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August 4, 2017

VIA ELECTRONIC MAIL AND REGULAR MAIL

Administrative Law Judge Christopher P. Pell
Administrative Law Judge Marta Guhl
Pennsylvania Public Utility Commission
Office of Administrative Law Judge
801 Market Street, Suite 4063
Philadelphia, PA 19107

RE: Pennsylvania Public Utility Commission *et al.* v. Philadelphia Gas Works,
Docket No. R-2017-2586783; **RESPONSE OF RETAIL ENERGY SUPPLY
ASSOCIATION TO LETTER OF OFFICE OF SMALL BUSINESS
ADVOCATE**

Dear Judge Pell and Judge Guhl:

On July 21, 2017, the Parties to the above-captioned matter submitted a Joint Petition for Partial Settlement (“Settlement”) for review and approval by Your Honors and the Commission. The Settlement resolves all but two discreet issues that are not at issue for purposes of this letter. As a party to the Settlement, the Retail Energy Supply Association (“RESA”) submitted a Statement in Support which submits that the Settlement is in the public interest, particularly as it pertains to the issues of concern to RESA, and requests that the Settlement be approved. RESA’s Statement in Support notes, however, that the Office of Small Business Advocate (“OSBA”) opposes a specific portion of the Settlement, namely the issues of interest to RESA, and RESA noted its anticipation that the OSBA would file a brief on those issues. RESA, accordingly, reserved its right to offer a reply brief to the OSBA if necessary.

On the same date the OSBA and other parties were submitting their statements in support of the Settlement, the OSBA submitted a letter to Your Honors opposing the approval of the “supplier issues” portion of the Settlement. The OSBA’s letter contends that the purchase of receivables program (“POR”) in the PGW service territory had been established by a settlement that concluded after an extensive stakeholder collaborative process, and that the OSBA participated in that collaborative process and supported the Settlement. The OSBA also maintained that the Settlement established an administrative adder to the over-all POR discount, that would remain in effect until all the amounts Philadelphia Gas Works (“PGW”) was intending to spend on implementing POR were recovered. The OSBA’s letter goes on to claim that the Joint Petition for Partial Settlement changes the terms of the earlier settlement without any record evidence. RESA objects to the OSBA’s claim because it is

incorrect. There is ample evidence in this record to support the modification of the administrative adder; the OSBA simply chooses to ignore it. RESA responds to the OSBA's objection as follows.

It is true that a Settlement at Docket Nos. R-2008-2073939 and R-2009-2139884 did establish the POR discount for the PGW service territory and did include an administrative adder, set at 2%, that is intended to recover certain costs associated with implementing the POR. What the OSBA fails to mention, however, is that the same Settlement expressly provides that it is:

[P]resented without prejudice to any position which any of the Joint Petitioners may have advanced and without prejudice to the position any of the Joint Petitioners may advance in the future on the merits of the issues in future proceedings, except to the extent necessary to effectuate the terms and conditions of this settlement.¹

Accordingly, RESA submits that the Parties to the prior settlement referenced by OSBA (and quoted above), including RESA, are not prohibited from addressing the settlement terms in any future proceeding as the OSBA implies. Accordingly, there is no basis to suggest that RESA be barred from raising the issue of the appropriate level of the POR discount or the administrative adder in the instant proceeding. Moreover, the OSBA's statement is misleading in that it suggests that the Settlement now before the Commission proposes to remove the administrative adder from the POR, when it does not; under the Settlement, the level of the administrative adder will be reduced. Contrary to the OSBA's contention, there is record evidence to support the position that a lower discount will promote a more repaid recovery of the expended funds than the current 2%, which is stifling competition in the PGW service territory. (RESA Statement No. 1, pp. 6-8; RESA Statement No. 1-SR, pp. 7-8). The OSBA offers no testimony to rebut Mr. Cusati, but merely states that the level of the adder was established in a settlement and is therefore inviolate. Because there is no legal basis for the OSBA's argument, and it cites no testimony in the record that contests Mr. Cusati's proposal to reduce the adder, the OSBA's position must fail from an evidentiary basis as well. In short, the OSBA's opposition to the Supplier issues in the settlement is lacking in any support whatsoever, and must be disregarded in favor of approving the Settlement in its entirety.

RESA requests therefore that the Settlement be approved in its entirety and that the OSBA position on the supplier issues be dismissed.

Very truly yours,



Todd S. Stewart
Counsel for
The Retail Energy Supply Association

TSS/jld

cc: Per Certificate of Service

¹ *Joint Petition for Settlement*, Docket Nos. R-2008-2073938 and R-2009-2139884 (Recommended Decision dated December 19, 2013 and Order entered February 20, 2014).

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

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DATED: August 4, 2017