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August 4, 2017

Via Electronic Filing

Rosemary Chiavetta, Secretary
PA Public Utility Commission
PO Box 3265
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Re: PA Public Utility Commission v. Philadelphia Gas Works - R-2017-2586783
Office of Consumer Advocate v. Philadelphia Gas Works - C-2017-2592092
Office of Small Business Advocate v. Philadelphia Gas Works - C-2017-2593497
Philadelphia Industrial & Commercial Gas Users Group v. Philadelphia Gas Works –
C-2017-2595147 and
Dingfelder v. Philadelphia Gas Works – C-2017-2593903

Dear Secretary Chiavetta:

Enclosed for electronic filing please find Philadelphia Gas Works' ("PGW") Reply Brief with regard to the above-referenced matters. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,



Daniel Clearfield
DC/lww

Enclosure

cc: Hon. Christopher Pell
Hon. Marta Guhl
Certificate of Service w/enc.

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of PGW's Reply Brief upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

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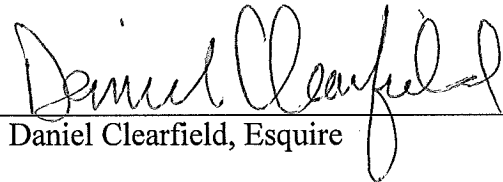
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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	R-2017-2586783
Office of Consumer Advocate	:	C-2017-2592092
Office of Small Business Advocate	:	C-2017-2593497
Philadelphia Industrial & Commercial	:	
Gas Users Group	:	C-2017-2595147
William Dingfelder	:	C-2017-2593903
	:	
v.	:	
	:	
Philadelphia Gas Works	:	

PHILADELPHIA GAS WORKS REPLY BRIEF

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I. INTRODUCTION AND PROCEDURAL HISTORY

Philadelphia Gas Works (“PGW” or “Company”) hereby submits this Reply Brief in response to the Briefs of the Office of Consumer Advocate (“OCA”) and the Office of Small Business Advocate (“OSBA”).¹

This Reply Brief is focused on the two issues which were not resolved by the Settlement.² As explained in greater detail herein and in PGW’s Brief, PGW requests that issues not resolved by the Settlement be decided so as to authorize the continuation of: (a) PGW’s allocation of universal service costs through the Universal Service and Energy Conservation Surcharge (“USC” or “USEC”) Rider; and (b) PGW’s existing partial payment allocation practices.

¹ The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”) and the Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (collectively, “TURN, et al.” or “TURN”) filed a brief but either supported PGW’s position or took no position on the contested issues.

² On July 21, 2017, OSBA also filed a letter re-stating the Joint Petition’s language that OSBA did not join in the settlement of the natural gas supplier issues. No other party refused to join or opposed the supplier terms in the Joint Petition. Specifically, the letter states, “The [Feb. 20, 2014] NGS Settlement stipulated that the Administrative Discount would remain in effect until the amounts were recovered (with no interest charge).” The letter then goes on to state that the Joint Petition changes the terms of the 2014 NGS Settlement with no record evidence.

The OSBA’s letter should be disregarded. First, since this letter regards the merits of a pending issue, it could be construed as a prohibited *ex parte* communication, 66 Pa.C.S. § 334(c). Second, as to the merits, the OSBA appears to misunderstand the Settlement term at issue. The record supports the Joint Petition on the proposed change to the Administrative Discount. RESA argued that the Administrative Discount was too high and should be reduced. RESA St. No. 1, at 3, 17-8:21; RESA St. No. 1-SR, 5:15-9:1; RESA Statement in Support at 6-7; PGW Statement in Support at 22. The Joint Petition does not reduce or otherwise change the total amount to be recovered by the Administrative Discount. *Id.* Rather, the Joint Petition proposes to simply lower the amount recovered per bill without changing the overall recovery amount. *Id.* So, the pace of recovery may slow. In part, this reduction in the per bill charge reflected a determination that POR implementation costs projections were lower than originally expected. *See* PGW Statement in Support at 22. Importantly, however, PGW will still recover the full amount of its administrative costs incurred, as provided for in the 2014 NGS Settlement. Therefore, OSBA’s position on this term is without merit and should be afforded no weight. Moreover, the letter only discusses that single term in the Joint Petition. None of the other supplier terms in the Joint Petition are discussed by the OSBA’s letter, and that letter should not be construed as stating a position on the merits as to any other term in the Joint Petition.

II. BURDEN OF PROOF

To implement its proposal on the allocation of universal service costs, the OSBA is proposing a four-step implementation process which requires a change in the present method of recovering universal service costs, now collected in PGW's Universal Service Cost Rider from all firm customers, so that a portion would be collected in PGW's delivery rates; and proposed that any incremental changes on a going forward basis would continue to be collected in the Rider, but only from residential customers.³ The OSBA bears the burden of its proposed changes.⁴

Similarly, the OCA bears the burden of proving that PGW's partial payment allocation practices, which are not set forth in either PGW's existing or proposed tariff, are contrary to the Commission's regulations or the Public Utility Code.⁵ The OCA did not address this issue in its Brief (discussing only PGW's burden of proof for *proposed* rates, terms and conditions)⁶; therefore PGW's position – that the OCA bears the burden on this issue – should be accepted. In adopting a Motion of Commissioner David W. Sweet on August 3, 2017, the Commission confirmed that a party alleging a violation of Commission regulations bears the burden of proof under Section 332 of the Public Utility Code.⁷

³ OSBA Brief at 15-16.

⁴ See PGW Brief at 10; OSBA Brief at 6; Joint Brief of TURN and CAUSE-PA at 4.

⁵ PGW Brief at 8-10; OCA Brief at 7-8.

⁶ OCA Brief at 8.

⁷ *Pa. PUC v. Capital City Cab Service*, Docket No. C-2015-2464291 (Motion adopted August 3, 2017).

III. SUMMARY OF REPLY ARGUMENT

Partial Payment Allocation Practices

As part of this base rate proceeding, the OCA is seeking to modify PGW's long-standing partial payment allocation practices, which are not in its tariff or in any way related to its tariff and which are fully compliant with the Commission's regulations and the Public Utility Code. Specifically, under the applicable regulations, public utilities are required to first apply partial payments – payments from customers that are not sufficient to pay a balance due for prior basic service and for basic service billed during the current billing period – to the balance due for prior basic service.⁸ That is exactly what PGW does.⁹ As PGW's partial payment allocation practices are not part of its tariff, this issue should not be addressed by the Commission in this proceeding. If the Commission determines that additional requirements are necessary to delineate a hierarchy for applying partial payments to charges within the "prior service" category, such mandates should be the subject of a rulemaking proceeding.

The dispute raised by the OCA centers on PGW's application of partial payments to charges for prior basic service, particularly with respect to late payment charges. PGW's approach of first zeroing out late payment charges before applying partial payments to unpaid gas charges is consistent with applicable regulations since they are silent on a hierarchy for posting partial payments to charges for prior basic service.¹⁰ By contrast, the OCA contends that PGW must apply the partial payments to the oldest balances first, without any priority given to late payment charges.¹¹ Rather than being based in any law, the OCA's position is driven by

⁸ 56 Pa. Code § 56.24.

⁹ PGW Brief at 20-23.

¹⁰ PGW Brief at 21.

¹¹ OCA Brief at 12. While Mr. Colton's testimony was silent as to PGW's practice of first posting partial payments to any required security deposit, OCA appears to argue in its Brief that security deposits should also not

policy preferences that fail to consider the long-term negative impacts – of increased carrying costs and rising bad debt expense – on PGW’s customers who are timely paying their bills in full.

In arguing that PGW’s partial payment allocation method violates Section 56.24 of the Commission’s regulations, the OCA mistakenly asserts that late payment charges are not charges for basic service.¹² However, the Commission’s regulations expressly and unambiguously identify late payment charges as part of basic service.¹³ Therefore, PGW is properly applying partial payments to late payment charges for prior basic service before applying them to charges for current basic service and OCA’s argument regarding an alleged violation of Section 56.24 must fail.

The OCA also incorrectly claims that PGW is violating Section 56.22 of the Commission’s regulations.¹⁴ While Section 56.22 prohibits public utilities from charging compound interest, a review of the record clearly establishes that PGW does not charge compound interest. Notably, the OCA concedes that PGW does not assess late fees on late fees or otherwise charge compound interest when it imposes late payment charges.¹⁵ Rather, the OCA argues that under PGW’s partial payment allocation method, customers who pay their bills on an untimely basis, incur properly assessed late payment fees and then make partial payments, are “effectively” charged compound interest.¹⁶ The only support offered by the OCA for this

be given priority in the partial payment allocation methodology. *Id.* This argument is addressed in Section IV.A.2 of this Reply Brief.

¹² 52 Pa. Code § 56.24; OCA Brief at 16-17.

¹³ 52 Pa. Code § 62.74(b); PGW Brief at 16.

¹⁴ 52 Pa. Code § 56.22; OCA Brief at 13-14.

¹⁵ OCA Brief at 15.

¹⁶ OCA Brief at 15-16.

argument is a flawed legal theory that its witness previously concocted in a separate proceeding to support the position of the commercial complainants on whose behalf he was testifying.¹⁷ The Commission did not endorse this “compound interest” theory in the *SBG Order* and should reject it here as well.

Finally, while the OCA insists that PGW’s longstanding practice is somehow “unjust and unreasonable,” the evidence shows just the opposite. Importantly, PGW’s partial payment allocation practices incentivize customers to timely pay their bills in full, lowers bad debt expenses and reduces the carrying costs that must be shouldered by other ratepayers.¹⁸ By contrast, the OCA’s proposal would result in increases in bad debt expense and carrying costs, while allowing late-paying partial-paying customers to indefinitely avoid paying their own late payment charges. Particularly since nothing in the Commission’s regulations or the Public Utility Code dictates a hierarchy for applying partial payments to prior basic service, these compelling policy objectives support a continuation of PGW’s existing practices.

It is noteworthy that the OCA is the only party that has pursued this issue here. No other party, including the Commission’s Bureau of Investigation and Enforcement and the low-income advocates, has expressed support for the OCA’s recommendation. Moreover, until recently, PGW’s partial payment application methodology has not been questioned, despite having been reviewed by the Commission on countless occasions during formal and informal complaint

¹⁷ *SBG Management Services, Inc. / Colonial Garden Realty Co., L.P. v. Philadelphia Gas Works*, Docket No. C-2012-2304183 and *SBG Management Services, Inc. / Simon Garden Realty Co., L.P. v. Philadelphia Gas Works*, Docket Nos. C-2012-2304183 and C-2012-2304324 (Order entered December 8, 2016) (“*SBG Order*”), at 39-40. The *SBG Order* is currently undergoing reconsideration on the merits. See Order entered December 28, 2016.

¹⁸ PGW Brief at 30-33.

handling since 2000.¹⁹ Accordingly, the OCA has not met its heavy burden of demonstrating that PGW's partial payment allocation practice should be found to be illegal or unreasonable.

Universal Service Cost Recovery

PGW did not propose any changes to its long-standing practice – reflected in its allocation of the costs of its universal service programs to all firm customers. Continuation of that allocation was opposed by the OSBA, which proposed that non-residential customers should not be required to contribute towards universal service costs. The record shows that the continuation of the allocation to non-residential customers is just and reasonable and, despite coming up with a novel scheme to carry out its previously rejected proposal, OSBA has not met its burden of showing that its proposed allocation scheme should be adopted.

The OSBA outlined a novel proposed four-step implementation process for shifting 100% of the cost responsibility for universal service costs to residential customers. In essence, OSBA's scheme would require PGW to embed existing universal service cost responsibility in base rates, but force residential customers to bear 100% of those costs on a going forward basis. Since the OSBA's cost-shifting proposal should be rejected in the first instance, PGW submits that the ALJs and the Commission need not consider this novel implementation process. Nevertheless, if the implementation process is considered, it should be rejected because, on a going forward basis, it would lead to the eventual allocation of all universal service costs to one class of customers, even though all customers benefit from the existence of these programs. Further, the proposal would merely delay the "rate shock" associated with this singular assignment to future years and rate cases. Nothing in the record shows that the rates resulting

¹⁹ PGW Brief at 40.

from such an implementation process fairly balance the interests of PGW or its ratepayers, are supported by substantial evidence, are in the public interest, or are just and reasonable.

IV. ARGUMENT

A. Partial Payment Allocation Practices

1. OCA Has Failed to Tie PGW's Partial Payment Application Practices to the Tariff.

PGW initiated this proceeding on February 27, 2017, requesting Commission approval for a general increase in base rates. In the Order suspending the base rate filing for investigation, the Commission indicated that it would review “the lawfulness, justness, and reasonableness of the rates, rules and regulations contained in the proposed Supplement No. 100 to Philadelphia Gas Works Gas Service Tariff – PA. P.U.C. No. 2.”²⁰ The investigation also includes consideration of the lawfulness, justness, and reasonableness of existing rates, rules and regulations.²¹ However, PGW’s partial payment allocation method is not set forth in either its existing or its proposed tariff, and the Company is unaware of any Commission requirement for such details to be set forth in the tariff.²² Therefore, the issue has been improperly raised by the OCA in this base rate proceeding and should be disregarded.²³

In an effort to fit this issue into the pending base rate proceeding, the OCA “submits that PGW’s application of its tariff language regarding the sequencing of residential customer payments” violates various provisions of the Commission’s regulations and the Public Utility

²⁰ *Pa. P.U.C. v. Philadelphia Gas Works*, Docket No. R-2017-2586783 (Order entered March 16, 2017), at Ordering Paragraph No. 1.

²¹ *Id.* at Ordering Paragraph No. 4.

²² PGW Brief at 34.

²³ PGW Brief at 33-35. If the Commission wishes to establish a specific method of allocating partial payments to specific categories of prior basic service charges, it should begin a rulemaking to do so.

Code.²⁴ Yet, the OCA does not point to any specific language in PGW's tariff regarding the sequencing of residential customer payments. Of course, this omission is because there is no such language.²⁵ The absence of provisions in the tariff regarding the application of partial payments to prior basic service means that the issue is not properly raised in this base rate proceeding.

The OCA seeks to link PGW's partial payment application practices to its tariff by arguing that they allegedly have the "effect" of imposing compound interest contrary to Rule 4.2 in PGW's tariff that addresses the computation and assessment of late payment charges.²⁶ This attempt to relate PGW's partial payment application practices to its tariff must fail.

Rule 4.2 of PGW's tariff provides, in its entirety, as follows:

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.²⁷

Notably, the OCA acknowledges that PGW's tariff language is consistent with the requirements of Section 56.22 of the Commission's regulations.²⁸ The OCA also does not allege that PGW departs from Rule 4.2 of its tariff in the computation and assessment of late payment charges. For example, the OCA does not contend that PGW computes late payment charges using a 1.6% interest rate or that the Company assesses the late payment charges on bills that are not yet

²⁴ OCA Brief at 11.

²⁵ PGW Brief at 33.

²⁶ OCA Brief at 11 and 14.

²⁷ PGW Brief at 24.

²⁸ OCA Brief at 15.

overdue. The OCA also does not claim that PGW charges compound interest. In short, the OCA's arguments do not involve any of the specific language that is in Rule 4.2 of PGW's tariff.

Yet, the OCA argues that "PGW's application of its tariff provision" is inconsistent with the Commission's regulations.²⁹ The only way in which PGW's application of its tariff provision can be examined in this base rate proceeding is from the standpoint of whether PGW properly computes and assesses late payment penalties; how PGW subsequently applies partial payments to late payment charges is beyond the scope of this tariff language. Clearly, as no issue has been raised about the actual computation and assessment of late payment charges, no review of the application of the tariff provision is warranted. If the Commission desires, after considering the arguments that have been raised here, to mandate a particular hierarchy for (all) public utilities to follow in posting partial payments to the unpaid balance for prior basic service, it is incumbent upon the Commission to initiate a rulemaking proceeding.³⁰ But, singling out one utility – PGW – and, in an adjudication, ordering it to change a long-standing practice that is not violative of any regulatory rule is unfair and not in accordance with law.

2. PGW's Partial Payment Allocation Practices Comply with Each and Every Regulatory Provision Cited by OCA.

In the event that the Commission nonetheless decides to review PGW's partial payment allocation practices in the context of this base rate proceeding, it should find that they fully comply with PUC regulations including each and every regulatory requirement cited by the OCA. The dispute centers on PGW's practice of first applying partial payments made by

²⁹ OCA Brief at 15.

³⁰ PGW Brief at 35-38. Through the use of Pennsylvania's statutorily-mandated regulatory review process, the Commission would be able to lawfully and properly determine whether it is necessary to require public utilities to follow a certain hierarchy when applying partial payments to a balance due for prior service. After public notice and comment, the Commission would have a sufficient basis upon which to order any specific directives that it deems necessary.

customers to late payment charges for prior basic service before they are applied to the remaining charges for prior basic service. Since the Commission's regulations only require that public utilities apply partial payments first to prior basic service before applying them to current basic service, PGW's practice is consistent with that mandate.

In its Brief, the OCA makes the blanket assertion that "PGW's application of its tariff language regarding the sequencing of residential customer payments violates 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."³¹ Yet, the OCA offers no legal analysis to support this contention. Rather, the OCA rests wholly on the personal legal theory of its witness, Mr. Colton, which he devised as a witness in a separate proceeding to support the position of commercial complainants upon whose behalf he was testifying.³² Instead of identifying any particular provision of the Commission's regulations or the Public Utility Code that PGW is allegedly violating, the OCA has cobbled together a flawed legal argument using bits and pieces of various provisions of the regulations and statute to argue that PGW is required to apply partial payments in a manner that is simply not mandated by the law.

For instance, although it argues that "PGW should be applying the partial payments to the oldest balances first,"³³ or "in the order and timing in which they occurred,"³⁴ the OCA points to nothing in the Commission's regulations that requires such an approach. Despite repeated references to PGW's partial payment allocation method as applying "partial payments against newer non-interest bearing charges before applying the payments against older interest-bearing

³¹ OCA Brief at 11.

³² *SBG Order* at 38.

³³ OCA Brief at 12.

³⁴ OCA Brief at 21.

principal,” the OCA refers to no provisions that prohibit public utilities from applying partial payments in this way.³⁵ Similarly, the OCA cites to no Commission regulations requiring public utilities to apply partial payments against older interest-bearing principal before applying them to newer non-interest bearing charges. Quite simply, the OCA makes no such references because they do not exist.

A particularly disturbing aspect of the OCA’s proposal is the potential effect on PGW’s ability to give priority to the payment of security deposits. Although Mr. Colton’s testimony was silent on PGW’s practice of first applying partial payments to any required security deposit, the OCA’s Brief appears to seek to modify that practice as well.³⁶ By arguing to have partial payments applied in the order and timing in which they occurred, the OCA seems to be suggesting that PGW may not apply a partial payment to a security deposit that is imposed during any given month consistent with Section 1404 of the Public Utility Code.³⁷ To the extent that the OCA is proposing that PGW may not give priority to security deposits in applying partial payments first to such deposits, this recommendation appears to conflict with Section 1406(a)(3) of the Public Utility Code, which authorizes a utility to terminate service for a customer’s failure to complete payment of a deposit, and Section 1404, which establishes that a utility shall not be required to provide service if the applicant fails to pay the full amount of the cash deposit (which is payable within 90 days of reconnection).³⁸ It is patently unfair and illegal to adopt a proposal that deprives a public utility of receiving a security deposit that has been lawfully imposed. If,

³⁵ OCA Brief at 11. And, as described below, PGW’s method is actually reasonable and in the best interests of fully paying customers.

³⁶ OCA Brief at 12, 13 and 21.

³⁷ See 66 Pa.C.S. § 1404(a).

³⁸ 66 Pa.C.S. §§ 1406(a)(3) and 1404. To the contrary, if the OCA is not lumping security deposits in with its late payment charge proposal, its proposal supports prioritization among components of prior basic service for purposes of applying partial payments. See PGW Brief at 17.

on the other hand, it is consistent with existing regulations to apply partial payments first to security deposits, then the OCA is conceding that there is no established partial payment allocation rule among the components of prior service and its entire argument must fail.³⁹

Also, without any support, the OCA claims that “Section 56.22 must operate consistent with the application of partial payments identified in Section 56.23 and 56.24 of the Commission’s regulations.”⁴⁰ As Section 56.22 only governs the assessment of late payment charges and Sections 56.23 and 56.24 of the Commission’s regulations only address the allocation of partial payments, no basis exists for the OCA’s insistence that these provisions, operating together, require a certain method for applying partial payments to late payment charges. Each provision in the regulations or statute that the OCA alleges that PGW is violating is addressed below, with the argument demonstrating that PGW is in full compliance with each and every one of these regulatory requirements.

a. PGW’s Partial Payment Allocation Practices Comply with Sections 56.23 and 56.24 of the Commission’s regulations.

PGW’s partial payment allocation practices comply with the applicable Commission’s regulations governing such practices by first applying partial payments to the balance due for prior basic service before applying them to charges for current basic service.⁴¹ The OCA’s argument to the contrary appears to be based on its incorrect view that late payment charges are charges for nonbasic service.⁴² However, the Commission’s regulations and prior Commission decisions clearly identify late payment charges as *basic services*. Specifically, Section 62.74 of the Commission’s regulations, which require charges for basic services to appear before charges

³⁹ See PGW Brief at 17.

⁴⁰ OCA Brief at 14.

⁴¹ PGW Brief at 20-23.

⁴² OCA Brief at 14 and 16.

for nonbasic services and appear distinctly separate on bills,⁴³ expressly classifies late payment charges (and security deposits) as “basic” charges.⁴⁴

In making its argument about late payment charges not being charges for basic service, the OCA also ignores this unambiguous language of Section 62.74 and instead relies on the definition of “basic services” in Section 62.72, which describes them as “[s]ervices necessary for the physical delivery of natural gas to a retail customer, consisting of natural gas distribution services and natural gas supply services.”⁴⁵ What the OCA fails to mention is that Section 62.72 defines “nonbasic services” as being “[o]ptional recurring services which are distinctly separate and clearly not required for the physical delivery of natural gas service. Examples include a gas line repair program and a gas appliance warranty program.”⁴⁶ Indisputably, late payment charges are not “optional recurring services” that a customer can choose to receive from the public utility. Rather, they are necessary charges authorized by PGW’s tariff and the regulations that must be assessed on customers who pay their bills on an untimely basis and cause the public utility to incur carrying costs that, if not paid, increase rates for good-paying customers. Section 62.72 identifies distinctly separate services like appliance programs as being nonbasic service.

Two Commission regulations address partial payments. Section 56.23 governs the application of partial payments as between nonbasic charges and basic charges for residential public utility service. It provides, in its entirety:

Payments received by a public utility without written instructions that they be applied to merchandise, appliances, special services, meter testing fees or other nonbasic charges and which are insufficient to pay the balance due for the items

⁴³ 52 Pa. Code § 62.74(b)(2). *See also SBG Order* at 98 (late payment charges and security deposits are basic service charges).

⁴⁴ 52 Pa. Code § 62.74(b)(2)(vii).

⁴⁵ 52 Pa. Code § 62.72; OCA Brief at 14.

⁴⁶ *Id.*

plus amounts billed for basic utility service shall first be applied to the basic charges for residential public utility service.⁴⁷

This language emphasizes the need for partial payments to first be applied to *basic charges* for public utility service before they are applied to *nonbasic charges*. Section 56.23 gives several examples of nonbasic charges as including merchandise, appliances, special services and meter testing fees. Notably, nowhere does it refer to late payment charges as being nonbasic charges.

The other Commission regulation that addresses partial payment application practices of public utilities is Section 56.24, which provides in its entirety as follows:⁴⁸

In the absence of written instructions, a disputed bill or a 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.

Clearly, this provision relates solely to charges for *basic service*, which receive priority over charges for *nonbasic service* in the posting payment process as required by Section 56.23. The only requirement of Section 56.24 is that public utilities must first apply partial payments to the balance due for “prior” basic service before applying them to basic service charges for the current billing period. PGW follows that mandate to the letter by first applying partial payments to the balance due for prior basic service before applying them to charges for currently-billed basic service. (There is no definition that more fully delineates what the regulation means by “prior.”)

As the above provision plainly shows, nothing in Section 56.24 requires PGW or other public utilities to follow any certain hierarchy in posting partial payments to the balance due for prior basic service so long as the payment is applied to the “prior basic service” bucket.

⁴⁷ 52 Pa. Code § 56.23.

⁴⁸ 52 Pa. Code § 56.24.

Therefore, PGW is fully compliant with the requirements of Section 56.24 and the OCA's arguments that late payment charges are not basic service charges must be rejected.

Likewise, the OCA's contention that gas commodity delivery charges are somehow the "most basic of services," has no support in the Commission's regulations.⁴⁹ The Commission's regulations only differentiate between basic service charges and nonbasic service charges and establish no priorities among the various charges for basic services.

In the *SBG Order* cited by the OCA,⁵⁰ the Commission relied upon a different rationale in determining that PGW had violated Section 56.24 of the regulations in applying the commercial complainants' partial payments to late payment charges. There, the Commission found that the various basic service charges together, including late payment charges, constituted the "balance due" by the complainants for prior service in each billing month and that they should be treated simultaneously for purposes of applying partial payments to prior service.⁵¹ Importantly, the Commission's *SBG Order*, which is currently undergoing reconsideration on the merits and is not in effect at this time, was issued within the limited context of a complaint proceeding where actual billing data was entered into the record. The ALJs and the Commission relied extensively on the record that was developed by the complainants about the effect of PGW's method on their accounts.⁵² By contrast in this proceeding, no actual billing data has been presented by the OCA, and therefore, the OCA has not carried its heavy burden of proving that PGW's generic partial payment allocation practices violate the Commission's regulations. Accordingly, it is necessary for the ALJs and the Commission in this proceeding to consider the evidentiary record that has

⁴⁹ OCA Brief at 17.

⁵⁰ OCA Brief at 13, footnote 4.

⁵¹ *SBG Order* at 98.

⁵² *Id.*; Initial Decision at 44-51.

been developed here and to conclude that the OCA has not proven that PGW is violating the Commission's regulations.

b. PGW's Assessment of Late Payment Charges is Consistent with the Late Payment Charge Provisions of its Tariff and Section 56.22 of the Commission Regulations.

PGW is also in full compliance with its tariff and Section 56.22 of the Commission's regulations in the computation and assessment of late payment charges.⁵³ Section 56.22 provides, in its entirety, that:⁵⁴

(a) Every public utility subject to this chapter is prohibited from levying or assessing a late charge of 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.

(b) An additional charge or fixed fee designed to recover the cost of a subsequent rebilling may not be charged by a regulated public utility.

(c) Late payment charges may not be imposed on disputed estimated bills, unless the estimated bill was required because public utility personnel were willfully denied access to the affected premises to obtain an actual meter reading.

(d) A public utility may waive late payment charges on any customer accounts. The Commission may only order a waiver of late payment charges levied by a public utility as a result of a delinquent account for customers with a gross monthly household income not exceeding 150% of the Federal poverty level. See Pa.C.S. § 1409 (relating to late payment charge waiver.)

Rule 4.2 of PGW's tariff parrots the requirements of Section 56.22.

Notably, the OCA does not argue that PGW departs from the language of either Section 56.22 of the Commission's regulations or Rule 4.2 of PGW's tariff in the computation and assessment of late payment charges – the only activities of PGW that are governed by these

⁵³ PGW Brief at 23-28.

⁵⁴ 52 Pa. Code § 56.22.

provisions. While Section 56.22 prohibits public utilities from charging compound interest, a review of the record clearly establishes that PGW does not charge compound interest.⁵⁵ Notably, the OCA concedes that PGW does not assess late fees on late fees or otherwise charge compound interest when it imposes late payment charges.⁵⁶ Since PGW does not charge compound interest when it imposes late payment fees on unpaid balances (from which previously imposed late payment charges have been subtracted), PGW is fully in compliance with Section 56.22 of the Commission's regulations.

However, the OCA contends that PGW's partial payment allocation practices somehow result in customers being charged the "effect" of compound interest.⁵⁷ In a failed effort to demonstrate a violation of Section 56.22, the OCA maintains that "under PGW's payment posting methodology, customers actually *may* effectively be charged up to 19.562%."⁵⁸ For support, the OCA refers to testimony of Mr. Colton which offers no basis for either the calculation or for the OCA's speculation as to the potential "effective" interest rate that customers might be assessed under its method.⁵⁹ Rather, the testimony of Mr. Colton that the OCA relies on merely describes PGW's partial payment application practices and notes that a customer may ultimately pay more for services when prior late payment charges are zeroed out before partial payments are posted to prior charges for gas service.⁶⁰ A customer paying more for their services (or, more accurately, being charged more for their services), as a result of their own late-paying and partial-paying patterns, is not the equivalent of PGW charging compound

⁵⁵ PGW Brief at 23.

⁵⁶ OCA Brief at 15.

⁵⁷ OCA Brief at 14.

⁵⁸ OCA Brief at 15 (emphasis supplied).

⁵⁹ OCA Brief at 15-16.

⁶⁰ OCA St. No. 4-S at 18.

interest. Nothing in Section 56.22 prohibits a public utility from applying partial payments to late payment fees in a manner that results in the customer ultimately being assessed a higher total amount in such charges. What is not permitted by Section 56.22 of the Commission's regulations is an assessment of late fees on late fees, which PGW does not do. Rather, it is undisputed that the Company removes late fees from the unpaid balance before imposing new late payment charges.⁶¹

In fact, Mr. Colton's testimony does not even establish that PGW's partial payment allocation practices *effectively* impose an annual percentage interest rate of 19.562%.⁶² Rather, all that his testimony shows is the mathematical effect of imposing a monthly interest rate of 1.5% on a compounded basis over the course of a year. Mathematically, when an interest rate of 1.5% is compounded over a twelve-month period, the product is a 19.562% rate per annum.⁶³ This simple mathematical calculation does not in any way reflect the interest rate that is assessed on PGW customers who incur late payment charges and make partial payments.

At no time during this proceeding, as the party with the burden of proof, has the OCA presented any evidence to show that PGW's partial payment application practices actually result in customers being assessed 19.562% on an annual basis. This failure was noted by Mr. Cummings for PGW, when he stated in his rebuttal testimony that "[w]ithout any factual basis or explanation, Mr. Colton leaps to the unsubstantiated conclusion that PGW's sequencing of the

⁶¹ PGW Brief at 23.

⁶² PGW Brief at 26.

⁶³ Using the formula, $r = (1 + i/n)^n - 1$, to convert a monthly interest rate to an effective interest rate, where "r" is the effective interest rate, "i" is the stated interest rate, and "n" is the number of compounding periods per year, the mathematical calculation is $19.562\% = (1 + 1.5\%/12)^{12} - 1$.

See: <http://www.math.uni.edu/~campbell/mdm/comp.html>; <http://www.wikihow.com/Calculate-Effective-Interest-Rate>

posting of payments amounts to imposing compound interest.”⁶⁴ Rather than providing anything to substantiate this conclusion in his surrebuttal testimony, Mr. Colton merely relied on his prior testimony, which offered no basis whatsoever for his assertions that PGW is effectively charging compound interest.⁶⁵

Mr. Colton’s example for a hypothetical customer also does not contain any calculations to show what the effective annual interest rate for a PGW customer would be. Rather, his schedule merely shows that the customer was properly assessed late payment charges totaling \$151.97 over the course of the year and, through the application of partial payments, paid \$137.17 in late payment charges. Nowhere does he present calculations to show what the effective annual interest rate imposed on that customer would be.⁶⁶ Therefore, no evidence has been submitted that would permit the conclusion that PGW is effectively imposing a monthly interest rate of 1.5% on a compounded basis (because it does not do so) and PGW cannot be found to be in violation of Section 56.22 of the Commission’s regulations.

The OCA also asserts that “the Company’s methodology allows interest to be assessed on balances that have already been assessed interest.”⁶⁷ That is a correct statement because customers who continually fail to pay their bills in full continue to have late payment charges properly assessed on those unpaid balances for prior service. This argument does not, however, support a finding that PGW is imposing compound interest or is otherwise in violation of any PUC rule. Moreover, under the OCA’s approach, the same result would occur. Even if partial payments would be applied to the oldest balances first, this practice would also leave outstanding

⁶⁴ PGW St. No. 10-R at 12.

⁶⁵ OCA St. No. 4-S at 19.

⁶⁶ OCA St. No 4-S, Schedule RDC-1SR (Revised Schedule RDC-1).

⁶⁷ OCA Brief at 12.

charges for prior service to the extent that the partial payments are insufficient to pay them. As a result, interest would be assessed again on the unpaid charges for prior service. This is the only fair and appropriate outcome since otherwise, customers would only be required to pay a late payment charge one time for a monthly bill despite leaving that unpaid balance for that month on the books for many months.

In fact, PGW has shown that the effect of Mr. Colton's proposal would allow customers who habitually make late payments and partial payments to indefinitely delay the payment of their properly assessed late payment charges. Moreover, even under Mr. Colton's preferred approach, late-paying partial-paying customers would be paying more in late payment charges than late-paying full-paying customers would pay. This occurs because, using the customer in Mr. Colton's hypothetical example, the customer continues accumulating a growing balance upon which late payment charges are properly assessed.⁶⁸

Finally, in referring to the Commission's *SBG Order* as support for its argument that PGW's partial payment allocation practices violate Section 56.22 of the Commission's regulations, the OCA mischaracterizes the Commission's findings.⁶⁹ On the page of the *SBG Order* referenced by the OCA, the Commission was summarizing the findings of the Administrative Law Judge's decision, which the Commission only adopted in part. In discussing the legality of PGW's partial payment allocation practices, the Commission did not find that the Company had violated Section 56.22 of the Commission's regulations. Importantly, in the *SBG Order*, the Commission does not endorse Mr. Colton's theory or conclude that PGW was charging compound interest.⁷⁰ The fact that late-paying partial-paying customers may end up

⁶⁸ PGW St. 10-RJ at 4-6; PGW Exhibit BLC-3 (Table BLC-2).

⁶⁹ OCA Brief at 13, including footnote 4.

⁷⁰ *SBG Order* at 38 and 97-98.

paying more for basic service under PGW's approach than they would under the OCA's proposal does not mean that PGW's partial payment allocation practices are not lawful.

c. The OCA's Other Legal Theories Also Fail.

The OCA also argues that PGW's partial payment allocation practices violate Section 1303 of the Public Utility Code, which prohibits a public utility from receiving directly or indirectly by any device whatsoever a greater or less rate for any service rendered than that specified in the tariff. Contending that PGW's partial payment posting "methodology results in a customer effectively being charged an annual interest rate of 19.562% in excess of the specified tariff interest rate of 18%, the OCA maintains that PGW is receiving more interest than is allowed by its tariff.⁷¹ This argument is flawed in several respects.

PGW is not receiving directly or indirectly a greater or less rate for service rendered than that specified in the tariff. PGW is properly assessing a 1.5% finance charge to late payments per month. When customers subsequently make partial payments, PGW is first applying them to those late payment charges before posting them to other unpaid charges for prior gas service. To the extent that this practice results in a customer being assessed a higher amount of late payment charges over the course of the year than if a different partial payment allocation practice were being used, the outcome does not mean that PGW is receiving a greater rate for service rendered than that specified in the tariff.⁷²

Another argument advanced by the OCA is that PGW's partial payment allocation method violates Section 1301 of the Public Utility Code, which requires rates charged by public utilities to be just and reasonable. In support of this assertion, the OCA contends that no cost

⁷¹ OCA Brief at 18.

⁷² PGW Brief at 27-28.

causation principles support PGW's partial payment posting practices.⁷³ As testified by Mr. Cummings, "cost of service principles that apply to ratemaking are not applicable to the imposition of late payment charges or a company's partial payment allocation practices."⁷⁴ He explained that because late payment charges are primarily designed to incentivize customers to timely pay their bills, they are not wholly based on the carrying and collection costs incurred by the Company. In fact, there is no cost basis for the 1.5% per month late payment charge that is authorized for all utilities by the regulations. In addition, Mr. Cummings noted that PGW's partial payment practices are intended to ensure that the customers who are not paying their bills on a full and timely basis are the ones who are responsible for paying their own late payment charges. As he further explained:

This approach is consistent with the policy objectives of Chapter 14 in the Public Utility Code. It is noteworthy that Chapter 14 contains a declaration of policy noting the General Assembly's view that "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."⁷⁵

The OCA also contends that PGW's method for applying partial payments is not consistent with Section 56.1 of the Commission's regulations, which requires public utilities to use the procedures in Chapter 56 to effectively manage customer accounts to prevent the accumulation of large, unmanageable arrearages.⁷⁶ The OCA further points to Section 56.21 of the regulations, which establishes the way to calculate payment dates,⁷⁷ and argues that "[w]hen

⁷³ OCA Brief at 18-19.

⁷⁴ PGW St. No. 10-R at 17.

⁷⁵ PGW St. No. 10-R at 17.

⁷⁶ 52 Pa. Code § 56.1.

⁷⁷ 52 Pa. Code § 56.21.

given alternative choices on how to treat customer payments, the Commission has consistently chosen the alternative that would minimize the need to impose late payment charges.”⁷⁸

This argument is baseless. First, if there really was a Commission desire to “minimize” late payment charges it could simply eliminate a utility’s right to charge them. In fact, as Mr. Cummings testified, “PGW’s partial payment allocation practices are consistent with the Commission’s policies that are designed to prevent the accumulation of large, unmanageable arrearages.”⁷⁹ Specifically, he explained that they “are consistent with these goals by providing inherent incentives for customers to timely pay their bills in full.”⁸⁰

3. PGW Has Offered Compelling Policy Objectives In Support of its Partial Payment Allocation Practices.

During this proceeding, PGW has also defended its partial payment allocation practices by describing the compelling policy objectives that they fulfill. In his unrefuted testimony, Mr. Cummings noted that PGW’s partial payment allocation practices reduce the costs of carrying delinquent accounts that are otherwise borne by other ratepayers. Paying off late payment charges before posting partial payments to gas charges is fair and reasonable to other ratepayers and helps ensure that the delinquent account actually pays the late payment charges.⁸¹ As further explained by Mr. Cummings, “PGW follows this practice as a way of incentivizing customers to timely pay their bills in full. Customers who do not pay their bills increase the Company’s bad debt expense, obligating other ratepayers to shoulder a greater burden.”⁸²

⁷⁸ OCA Brief at 19-20.

⁷⁹ PGW St. 10-R at 18.

⁸⁰ *Id.*

⁸¹ PGW Brief at 31-34.

⁸² PGW St. 10-R at 6.

Besides showing how its current partial payment allocation practices promote the payment of late payment charges and work to keep bad debt expense down, PGW also demonstrated the negative financial impact of Mr. Colton's proposed approach. Specifically, Mr. Cummings testified that PGW's revenues from late payment charges would decline, to be made up through higher rates for remaining customers. For example, he showed that using Mr. Colton's hypothetical example and Mr. Colton's approach for applying partial payments, a customer would only pay \$5.25 in late payment charges over the course of a year despite being properly assessed the amount of \$143.77. Indeed, the customer would not pay the second late payment charge of \$9.75 assessed in March of year one until September of year two.⁸³

The OCA thus has simply ignored these compelling policy objectives that support PGW's approach. Rather, the OCA tries misdirection, arguing that "low-income customers are likely to be disproportionately impacted by PGW's payment sequencing methodology."⁸⁴ In support of that claim, the OCA refers to data reported by the Commission's Bureau of Consumer Services regarding the number of PGW residential customers in debt and their average monthly arrears and suggests that the financial impact on low-income customers "would be substantial."⁸⁵ As Mr. Cummings testified, the data relied upon by Mr. Colton failed to show that any impact would be substantial and in fact the record in the *SBG Order* proceeding showed that the effect on an individual customer basis is relatively minimal.⁸⁶ Further, Mr. Cummings explained that this data provides no information about customers who are making partial payments.

⁸³ PGW Brief at 32.

⁸⁴ OCA Brief at 20.

⁸⁵ OCA Brief at 20.

⁸⁶ PGW St. 10-R at 18-19.

More importantly, Mr. Cummings noted that “Mr. Colton does not address the impact of the changes he recommends on customers who timely pay their bills in full.”⁸⁷ The failure of Mr. Colton in his testimony and the OCA in its brief to address this impact is disconcerting (and further supports PGW’s conclusion that the OCA has failed to meet its heavy burden of proof). The low-income customers that the OCA targets as possibly being disproportionately impacted by PGW’s payment sequencing methodology are the same low-income customers who would be required, under Mr. Colton’s preferred approach, to pay higher rates due to higher bad debt expense and lower late payment charge revenues.⁸⁸ This would be a particularly troubling result if Mr. Colton’s proposed sequencing of residential payments would also be applied as well to deposits or to the sequencing of payments for commercial entities.⁸⁹

In discussing the costs that would be incurred for PGW to make modifications to its system to implement Mr. Colton’s proposal, the OCA mischaracterizes Mr. Cummings’ testimony. Specifically, the OCA claims that Mr. Cummings testified that the Commission should not hold PGW’s payment practices to be unlawful because they have been in place for many years, are embedded in the billing system and would take significant time and money to implement.⁹⁰ To the contrary, Mr. Cummings testified that the partial payment allocation practices comply with the Commission’s regulations and explained his basis for that conclusion.⁹¹ His testimony regarding the impacts on the Company’s operation was offered in the context of explaining why the Commission should conduct a rulemaking proceeding before

⁸⁷ PGW St. 10-R at 19.

⁸⁸ See PGW Brief at 33.

⁸⁹ Presumably this would be the case since it is doubtful that the Commission would require PGW to maintain two separate billing systems for purposes of serving residential and commercial customers.

⁹⁰ OCA Brief at 20-21.

⁹¹ PGW St. 10-R at 7-8.

directing changes to those lawful practices.⁹² Additionally, as to cost recovery, the OCA relies on Mr. Colton's faulty testimony suggesting that as with civil penalties, the costs associated with making the proposed modifications should not be chargeable to ratepayers.⁹³ This assertion overlooks the fact that PGW, as a municipally-owned, cash flow ratemaking company with no shareholders, has no other source available to pay for these costs.⁹⁴ Any costs of changing this longstanding policy will ultimately be recovered in rates; this is just a fact.

In light of the complete failure of the OCA to show that PGW's practices are either violative of existing regulations or the Public Utility Code or somehow unjust and unreasonable, the OCA's arguments should be rejected. If the ALJs have any view that the Commission should continue to explore this issue, they should recommend that the Commission initiate an investigation and rulemaking so that the entire industry can contribute and assist in the formulation of a policy that is in the public interest.

B. Allocation of Universal Service Cost Recovery.

1. Introduction

Preliminarily, it should be remembered that this is a base rate proceeding. It will set PGW's delivery rates until PGW's next base rate proceeding.⁹⁵ By way of comparison, PGW recovers its universal service costs – including (but not limited to) costs related to PGW's Customer Assistance Program ("CAP"), which PGW calls its "Customer Responsibility

⁹² PGW St. 10-R at 20-21.

⁹³ OCA Brief at 21.

⁹⁴ PGW St. 10-RJ at 10. And the costs of complying with a new PUC policy are quite different from a civil penalty.

⁹⁵ Under the Settlement, PGW shall not file a general rate increase pursuant to 66 Pa.C.S. § 1308(d) any sooner than December 1, 2019. Settlement at ¶ 15.

Program” (“CRP”) – through a reconcilable surcharge, the USEC.⁹⁶ The USEC is adjusted quarterly.⁹⁷ In May 2017, the Commission commenced a state-wide review of universal service programs,⁹⁸ which may include changes to CAP.⁹⁹

2. PGW Offered Compelling Reasons Supporting The Continuation Of The Allocation Of Universal Service Costs To All Firm-Customers

PGW did not propose any changes to the allocation of the costs of its universal service programs. Continuation of the allocation to all firm service customer classes is supported by OCA, TURN and CAUSE-PA.¹⁰⁰ Continuation is opposed by the OSBA,¹⁰¹ which takes the position that non-residential customers should not be required to contribute towards universal service costs. As stated earlier, OSBA has the burden of proof on this proposal and failed to carry it for the reasons stated herein and in PGW’s brief.

⁹⁶ PGW Brief at 2, 39. The Commission has held that universal service costs must be funded through a nonbypassable, competitively neutral cost recovery mechanism that fully recovers the costs of the programs. 66 Pa.C.S. § 2804(9) and § 2203(6). See Customer Assistance Programs: Funding Levels and Cost Recovery Mechanisms, Docket No. M-00051923, Final Investigatory Order entered December 18, 2006, 2006 Pa. PUC LEXIS 108.

⁹⁷ 66 Pa.C.S. § 1307; PGW Gas Service Tariff at Sixty Eighth Revised Page No. 81.

⁹⁸ *Review of Universal Service and Energy Conservation Programs*, Docket No. M-2017-2596907, Opinion and Order entered May 10, 2017.

⁹⁹ *Id.* The Joint Brief of TURN & CAUSE-PA argues that it would be premature for any changes to be made to PGW’s longstanding cost allocation in this base rate proceeding when the Commission may very well be expanding – or at least reviewing – its previous policy determinations as to the appropriate the class of customers who pay for universal service costs. Joint Brief of TURN & CAUSE-PA at 19.

¹⁰⁰ Joint Brief of TURN & CAUSE-PA at 5-6.

¹⁰¹ OSBA Brief at 12 and Proposed Ordering Paragraph No. 1. The OSBA states that the “OSBA has an economic interest” in PGW’s universal service programs because non-residential firm service customers are required (at this time) to pay the USEC. OSBA Brief at 7, 12-13. That statement is incorrect. The OSBA represents the interests of small business customers. 73 P.S. § 399.45(a), (c). See PGW Brief at 45-46. The OSBA does not, in and of itself, have an economic interest in PGW’s universal service programs. See 73 P.S. §§ 399.41 *et seq.*

In its brief, the OSBA argued¹⁰² that PGW's current allocation of universal service costs is not consistent with Commission policy¹⁰³ and precedent.¹⁰⁴ The OSBA acknowledges that PGW has been an exception to Commission policy and precedent¹⁰⁵ (for 17 years). Nevertheless, the OSBA seeks consistency. But, the OSBA's evidence and Brief fail to establish that: (i) exceptions cannot lawfully exist; and (ii) PGW's longstanding practice of having all firm ratepayers contribute to universal service costs is not consistent with sound public and regulatory policy and in the public interest.¹⁰⁶

Simply put, and contrary to the OSBA's position, the continuation of the allocation of universal service costs to all firm customers is justified and reasonable. Allocation of universal service costs is a policy issue.¹⁰⁷ No provision in the Public Utility Code, the Commission's order or the Commission's regulations mandate that only residential customers must contribute towards universal service costs.¹⁰⁸ In fact, under Section 2212(e) of the Public Utility Code, the Commission is required to follow the same ratemaking methodology and requirements that were

¹⁰² OSBA Brief at 7-14, 16.

¹⁰³ A statement of policy is not binding on the PUC. *See Pa. Human Relations Commission v. Norristown Sch. Dist.*, 374 A.2d 671, 679 (Pa. 1977). *See Department of Environmental Resources v. Rushton Mining Co.*, 591 A.2d 1168 (Pa.Cmwlth. 1990) (agency policy which rises to the level of a "binding norm" must be promulgated as a regulation in accordance with the Commonwealth Documents Law).

¹⁰⁴ It is well-settled that the Commission is not bound by the rule of *stare decisis* and, therefore, prior Commission Orders have no preclusive effect on the Commission from taking action on a previously addressed matter. *See, e.g., Bell Atlantic Pennsylvania, Inc. v. PUC*, 672 A.2d 352, 354 (Pa.Cmwlth. 1999) (PUC must render consistent opinions and should either follow, distinguish, or overrule its precedent); *National Fuel Gas Distribution Corporation v. PUC*, 677 A.2d 861, 865 (Pa.Cmwlth. 1996) (remanding matter back to the PUC for a statement of reasons for departing from earlier precedent).

¹⁰⁵ OSBA Brief at 13.

¹⁰⁶ Mr. Knecht admitted that "legitimate arguments can be raised for allocating universal service costs to non-residential rate classes." OSBA St. 1-SR at 5; PGW Brief at 43.

¹⁰⁷ *See Customer Assistance Programs: Funding Levels and Cost Recovery Mechanisms*, PUC Docket No. M-00051923, Final Investigatory Order entered December 18, 2006 at 26-32, 2006 Pa. PUC LEXIS 108.

¹⁰⁸ *Id.* *See also* PGW Brief at 39-40.

applicable to PGW prior to the Commission assuming jurisdiction over PGW.¹⁰⁹ Continuation would follow PGW's 25-year old method of allocating universal service costs to both residential and non-residential firm customers,¹¹⁰ and be consistent with the prior PGW-specific policy and precedent.¹¹¹ Continuation also acknowledges that PGW is fundamentally different from the other Natural Gas Distribution Companies ("NGDCs"): PGW is city-owned,¹¹² lacks shareholders,¹¹³ and has a denser, more residential, more low-income customer base than many similar sized utilities.¹¹⁴ The record shows that continuing the allocation to all firm customers would be consistent with cost causation principles (because non-residential customers also benefit from the universal service program);¹¹⁵ and promote the public good.¹¹⁶ Moreover, PGW's practice recognizes that it has one of the largest universal service programs of any Pennsylvania utility.¹¹⁷ This factor is important when considering the impact on residential customers that would inevitably occur if OSBA's policy position were adopted.

3. The OSBA's Proposal Should be Rejected

The OSBA's proposal should be rejected.¹¹⁸ Only the OSBA filed a brief supporting the OSBA's proposal that non-residential firm customers be relieved of having to contribute toward PGW's universal service costs.¹¹⁹ The OSBA's brief is focused on an alleged need for

¹⁰⁹ PGW Brief at 14-15, 40-41. OCA Brief at 22-23.

¹¹⁰ PGW Brief at 14-15, 39-41; Joint Brief of TURN & CAUSE-PA at 5, 7, 19-20.

¹¹¹ PGW Brief at 40.

¹¹² PGW St. 4 at 9; Joint Brief of TURN & CAUSE-PA at 13-16.

¹¹³ PGW St. 3 at 10.

¹¹⁴ PGW Brief at 38-39; PGW St. 4 at 9.

¹¹⁵ PGW Brief at 40-41; OCA Brief at 30-32; Joint Brief of TURN & CAUSE-PA at 13-16.

¹¹⁶ OCA Brief at 23-30; Joint Brief of TURN & CAUSE-PA at 16.

¹¹⁷ PGW Brief at 38-39; PGW St. 4 at 9; OSBA 1-SR at 12-13.

¹¹⁸ See PGW Brief at 38-47; OCA Brief at 22-39; Joint Brief of TURN & CAUSE-PA at 17-20.

¹¹⁹ OSBA Brief at 12 and Proposed Ordering Paragraph No. 1.

consistency with policy and precedent.¹²⁰ But, consistency, in and of itself, does not necessarily result in sound regulatory or public policy. This record does not show that OSBA's proposal is just and reasonable.¹²¹ To the contrary, the record here, as discussed herein and in PGW's brief, shows that the continued allocation of universal service costs to all firm customers is just and reasonable.

In an attempt to make this major policy shift more palatable to the Commission, OSBA has put forward an implementation plan that would provide some initial mitigation of the large residential rate increases that would otherwise be required if the USEC was simply modified to be solely the responsibility of residential customers. As PGW understands the proposal, OSBA is proposing a four-step implementation plan:

1. The per Mcf USEC charges for non-residential firm customers would be eliminated.¹²²
2. The per Mcf delivery charges for non-residential firm customers would be increased.¹²³ The delivery charge would be increased by the same amount as the reduction in the USEC charge for non-residential firm customers implemented in Step 1.
3. The per Mcf USEC charges for residential customers would be increased.¹²⁴ This increase would be in the amount necessary to recover all USEC costs from residential customers (including the amount previously recovered from other firm commercial and industrial customers). PGW estimated that exempting firm

¹²⁰ OSBA Brief at 6-10, 11-14.

¹²¹ Mr. Knecht admitted that "legitimate arguments can be raised for allocating universal service costs to non-residential rate classes." OSBA St. 1-SR at 5; PGW Brief at 43. This admission negates the value of his earlier (direct) testimony, which is relied upon by OSBA at page 7 of its brief, which opines that it is not reasonable to recover the costs of these programs from non-residential customers.

¹²² OSBA Brief at 15-16. *See also* OSBA Brief at 15 ("Mr. Knecht proposed that USEC revenues for the other firm service classes be set to zero, but with offsetting large percentage increases to the volumetric delivery charges").

¹²³ OSBA Brief at 15, 16.

¹²⁴ OSBA Brief at 16.

commercial and industrial customers would transfer millions in universal service costs to the residential class.¹²⁵

4. The per Mcf delivery charges for residential customers would be decreased.¹²⁶ This delivery charge would be decreased by the magnitude of the increase in the USEC charge for residential customers in Step 3.

According to the OSBA, the implementation of these steps will (a) place the cost responsibility for universal service programs with the residential class¹²⁷ (b) keep the same revenue effects for the PGW and each customer class,¹²⁸ and (c) render any claims of rate shock moot.¹²⁹

PGW submits that the ALJs and the Commission need not to consider the above-described implementation process because it presupposes the adoption of the OSBA's proposal to shift all universal service cost responsibility to residential customers only, a proposal that should not be accepted. Nevertheless, if the implementation process is considered, it should be rejected for the following reasons:

The OSBA's four-step implementation process is a "shell game." Steps 1 and 3 of the OSBA's implementation process purports to shift responsibility in universal service costs from non-residential firm customers to residential customers.¹³⁰ Steps 1 and 3 are the only steps necessary to relieve non-residential firm customers of having to contribute toward PGW's universal service costs. If the implementation process stops at those two steps, the shift of the

¹²⁵ PGW Brief at 44. PGW Rebuttal testimony estimated that \$11.6 million would be transferred to the residential class. PGW St. 6-R at 4. That testimony was based on the request for a \$70 million rate increase. The ratio between the rate request of \$70 million and the USC costs of \$11.6 million is about 16.57%. If that ratio (16.57%) is applied to the Settlement amount of \$42 million, the USC costs to be transferred to the residential class (under the Settlement) would be about \$6.96 million.

¹²⁶ OSBA Brief at 16.

¹²⁷ OSBA Brief at 15 ("Going forward, the cost responsibility for the USEC programs will remain with the residential class"). *See also* OSBA Brief at 16.

¹²⁸ OSBA Brief at 15, 16.

¹²⁹ OSBA Brief at 14.

¹³⁰ PGW Brief at 42, 44-45; OCA Brief at 10, 32, 38; Joint Brief of TURN & CAUSE-PA at 5-6.

universal service costs will increase PGW's proposed overall rate increase for residential customers.¹³¹ (Increased delivery rates for residential customers is opposed by PGW, OCA, TURN and CAUSE.-PA).¹³² But, the OSBA's implementation process is not limited to those steps. In an effort to generate a "revenue neutral" effect (at least for the moment, so as to claim no rate shock), Steps 2 and 4 would modify the delivery rates established by the Settlement¹³³ in order to offset the increased USEC charges that OSBA would impose on residential customers. The result would be that, coming out of this case, the overall rates (including USEC charges) for the residential, commercial and industrial firm customer classes would be the same as if this process had not been implemented (although the pots of dollars would be different). However, the effect in the long run would be just as bad, if not worse than merely modifying the USEC to impose all costs on residential customers.

First, under the OSBA's plan, revenue neutrality will last only until the next USEC change. It appears quite clear that the OSBA is proposing that, once its plan is put into effect, on a going forward basis: (1) the USEC would only be charged to residential customers; and (2) there would be no corresponding increase or decrease in a class's delivery service rates to offset any changes in the USEC. This means that while residential customers would not have to solely contribute to the increase in universal service costs as a result of this case (since they will receive a corresponding delivery service decrease) all future increases will be 100% their responsibility. Importantly, PGW's USEC changes each time the rates – both GCR and delivery charge – changes (because customers in PGW's CRP program pay a percentage of their income). So, if natural gas costs go up in 2018, PGW will be required to modify its USEC to recover that

¹³¹ PGW Brief at 44; *See* footnote 124, *supra*.

¹³² PGW Brief at 44-45; OCA Brief at 32-34; Joint Brief of TURN and CAUSE-PA at 7-13.

¹³³ Settlement at ¶ 10, 12, 17.

incremental amount of charge, and, under the OSBA proposal, residential customers would be responsible for 100% of the increase. More concerning, if PGW is required to increase its rates to recover a Gross Receipts Tax at 5.7% (as is now being considered by the General Assembly), 100% of the resulting increase in the USEC would be assigned to residential customers. Thus it should be clear that OSBA's proposal does not eliminate rate shock on residential customers – it simply pushes it slightly down the road.

Moreover, even the initial effort to avoid rate shock in this proceeding would only last until PGW's next base rate case.¹³⁴ At that time, the OSBA would undoubtedly argue that commercial and industrial firm rates exceeded their appropriate levels, since all of the costs of universal service would have been declared the sole responsibility of residential customers. If the Commission were inclined to attempt to set rates reflecting those cost principles, the increase to the residential class would likely be even more dramatic than that necessary to recover whatever rate increase PGW requests at that time. The resulting rate shock effect is likely to be far worse than if the OSBA "mitigation" scheme had not been implemented.

The bottom line is that there are compelling policy reasons for PGW to assign cost responsibility for universal service costs to all firm customers. Unrefuted evidence in the record shows that all customers, including commercial and industrial customers, benefit from utility service support for low-income customers, so that they can contribute to the local economy and participate in the workforce.¹³⁵ Also, PGW's relatively large level of the universal service charges justifies a spreading of these costs to all firm customers. This fact, as well as the fact

¹³⁴ It is fairly clear that the efforts to mitigate the rates of residential customers (Step 4) and artificially increase the rates of non-residential firm customers (Step 2) would only occur for this case; otherwise, cost responsibility for universal service costs would never be transferred to residential customers alone and the process would simply be a useless exercise that would just complicate and distort cost of service responsibility and leave OSBA without achieving its goal.

¹³⁵ PGW Brief at 40-41; OCA Brief at 30-32; Joint Brief of TURN & CAUSE-PA at 13-16.

that PGW has been allocating these costs to all firm customers for years prior and subsequent to coming under PUC authority fully justifies a continuation of this practice for PGW and a rejection of the OSBA's position.

4. The OSBA's Alternative Proposal Should Be Deemed Waived.

The alternative proposal should be deemed to have been waived by the OSBA. PGW noted in its brief¹³⁶ that the OSBA has proposed that universal service costs be allocated between all customers (i.e., residential, firm non-residential, PGW's interruptible sales service rate classes and PGW's large volume transportation service rate classes), if the Commission does not allocate all of PGW's universal service costs to residential customers.¹³⁷ The OSBA did not brief this alternative issue,¹³⁸ and this issue should be deemed to have been waived by the OSBA.¹³⁹

¹³⁶ PGW Brief at 46-47.

¹³⁷ OSBA St. 1-R at 13; OSBA St. 1-SR at 14.

¹³⁸ See OSBA Brief at 7-17.

¹³⁹ See, e.g., *Jackson v. Kassab*, 812 A.2d 1233 (Pa. Super. 2002), *appeal denied*, 825 A.2d 1261 (Pa. 2003), *Brown v. PA Dep't of Transportation*, 843 A.2d 429 (Pa.Cmwlth. 2004), *appeal denied*, 863 A.2d 1149 (Pa. 2004).

V. CONCLUSION

PGW respectfully requests that the ALJs and the Commission: 1) approve the Settlement without modification; 2) resolve the remaining issues so as to authorize the continuation of both PGW's allocation of universal service costs and PGW's partial payment allocation practices; and 3) permit PGW to file the tariff supplement annexed as Exhibit 1 to the Settlement.

Respectfully submitted,



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