



COMMONWEALTH OF PENNSYLVANIA

August 23, 2017

The Honorable Christopher P. Pell
Deputy Chief Administrative Law Judge
Commonwealth of Pennsylvania
Pennsylvania Public Utility Commission
801 Market Street, Suite 4063
Philadelphia PA 19107

The Honorable Marta Guhl
Administrative Law Judge
Commonwealth of Pennsylvania
Pennsylvania Public Utility Commission
801 Market Street, Suite 4063
Philadelphia PA 19107

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

Dear Judge Guhl and Judge Pell:

Enclosed please find the Answer of the Office of Small Business Advocate ("OSBA") to the Philadelphia Industrial and Commercial Gas Users Group's Motion to Strike Portions of the Reply Brief of the Office of Small Business Advocate, in the above-captioned proceeding.

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

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

Sincerely,


Sharon E. Webb
Assistant Small Business Advocate
Attorney ID No. 73995

Enclosures

cc: Rosemary Chiavetta, Secretary PA Public Utility Commission (electronic filing)
Mr. Robert D. Knecht
Parties of Record

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PENNSYLVANIA PUBLIC UTILITY COMMISSION	:	
	:	
	:	
v.	:	DOCKET NO. R-2017-2586783
	:	
PHILADELPHIA GAS WORKS	:	

**ANSWER OF THE OFFICE OF SMALL BUSINESS ADVOCATE TO
THE PHILADELPHIA INDUSTRIAL AND COMMERCIAL GAS USERS GROUP'S
MOTION TO STRIKE PORTIONS OF THE REPLY BRIEF OF THE
OFFICE OF SMALL BUSINESS ADVOCATE**

I. INTRODUCTION AND PROCEDURAL HISTORY

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

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

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

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

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

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

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

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

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

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

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

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

The OSBA and other parties submitted Main Briefs on July 21, 2017, pursuant to the procedural schedule as set forth in the ALJs’ June 30, 2017, Briefing Order.

On August 4, 2017, the OSBA and other parties submitted Reply Briefs in response to issues raised in the Main Briefs of other parties.

On August 21, 2017 the PICGUG filed a Motion to Strike Portions of the OSBA’s Reply Brief (“Motion to Strike”). Pursuant to 52 Pa. Code §103(c) of the Commission’s Regulations, and the litigation schedule established in this proceeding, the OSBA files this Answer in response to PICGUG’s Motion to Strike. For all of the reasons set forth more fully below, the

Commission should deny PICGUG's Motion to Strike.

II. BACKGROUND

Since before the time PGW was regulated by the Commission, PGW's universal service costs have been recovered from all classes of customers in spite of the fact that only residential customers are permitted to participate in the Company's universal service programs. Under Commission policy and the precedent with regard to other utilities, non-residential customers are not required to contribute toward universal service costs. Until now, the only rationale provided by the Commission for continuing the prior policy was that rate shock precluded the application of standard Commission policy to PGW. Under the OSBA's proposal in this proceeding, there is no net impact on the Residential class revenue requirement associated with moving cost responsibility for universal services costs to the Residential class, and thus there is no rate shock issue. Therefore, the requirement that PGW's non-residential firm service customers contribute toward universal service costs should be eliminated in this proceeding.

The OSBA has an economic interest in PGW's universal service programs because non-residential firm service customers are required (at this time) to pay the Universal Service and Energy Conservation Surcharge ("USEC").¹ PGW currently has three universal service programs for low-income customers: the Customer Responsibility Program ("CRP"); a conservation program for low-income customers (alternatively called the "CRP Home Comfort Program," the "Enhanced Low-Income Retrofit Program," and the "Conservation Works Program"); and a grandfathered Senior Citizen Discount Program.² As Mr. Knecht testified, it is

¹ OSBA Statement No. 1 at 33.

² OSBA Statement No. 1 at 33.

not reasonable to recover the costs of these programs from non-residential customers because non-residential customers are ineligible to participate in the universal service programs.³

III. RESPONSE TO MOTION TO STRIKE

The OSBA's response to the specific numbered paragraphs of the Motion to Strike includes the following:

1. ADMITTED.
2. ADMITTED. By way of further response, ALJ Guhl and ALJ Pell were jointly assigned to preside in this proceeding.
3. No response is required to the averments set forth in paragraph 3 of the Motion because the averments refer to testimony which, as writings, speak for themselves.
4. No response is required to the averments set forth in paragraph 4 of the Motion because the averments refer to a settlement which, as a writing, speaks for itself.
5. DENIED; in part. No response is required to the averments set forth in paragraph 5 of the Motion because the averments refer to testimony which, as writings, speak for themselves. The last averment to paragraph 5 is specifically denied. By way of further response, the Joint Main Brief of TURN, *et al.* and CAUSE PA, acknowledged and supported the OSBA's alternative argument that "if small and medium sized businesses must contribute, Rate IT customers should contribute as well." (*See* Joint Main Brief of TURN, *et al.* and CAUSE PA at 18-19 (note 67)).
6. DENIED. The first averment in paragraph 6 refers to Reply Briefs which, as writings, speak for themselves. The second averment in paragraph 6 is a conclusion

³ OSBA Statement No. 1 at 33.

of law to which no response is required. If, and to the extent that a response is required, as set forth more fully in paragraph 5 above, TURN, *et al.* and CAUSE PA supported the OSBA's alternative argument in their Main Brief at Page 18-19 (note 67). The last averment in paragraph 6 is an argument and conclusion of law to which no response is required. If, and to the extent a response is required, the arguments set forth in the OSBA's Reply Brief are responsive to those arguments raised by the Main Briefs of other parties. PICGUG's Motion, while concluding that the OSBA has flaunted Commission regulations and case precedent, does not cite to any specific regulation or case. However, the Commission's regulations at 52 Pa. Code §5.502(d)(2) allows for the filing of a Reply Brief to the arguments set forth in Main Briefs. PGW raised the issue universal service costs beginning on page 38 in its Main Brief. *See* PGW Main Brief at 38. The Company's argument against the OSBA's begins on page 47 of its Main Brief. *See* PGW Main Brief at 46. The OSBA in its Reply Brief, complied with the Commission's regulations and case precedent when it responded to the Company's argument against OSBA's alternative proposal.

7. The averments of paragraph 7 are argument, conclusions of law, and a request for relief to which no response is required. If, and to the extent that a response is required, the averments are denied.
8. The averments of paragraph 8 are argument and conclusions of law to which no response is required. If, and to the extent that a response is required, the OSBA presented arguments in its Reply Brief that responded to arguments raised in Main Briefs of other parties. The requirements of due process, as well as the Commission's regulations at 52 Pa. §5.502(d)(2), allow for Reply Briefs to be filed in response to

the Main Briefs of parties in rate proceedings. The last averment in paragraph 8 is a request for relief to which no response is required.

9. The averments of paragraph 9 refer to the Public Utility Code which, as a writing, speaks for itself. Furthermore, the averments in paragraph 9 are argument and conclusions of law to which no response is required. If, and to the extent that a response is required, the OSBA presented arguments in its Reply Brief that responded to arguments raised in Main Briefs of other parties. The requirements of due process, as well as the Commission's regulations at 52 Pa. §5.502(d)(2), allow for Reply Briefs to be filed in response to the Main Briefs of parties in rate proceedings.
10. The averments of paragraph 10 refer to the Commission's regulations and case law which, as writings, speak for themselves. The averments in paragraph 9 are also argument and conclusions of law to which no response is required. If, and to the extent that a response is required, the OSBA presented arguments in its Reply Brief that responded to arguments raised in Main Briefs of other parties. The requirements of due process, as well as the Commission's regulations at 52 Pa. §5.502(d)(2), allow for Reply Briefs to be filed in response to the Main Briefs of parties in rate proceedings.
11. The averments of paragraph 11 are argument and conclusions of law to which no response is required. If, and to the extent that a response is required, the OSBA presented arguments in its Reply Brief that responded to arguments raised in Main Briefs of other parties. The requirements of due process, as well as the Commission's regulations at 52 Pa. §5.502(d)(2), allow for Reply Briefs to be filed in response to the Main Briefs of parties in rate proceedings.

12. The averments of paragraph 12 are argument and conclusions of law to which no response is required. If, and to the extent that a response is required, the OSBA presented arguments in its Reply Brief that responded to arguments raised in Main Briefs of other parties. The requirements of due process, as well as the Commission's regulations at 52 Pa. §5.502(d)(2), allow for Reply Briefs to be filed in response to the Main Briefs of parties in rate proceedings.
13. The averments of paragraph 13 are argument and conclusions of law to which no response is required. If, and to the extent that a response is required, the OSBA presented arguments in its Reply Brief that responded to arguments raised in Main Briefs of other parties. The requirements of due process, as well as the Commission's regulations at 52 Pa. §5.502(d)(2), allow for Reply Briefs to be filed in response to the Main Briefs of parties in rate proceedings. The last averment in paragraph 13 is a request for relief to which no response is required.

WHEREFORE, for all of the forgoing reasons, the OSBA submits that the issues raised in its Reply Brief relating to the OSBA's alternative proposal for the recovery of universal service costs were properly and timely presented in response to the arguments raised in the Main Briefs of PGW, the OCA, and TURN *et al.*, and CAUSE PA, and respectfully requests that Administrative Law Judges Guhl and Pell DENY PICGUG's Motion to Strike.

Respectfully submitted,


Sharon E. Webb
Assistant Small Business Advocate
Attorney ID No. 73995

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300 North Second Street, Suite 202
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Dated: August 23, 2017

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission

v.

Philadelphia Gas Works

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**Docket No. R-2017-2586783
C-2017-2593497**

CERTIFICATE OF SERVICE

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

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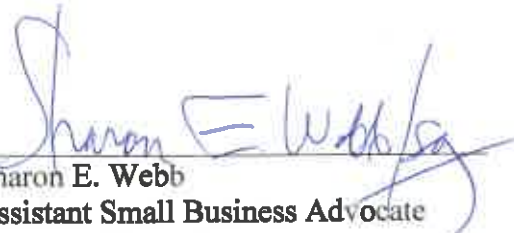
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DATE: August 23, 2017

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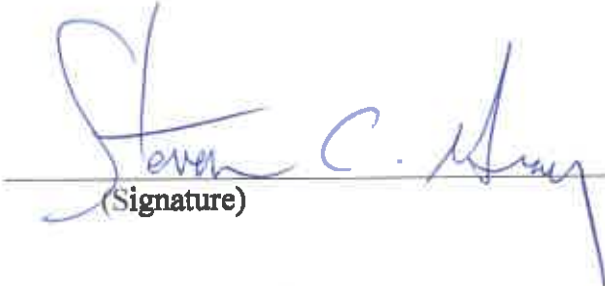
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VERIFICATION

I, Steven C. Gray, hereby state that the facts set forth herein above are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. §4904 (relating to unsworn falsification to authorities).

Date: August 23, 2017



(Signature)