customers, but providing few details as to how such shift would occur.⁸ This proposal is inappropriate for several reasons. Irrespective of whether this revised proposal could be deemed to introduce new evidence,⁹ it is inappropriately proposed in OSBA's brief because the parties have not had an opportunity to previously consider and appropriately rebut it.¹⁰ OSBA's revised proposal fails to give other parties an opportunity to investigate the altered proposal, provide expert examination and testimony on the proposal, and to understand the potential long-term implications of the change OSBA desires. For this reason alone, OSBA's new arguments should be rejected. Second, the new arguments raised by the OSBA would burden the Commission with the task of determining *how* to effectuate OSBA's tenuous policy position as the record does not

⁷ Main Brief at 9

⁸ OSBA M.B. at 15-16.

⁹ Briefing Order, Pa. PUC et al. v. Philadelphia Gas Works, Docket No. R-2017-2586783 at 7, ¶ 10 (June 30, 2017) (“[T]he parties are advised not to include any extra-record evidence in their briefs.”).

¹⁰ 52 Pa. Code § 5.431(b) (“After the record is closed, additional matter may not be relied upon or accepted into the record unless allowed for good cause shown by the presiding officer or the Commission upon motion.”). Moreover, the Commission, as an administrative body, is bound by the due process provisions of constitutional law and by the principles of common fairness. *See Bridgewater Borough v. Pa. PUC*, 123 A.2d 266, 124 A.2d 165 (Pa. Super. 1956); *McCormick v. Pa. PUC*, 30 A.2d 327 (Pa. Super. 1943). Among the requirements of due process are notice and an opportunity to be heard on the issues, to be apprised of the evidence submitted, to cross-examine witnesses, to inspect documents, and to offer evidence in explanation or rebuttal. *Davidson v. Unemployment Compensation Bd. of Review*, 151 A.2d 870 (Pa. Super. 1959); *In re Shenandoah Suburban Bus Lines, Inc.*, 46 A.2d 26 (Pa. Super. 1946).

provide adequate support for the Commission to reach the conclusions necessary to implement OSBA's revised proposal.

OSBA fails to provide adequate support for its significant shift in PGW universal service cost responsibility, which would upend more than a decade of Commission decisions and cannot be justified under the provisions of the Gas Choice Act. In support of its proposal, OSBA misconstrues or misapplies prior PUC decisions and fails to rebut the extensive evidence supporting the current allocation based on the unique position of PGW as a city owned Natural Gas Distribution Company with the highest concentration of low-income customers in the state.¹¹ In any event, OSBA presents no new reasons and no new theory to support why a change in PGW universal service cost allocation should be made. All of the reasons that have previously supported the continuing allocation of these costs to all firm customer classes continue to apply.

1. OSBA's Original Proposal to shift universal service costs to residential customers should be rejected.

As explained in TURN et al. and CAUSE-PA's Main Brief, OSBA's proposed reallocation of all universal service program to residential customers would result in rate shock, particularly concerning to the large number of PGW customers who do not participate in CRP, and was inconsistent with PGW's status as a city-owned natural gas utility having the highest concentration of low income customers.¹² Although OSBA seeks, in its Main Brief, to revise its original proposal, the Commission should remain concerned that the shift in these costs would

¹¹ Main Brief at 13-16. Because OSBA does not address any of this evidence, TURN *et al.* and CAUSE-PA continue to rely upon Section IV.B.3 of their Main Brief, arguing that extensive factual evidence exists in support of maintaining the current allocation of universal service cost responsibility for PGW. For the sake of brevity, TURN *et al.* and CAUSE-PA incorporate that argument, by reference, herein.

¹² Main Brief at 8-17.

account for an \$11.6 million rate increase for residential customers.¹³ In order to effectuate OSBA's original proposal, given that it was based on PGW's original rate increase request, the Commission would effectively have to increase the revenue allocation set forth in the Joint Petition, resulting in a total increase of approximately \$44.6 million to residential customers, an amount significantly in excess of the amount of new revenues *from all customers* agreed to in the proposed settlement.¹⁴ Indeed, this shift would result in allocating additional charges amounting to 106% of the total new revenues solely to residential customers. Recognizing this impact, OSBA effectively abandons its original proposal in its main brief.¹⁵ The Commission should likewise determine that OSBA's original proposal is untenable.

2. OSBA's New Proposed Reallocation of universal service costs to only residential customers is not adequately supported, and can only be implemented by undermining the Joint Petition.

In its Main Brief OSBA acknowledges that its witness, Mr. Knecht's, original and purportedly "revenue neutral" proposal was based on PGW's original rate proposal.¹⁶ OSBA's Main Brief fundamentally alters this proposal, however, by attempting to update Mr. Knecht's original scheme to fit into the allocation agreed to by all parties, including OSBA, in the Joint Petition.¹⁷ OSBA states that 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

¹³ Main Brief at 8-9.

¹⁴ Main Brief at 9.

¹⁵ OSBA M.B. at 15.

¹⁶ OSBA M.B. at 15-16.

¹⁷ OSBA M.B. at 15.

distribution charges.”¹⁸ It is unclear how the Commission would effectuate OSBA’s new proposal in a way that is fair to all the participants in this proceeding. As set forth in the Joint Petition, all parties, including OSBA, agreed to the revenue allocation set forth in Paragraph 17 of the Joint Petition. OSBA now proposes that the Commission fundamentally alter that revenue allocation by shifting universal services costs without a concrete proposal for how that could be accomplished.

On its face, OSBA’s proposal lacks sufficient detail to allow the parties to study this change, consult experts, and present expert testimony regarding its current, and long term, implications. OSBA offers sketchy (at best) details, stating that notwithstanding the Joint Petition, *the Commission* would be left to determine the appropriate increase to ensure that the universal service charge reached the value necessary to recover the full amount of all universal service costs.¹⁹ Thus, for the Commission to approve the Joint Petition, and also adopt OSBA’s revised proposal, the Commission would have to conduct a “switcharoo” of sorts, trading universal service revenues for distribution revenues, and allocating them in some as-yet-undetermined fashion that would not, solely in the short-term, disrupt the allocation agreed to in the Joint Petition. Effectively, OSBA asks the Commission to undermine the certainty regarding cost allocation set forth in the Joint Petition, for results which OSBA cannot clearly identify or articulate. This proposal is not what the parties bargained for in agreeing upon a revenue allocation in the Joint Petition. The Commission should flatly reject OSBA’s revised proposal as uncertain, unsupported, and inconsistent with the Joint Petition.

¹⁸ OSBA M.B. at 15.

¹⁹ OSBA M.B. at 16.

3. OSBA’s revised proposed reallocation of universal service continues to present risks of rate shock, which concerns are heightened among the majority of low-income PGW customers who are not eligible for or do not participate in CRP.

As TURN *et al.* and CAUSE-PA noted in their Joint Main Brief, PGW’s 2007 rate case concluded with a rejection of OSBA’s proposal to shift allocation of universal service costs solely to residential ratepayers.²⁰ That decision was based on potential rate shock to residential customers, which remains a concern with OSBA’s revised proposal. While OSBA claims there is a revenue neutral way to shift these costs, it is only “revenue neutral within the context of this proceeding” and “[g]oing forward, the cost responsibility for the USEC programs will remain with the residential class.”²¹ As discussed in TURN *et al.* and CAUSE-PA’s Main Brief, the cost of PGW universal services programs could increase as a result of ongoing Commission proceedings.²² Of course, the cost of PGW’s CRP program will undoubtedly increase as a result of the proposed \$42 million rate increase set forth in the Joint Petition, as the amount of discounts required to make CRP customers’ bills affordable increases in equal proportion to the base rate increase.

Residential customers, faced with the negotiated rate increase agreed to in the Joint Petition, but asked to absorb future higher costs as a result of OSBA’s revised allocation proposal, will be clearly exposed to potential rate shock. As explained in TURN *et al.* and CAUSE-PA’s Main Brief, this rate shock risk is particularly troubling for the more than 100,000

²⁰ The Commission specifically cited rate shock as a reason for rejecting Mr. Knecht’s similar proposal in PGW’s 2007 rate case. Public Utility Commission v. PGW, Opinion & Order Docket R-00061931 at 85-88.

²¹ OSBA M.B. at 15.

²² Main Brief at 10.

low-income PGW customers who are not enrolled in CRP.²³ The Commission should reject OSBA's revised proposal on the grounds that it too may contribute to rate shock, particularly for the more than 100,000 low income PGW customers who are not eligible for or do not participate in PGW's CRP program. These customers already face extraordinary financial pressures, and OSBA's proposal would require them to absorb additional universal service program costs in the near future, as PGW's base rates increase and CRP program design and participation levels likely change.

4. OSBA's revised proposal is not supported by Gas Choice Act and misconstrues or misapplies Commission precedent regarding the allocation of universal service costs.

OSBA generally nods to the Gas Choice Act, stating that “[the Gas Choice Act] was enacted to provide a competitive and non-discriminatory market for natural gas supply services within the Commonwealth.”²⁴ But OSBA fails to recognize that its revised proposal is simply not supported by the Gas Choice Act. As explained more fully in TURN *et al.* and CAUSE-PA's Main Brief, the issue of responsibility for universal services costs under the Gas Choice Act relates back to the customers responsible prior to its implementation.²⁵ Although the Commission has the clear authority to expand upon the determination of which customers should pay to fund public purpose programs,²⁶ like PGW's universal service programs, OSBA presents no good legal argument in support of its proposed departure from the nonbypassable charges contemplated by the Gas Choice Act. In fact, there is no precedent under the Gas Choice Act for any customer group, who paid for universal service costs prior to deregulation, being able to

²³ Main Brief at 12.

²⁴ OSBA M.B. at 11 (citations omitted).

²⁵ Main Brief at 17-18.

²⁶ Main Brief at 18, note 65.

bypass those costs thereafter. OSBA simply has not presented any well-founded argument for why now, and from this point forward, non-residential firm customers of PGW should be able to bypass the public purpose funding obligations they have always borne toward PGW universal service programs.

Throughout OSBA's Main Brief, OSBA attempts to rely upon misconstruction and misapplication of Commission precedent regarding universal service cost allocation in support of its arguments. OSBA cites a number of cases to stand for the proposition that the Commission has declined to allocate universal services to customer classes outside of residential ratepayers.²⁷ OSBA heavily relies upon the Commission's decision in PPL's 2004 rate case.²⁸ In that proceeding, the Commission declined to *change* the allocation of PPL's universal service costs beyond PPL's residential rate class.²⁹ In other words, in that case, the Commission declined to *expand* the group of customers who must pay nonbypassable charges for universal service program funding. OSBA fails to address its burden of proving the Commission should, in this proceeding, *exempt* one group of customers from paying for universal services, thereby *narrowing* the classes of customers who have historically paid for these nonbypassable charges. A shift in PGW's longstanding allocation of universal services costs, which the Commission has repeatedly approved,³⁰ is not supported by the Gas Choice Act, and OSBA fails to identify any other support for it.

²⁷ See OSBA M.B. at 8, 11-14.

²⁸ *Id.* at 13.

²⁹ Pa. PUC v. PPL Elec. Utilities Corp., Docket No. R-00049255 (Order entered December 22, 2004).

³⁰ This cost allocation policy has been maintained by the Commission throughout at least seven separate proceedings since regulation of PGW was transferred to the Commission, and was explicitly reaffirmed by the Commission in PGW's 2003 restructuring proceeding. *See* footnote 4, *supra*.

OSBA also attempts to rely upon the Commission's 2006 review of customer assistance programs as further support.³¹ OSBA notes that "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."³² But OSBA misapplies the Commission's determination in that proceeding as it relates to PGW. OSBA fails to note, as Mr. Geller firmly asserted in his rebuttal testimony, that the Commission distinguished PGW's cost allocation structure in that determination, stating that "PGW's cost allocation was determined prior to the Commission's oversight of the company."³³ In fact, the requirement that all firm customers of PGW fund its universal service programs was in place for more than a decade prior to the Commission's 2006 review, and preserved through that review.

Again, as stated in *TURN et al.* and CAUSE-PA's Main Brief, the current allocation of universal service cost recovery effectuates the requirements of the Gas Choice Act, as it has been interpreted by the Commission and the Commonwealth Court.³⁴ OSBA presents no sound legal theory upon which the Commission should rely to abandon the longstanding allocation of PGW universal service cost recovery.

V. CONCLUSION

TURN et al. and CAUSE-PA submit that the Commission should reject OSBA's proposal to change the allocation of universal service costs to only residential customers. *TURN et al.* and CAUSE-PA submit that regardless of how it is presented, OSBA's proposed

³¹ See Customer Assistance Programs: Funding Levels and Cost Recovery Mechanisms, Docket No. M-00051923 (Order entered December 18, 2006).

³² OSBA Brief at 13. (internal citations omitted).

³³ *TURN et al.* St. 1-R at 3 citing Customer Assistance Programs: Funding Levels and Cost Recovery Mechanisms, Docket No. M-00051923 at 31, n. 24 (Order entered December 18, 2006). See also OCA Main Brief at 36.

³⁴ Main Brief at 17.

reallocation of universal service costs entirely to residential customers should be rejected

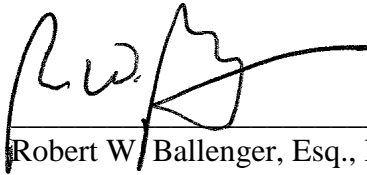
because:

- Adopting OSBA's proposed reallocation, and increasing residential customers' responsibility for universal service program costs, continues to present risks of rate shock, particularly for the majority of PGW low-income customers who do not participate in or are not eligible for PGW's CRP program;
- OSBA's revised proposal, set forth in its Main Brief, is not adequately supported, and requests that the Commission calculate adjustments to the parties' agreed revenue allocation, without an opportunity to examine the current and long term impacts of those changes;
- OSBA has presented no new evidence or legal theory in support of its proposed reallocation, which is not supported by the Gas Choice Act or the Commission's interpretation and effectuation of its nonbypassable charge requirement;
- OSBA fails to rebut the significant record evidence in support of PGW's current universal service cost allocation method, as described in TURN et al. and CAUSE-PA's Main Brief; and
- As set forth in TURN *et al.* and CAUSE-PA's Main Brief, the Commission's ongoing comprehensive review of Pennsylvania's universal service and energy conservation paradigm indicate that any changes to PGW's cost allocation model would be premature.³⁵

³⁵ Main Brief at 19.

For all of the reasons set forth in *TURN et al.* and CAUSE-PA's Main Brief and this Reply Brief, the Commission should maintain PGW's current universal service program cost allocation method and decline to permit non-residential customers, including small businesses represented by the OSBA, to bypass responsibility for those fundamental, public purpose programs.

Respectfully submitted,



Robert W. Ballenger, Esq., PA ID: 93434
Josie B. H. Pickens, Esq. PA ID: 309422
Jennifer Collins, Esq. PA ID: 312108

COMMUNITY LEGAL SERVICES, INC.
1424 Chestnut Street
Philadelphia, PA 19102
Telephone: 215-981-3700
Facsimile: 215-981-0434

Counsel for TURN et al.



Patrick M. Cicero, Esq., PA ID: 89039
Elizabeth R. Marx, Esq., PA ID: 309014
Joline Price, Esq., PA ID 315405

THE PENNSYLVANIA UTILITY LAW PROJECT
118 Locust Street
Harrisburg, PA 17101
Tel.: 717-236-9486
Fax: 717-233-4088

Counsel for CAUSE-PA