

October 2, 2017

Via Electronic Filing

Rosemary Chiavetta, Secretary
PA Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265

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 Exceptions with regard to the above-referenced matter. Copies of the Reply Exceptions are being served in accordance with the attached Certificate of Service.

PGW is also compelled to respond to the comments contained in PICGUG's letter submitted in this docket on September 25, 2017. In its letter, PICGUG commented upon a portion of the Recommended Decision having to do with an agreement between PICGUG and PGW to attempt to negotiate a new "LT" rate applicable to IT customers. LT rate customers would be subject to interruption in fewer instances than the existing IT rate. The R.D. (taking from PGW's Statement in Support) stated that "[t]he newly proposed LT service will be available only to new IT load or existing IT customers and will be set at an increment higher than the existing IT rates ..." R.D. pages 49 and 50.

In its letter of September 25, PICGUG states that "[a]lthough the term "higher" was referenced in Philadelphia Gas Works' ("PGW") Statement in Support and may have been the intent of the parties, PICGUG notes that the language of the Joint Petition for Partial Settlement ("Joint Petition") does not actually contain the word "higher." Joint Petition, ¶ 23(b)(ii) ("The LT rates will be an increment of the IT rates established in this case."). As noted previously, the exact rate and the terms and conditions will be determined after the parties meet to discuss further."

PGW respectfully submits that the word "increment" has only one accepted definition: "the action or process of increasing especially in quantity or value : enlargement,"¹ Thus, the Settlement logically may only be read as to authorize the parties to negotiate and/or propose an LT rate that is an "increment," i.e., higher, than the customer's comparable IT rate. This is certainly what PGW intends to do. Please do not hesitate to contact me with questions.

Sincerely,



Daniel Clearfield
DC/lww

Enclosure

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

¹ <https://www.merriam-webster.com/dictionary/increment>.

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of PGW's Reply Exceptions 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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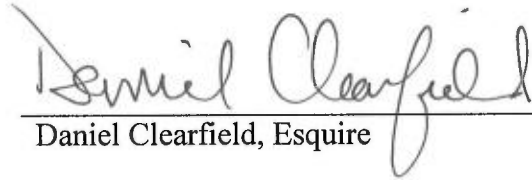
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Date: October 2, 2017



Daniel Clearfield, Esquire

**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	:	

**REPLY EXCEPTIONS OF
PHILADELPHIA GAS WORKS**

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I. INTRODUCTION AND SUMMARY OF REPLY EXCEPTIONS

Philadelphia Gas Works (“PGW” or “Company”) files these Reply Exceptions in response to the Exceptions filed by the Office of Consumer Advocate (“OCA”) and by the Office of Small Business Advocate (“OSBA”) to the Recommended Decision (“RD”) issued on September 8, 2017 by Deputy Chief Administrative Law Judge Christopher P. Pell and Administrative Law Judge Marta Guhl (collectively, the “ALJs”). By these Reply Exceptions, PGW fully incorporates by reference its Main Brief (“MB”) filed on July 21, 2017 and its Reply Brief (“RB”) filed on August 4, 2017.

In a comprehensive opinion, the RD recommended approval of the Settlement. No party excepted to that recommendation. The RD, however, also made recommendations on the two issues which were not resolved by the Settlement. Specifically, the ALJs recommended that OCA’s proposal to modify PGW’s long-standing partial payment allocation practices be dismissed without prejudice,¹ and the OCA filed Exceptions. The ALJs further recommended that “PGW maintain its current universal services cost allocation with the requirement that PGW submit the aforementioned data regarding adjustments to its universal service cost allocation in the next rate proceeding,”² and the OSBA filed an Exception.

The Exceptions of OCA and OSBA raise no new issues or arguments and simply repeat their arguments that were rejected by the ALJs in the RD. The ALJs were correct in their conclusions and both exceptions should be denied.

¹ RD at 77.

² RD at 112.

Allocation of Partial Payments

As part of this base rate proceeding, OCA has sought to modify PGW's 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 current basic service – to the balance due for prior basic service.³ This is exactly what PGW does.⁴

The ALJs correctly determined that the issue raised by OCA has no relationship to PGW's tariff provisions governing the computation and assessment of late payment charges, which nearly mirror the Commission's regulations, and therefore is not properly before the Commission in this proceeding.⁵ Moreover, to the extent that the Commission desires to direct modifications to PGW's partial payment allocation practices, the Commission must initiate a rulemaking proceeding or other type of generic investigation that examines the various utilities' practices, including those that handle partial payment allocation similar to PGW, and makes a decision on the basis of the operational impacts and other compelling policy objectives for all affected utilities.⁶

If the Commission desires to review PGW's partial payment allocation practices in this proceeding, the ALJs properly determined that a party raising an issue that is not included in a public utility's general rate case bears the burden of proof regarding that issue.⁷ Specifically, as

³ 52 Pa. Code § 56.24.

⁴ PGW MB at 20-23; PGW RB at 9-10.

⁵ RD at 76.

⁶ PGW MB at 36-39; PGW RB at 9.

⁷ RD at 29.

the proponent of a rule or order, OCA has the burden to establish that PGW's practice is unlawful, unjust or unreasonable.⁸

OCA has failed to carry its burden of showing that PGW's partial payment allocation practices violate any provision of the Commission's regulations or the Public Utility Code or are unjust and unreasonable. By contrast, PGW has demonstrated that it follows the requirement of the regulations by first applying partial payments to charges for prior basic service before applying them to charges for current basic service.⁹ In fact, OCA has not contended that PGW's posting method is contrary to any particular requirement of the applicable regulations. Rather, OCA has cobbled together a flawed legal theory using bits and pieces of various regulations and statutory provisions to maintain that PGW's partial payment allocation practices have the "effect" of charging compound interest. In fact, OCA agrees that PGW is not charging compound interest since it does not charge interest on interest and it subtracts unpaid late payment charges before assessing new late payment charges.¹⁰ Indeed, the only evidence presented by OCA in support of its claim was nothing more than a calculation by its witness that shows the mathematical outcome of compounding an 18% per annum simple interest rate, which produces an annual interest rate of 19.562%.¹¹ As the ALJs correctly noted, OCA has simply presented no evidence in this proceeding to show that, as a result of PGW's partial payment allocation practices, any customer has been billed or has paid late payment charges in excess of 18%.¹² OCA's Exception should be denied.

⁸ PGW MB at 8-10; PGW RB at 2.

⁹ PGW MB at 21-23; PGW RB at 9-22.

¹⁰ PGW MB at 24-26; PGW RB at 16-17.

¹¹ PGW MB at 26; PGW RB at 17-18.

¹² RD at 76.

Universal Service Cost Recovery

Similarly, OSBA's Exception concerning the allocation of Universal Service Charges to all firm customers (and not just residential customers) should be rejected. The PUC has approved PGW's present method of allocation on numerous occasions. The record also shows that allocation to all customers is justified on cost causation principles, as commercial and industrial customers receive both direct and indirect benefits from the existence of PGW's low-income programs. Finally, OSBA's scheme, which purportedly would permit a reallocation to residential customers but avoid "rate shock" to those customers, would merely delay the significant negative effects of such a policy change on residential customers, skew class cost allocation, and significantly complicate PGW's future rate cases. OSBA's Exceptions should be denied.

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 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.

For all of the reasons expressed herein and in PGW’s Briefs, PGW urges the Commission to adopt the RD and deny the Exceptions of OCA and OSBA.

II. REPLY TO EXCEPTIONS OF OCA

A. The ALJs Rightly Concluded That Issues Regarding PGW’s Partial Payment Allocation Practices Should Be Addressed Outside Of This Rate Case

In determining that issues regarding PGW’s partial payment allocation practices are beyond the scope of this base rate proceeding, the ALJs have properly rejected OCA’s proposed modifications.¹³ Rule 4.2 of PGW’s tariff, which OCA has relied upon in an effort to pursue issues concerning PGW’s partial payment allocation practices in this proceeding, provides 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.

¹³ RD at 76.

This tariff provision parrots the requirements of Section 56.22 of the Commission's regulations governing the computation and assessment of late payment charges and has no language relating to the application of customers' partial payments. Therefore, the ALJs correctly concluded that "the language of PGW's tariff is not at issue here."¹⁴ This result recommended by the ALJs is consistent with the ALJ's interim order issued in *Pa. P.U.C. v. PPL Electric Utilities Corp.*, Docket No. R-2015-2469275 (Sixth Prehearing Order dated July 14, 2015) ("*PPL*"). As in *PPL*, the challenges raised by OCA are not related to either base rates or to PGW's existing or proposed tariff and thus are beyond the proper scope of this base rate proceeding.

In its Exceptions, OCA suggests that the ALJs may have dismissed its proposal on the basis that OCA challenged the application, rather than the language, of an existing tariff provision.¹⁵ The RD contains no such discussion but rather appropriately recognizes that the issue raised by OCA simply does not relate to the tariff. Moreover, OCA did not challenge the application of Rule 4.2 of PGW's tariff. Specifically, OCA made no claims that PGW improperly calculated late penalties or improperly imposed them on customers' bills. Merely because OCA's issue focuses on PGW's method for applying partial payments to previously imposed late payment charges does not bring PGW's partial payment allocation practices within the scope of Rule 4.2 of its tariff, which only addresses the initial assessment of late payment charges and is silent on the posting of partial payments to those charges for prior basic service.

While OCA has proposed that PGW include its partial payment allocation practices in its tariff, that proposal cannot authorize a review of PGW's practices in this base rate proceeding. Indeed, it would be inappropriate to allow a party to bring any unrelated issue into a base rate proceeding by simply proposing that the practice in question be incorporated in the tariff.

¹⁴ RD at 75-76.

¹⁵ OCA Exceptions at 7.

Moreover, nothing in the Commission's regulations requires public utilities to incorporate their practices for complying with Sections 56.23 and 56.24 in their tariffs. Even when public utilities include such information in their tariffs, PGW has shown that they simply parrot the language set forth in the regulations and do not provide any greater detail about how partial payments are applied to the various components of prior basic service charges.¹⁶ Although PGW has indicated a willingness to also include language in its tariff reflecting the requirements of the regulations, nothing has been presented here to show why PGW should be required to do anything more.

Rather than permitting OCA to challenge PGW's partial payment allocation practices in this base rate proceeding, the ALJs appropriately observed that OCA is free to raise these issues in a complaint proceeding.¹⁷ While OCA notes that it already filed a formal complaint in this base rate proceeding and argues that it should not be required to file another complaint to pursue the same claims,¹⁸ the fact remains that the issues were never properly before the Commission as part of this proceeding. Merely because OCA elected to raise the issue here does not negate the fact that PGW's partial payment allocation practices are not part of its tariff and are therefore well outside the proper scope of the base rate proceeding. In addition to pursuing these issues in a separate complaint proceeding, OCA could likewise petition the Commission to initiate a

¹⁶ PGW MB at 35-36.

¹⁷ RD at 77. The ALJs also suggested that the forthcoming order in *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 No. C-2012-2304324 (Order entered December 8, 2016) ("*SBG Order*") will affect all PGW customers. RD at 77. As to that observation in the RD, PGW agrees with OCA's comments that the *SBG Order* should not apply to all customers, and has urged the Commission to decline to direct changes to its partial payment allocation practices in the context of a complaint proceeding involving a few individual customers. See PGW Petition for Reconsideration, Clarification and/or Rehearing filed on December 23, 2016 and currently pending before the Commission. PGW is also planning to file an additional Supplemental Petition for Rehearing to request that, if the PUC determines to review PGW's system-wide partial payment allocation policy in the context of the SBG case it reopen the record to admit the significant system-wide evidence that was developed here.

¹⁸ OCA Exceptions at 10-11.