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December 7, 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

Dear Secretary Chiavetta:

Enclosed for electronic filing please find Philadelphia Gas Works' ("PGW") Answer to the Office of Consumer Advocate's Petition for Reconsideration with regard to the above-referenced matter. Copies of the filing are being served in accordance with the attached Certificate of Service.

Sincerely,

A handwritten signature in cursive script that reads "Daniel Clearfield".

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 Answer to OCA's Petition for Reconsideration upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

Via Email and/or First Class Mail

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Date: December 7, 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

**ANSWER OF PHILADELPHIA GAS WORKS TO
PETITION FOR RECONSIDERATION OF
OFFICE OF CONSUMER ADVOCATE**

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I. INTRODUCTION AND SUMMARY

Philadelphia Gas Works (“PGW” or “Company”) files this Answer to the Petition for Reconsideration (“Petition”) filed by the Office of Consumer Advocate (“OCA”) on November 27, 2017 regarding the Commission’s Opinion and Order entered on November 8, 2017 (“November 8 Order”) in PGW’s base rate proceeding. In the November 8 Order, the Commission properly determined that OCA’s challenge to PGW’s partial payment allocation practices does not relate to the lawfulness, justness or reasonableness of a proposed or an existing rate, rule or regulation of PGW, and dismissed OCA’s claims without prejudice. In seeking reconsideration of the November 8 Order, despite its claims to the contrary, OCA has not raised any facts or matters that the Commission overlooked in the November 8 Order should be considered at this stage of the proceeding or that should cause the Commission to reconsider its decision. Therefore, the Petition should be denied.

Contrary to OCA’s claims in its Petition, the issues that it has sought to pursue go beyond the proper scope of a base rate proceeding. Specifically, OCA’s allegations do not relate to PGW’s existing or proposed base rates or to any rule or regulation in its tariff. While OCA attempted to link PGW’s partial payment allocation practices to the late payment charge provisions of its tariff, the Commission correctly determined that OCA’s claim does not relate to the computation or assessment of late payment charges pursuant to the tariff. Here, the OCA has tried a new tactic: claiming that PGW’s partial payment allocation practices are really a “rate” and therefore would be properly considered in the Commission’s review of PGW’s “existing rates, rules, and regulations.” Not only is this new argument improperly raised for the first time at the reconsideration stage, but it is plainly wrong. OCA’s allegations go to PGW’s practice concerning partial payments made by customers, which are insufficient to pay both the charges for prior basic service and the charges for current basic service. That practice clearly does not fit

the definition of “rate” in the Public Utility Code or any accepted definition of the term. Nor are the practices part of PGW’s tariff.

Additionally, since OCA’s claims relate to whether PGW’s practices comply with the Commission’s regulations, it had the burden of proof, which it failed to carry. Notably, despite numerous references to the prohibition in the Commission’s regulations and PGW’s tariff against assessing more than simple interest when levying late payment charges, OCA has never *actually* alleged, let alone presented evidence to show, that PGW assesses compound interest. Indeed, OCA has recognized that PGW removes unpaid late payment charges before assessing new late payment fees, and therefore does not assess late fees on late fees, which is the hallmark of compound interest. The only “evidence” OCA has offered in support of its compound interest theory is that the mathematical result of applying a compound interest formula to an 18% interest rate is 19.562%; but that hypothetical calculation has nothing to do with PGW’s actual practices. In fact, OCA did not present any billing data to show that PGW actually charges annual interest of 19.562% or any amount greater than 18% (because it does not).

As the Commission noted, OCA is free to raise any concerns it has regarding PGW’s partial payment allocation practices by filing a formal complaint specifically challenging those practices or by petitioning the Commission to conduct an investigation into PGW’s practices. In that manner, OCA would bear the burden of proving that PGW’s partial payment allocation practice violate the Commission’s regulations or warrant further review. Importantly, PGW would also be afforded a full opportunity to present a direct case and fully participate in a proceeding devoted to these issues. Specifically, this venue would permit PGW to again show that its existing partial payment allocation practices: (i) are fully compliant with the Commission’s regulations; (ii) comport with compelling policy objectives that minimize the

charges paid by other ratepayers (who timely pay their bills in full); and (iii) do not result in the assessment of compound interest. During such a proceeding, PGW would further show that modifying its partial payment allocation practices in the manner suggested by OCA would result in a customer paying only \$5.25 in late payment charges during a given year in which \$143.77 in late payment charges were properly assessed pursuant to the tariff.¹ Another approach, a generic investigation and/or rulemaking proceeding would permit the Commission to fully consider the reasonableness of PGW's approach, as well as to consider how other utilities are applying partial payments to charges for prior basic service.

The Commission's decision to dismiss OCA's claims without prejudice was correct and should be upheld. As OCA has raised no new issues warranting further review and, for the most part, simply repeats the arguments that have been previously considered and rejected, the Petition should be denied.

II. STANDARD OF REVIEW

Requests for reconsideration, under the provisions of 66 Pa. C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under the Public Utility Code to rescind or amend a prior order in whole or in part.² Parties cannot be permitted by a motion to review and reconsider, to raise the same questions which were specifically decided against them. What the Commission expects in petitions for reconsideration are new and novel arguments that could not previously have been raised, or considerations which appear to have been overlooked by the Commission. Additionally, a Petition for Reconsideration is properly before the Commission where it pleads newly discovered

¹ PGW Main Brief at 17-19.

² *Duick v. Pennsylvania Gas and Water Co.*, Docket No. C-R0597001 *et al.*, 56 Pa. P.U.C. 553 (1982).

evidence, alleges errors of law, or a change in circumstances.

III. ANSWER TO PETITION FOR RECONSIDERATION

A. The Commission Rightly Concluded That Partial Payment Allocation Does Not Involve PGW's Rates, Rules and Regulations

In determining that OCA's claim regarding PGW's partial payment allocation practices is not a challenge regarding the lawfulness, justness or reasonableness of a proposed or an existing PGW rate, rule or regulation, the Commission properly dismissed OCA's claim without prejudice.³ Rule 4.2 of PGW's tariff, on which OCA has relied 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.

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.⁴

As Rule 4.2 of PGW's tariff is silent with respect to the allocation of partial payments made by customers, which are payments that are not sufficient to pay both charges for prior basic service and charges for current basic service, OCA's claims have nothing to do with this tariff provision. Merely because OCA's issue focuses on PGW's method for applying partial

³ November 8 Order at 46-47.

⁴ 52 Pa. Code § 56.22.

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.

In its Petition, OCA argues – for the first time in this proceeding⁵ – that PGW's partial payment allocation practices are properly before the Commission in a base rate case because of the statutory definition of “rate” in Section 102 of the Public Utility Code (“Code”), which includes “practices...affecting any such compensation, charge, fare, toll, or rental.”⁶ On this basis, OCA contends that PGW's partial payment allocation practices fall within the definition of “rate,” which the Commission's Order entered on March 16, 2017 (“Suspension Order”) placed in issue when it ordered an investigation into PGW's “existing rates, rules, and regulations.”⁷

As a threshold matter, OCA has waived its argument concerning the statutory definition of rate by failing to raise it until the Petition for Reconsideration.⁸ For the first time in this proceeding, OCA is now contending that PGW's partial payment allocation practice is in fact a “rate;” but that argument could have been raised before the ALJs or in Exceptions. Based on prior Commission and judicial precedent in Pennsylvania, this argument should be rejected as waived. In any event, the Commission's November 8 Order already addresses OCA's fundamental underlying issues, which it has sought to re-characterize in its Petition as involving a statutory definition. Specifically, the Commission previously determined that OCA has not

⁵ Petition at 4-5. This argument was not raised in OCA's Answer filed on May 25, 2017 to PGW's Motion in Limine, in its Main Brief filed on July 21, 2017, in its Reply Brief filed on August 4, 2017 or in its Exceptions filed on September 25, 2017 to the Recommended Decision.

⁶ 66 Pa. C.S. § 102 (relating to definitions).

⁷ Docket No. R-2017-2586783, Suspension Order at 2.

⁸ *Pa. PUC v. Uber Technologies, Inc., et al.*, Docket No. C-2014-2422723 (Order entered September 1, 2016 at 52) (Commission found that as a matter of administrative economy, an issue raised for the first time in the Petition for Reconsideration, was waived if it could have been raised previously in the proceeding); *see also Hiko Energy, LLC v. Pa. PUC*, No. 5 C.D. 2016, Slip Opinion at 26 (Court found that issue was waived when it was not raised in exceptions filed with the Commission).

presented evidence showing that PGW's partial payment allocation practices *actually* affect the rates that are charged to customers.⁹

Moreover, OCA's claim that PGW's partial payment allocation practices somehow meet the definition of "rate" in the Public Utility Code focuses on the wrong thing. PGW's partial payment allocation practices do not affect the rates that are charged to customers. To the contrary, customers are billed and late payment charges are imposed in accordance with PGW's tariff. For customers who do not timely pay their bills in full, late payment charges continue to accrue on unpaid charges (other than previously assessed late payment charges). Therefore, it is the failure of the customers to timely pay their bills in full – and PGW's practice with respect to those partial payments – that results in the imposition of additional late payment charges.¹⁰ That practice is not a "rate, rule or regulation" of PGW.

Further, if the Commission viewed the procedure that a utility utilizes to apply partial payments to arrearages as a practice involving a rate it would have directed that such procedure appear in the tariff, since, in accordance with Code Section 1303, all "rates" must appear in a utility's tariff. There is not a single decision cited by OCA (or that PGW has been able to find) to suggest that the Commission has ever defined the term "rate" so expansively. Adopting OCA's unrestricted and expansive interpretation would mean that virtually any and all practices of any utility would be at issue in a general rate case. Such *carte blanche* to insert any issue into a rate case and place the burden of proof on the utility would appear to be entirely inconsistent

⁹ November 8 Order at 46 (Commission adopted recommendation of the ALJs to dismiss OCA's claim without prejudice); Recommended Decision at 76 (ALJs found that only hypothetical scenarios were presented to show that PGW's practices *may* violate the Commission's regulations, and noted the absence of actual billing data).

¹⁰ PGW Main Brief at 17-19.

with the terms of the Code Section 1308, which mandates that proceedings involving a proposed rate must be decided in a very compressed time frame (9 months).¹¹

Moreover, the Commission's prior holdings have confirmed that, in its view, the proper scope of an investigation during a base rate proceeding is limited to tariffs (both existing and proposed) and does not include other "practices" of public utilities. In *Pa. PUC v. PPL Electric Utilities Corporation*,¹² the ALJ struck pre-served written testimony about data access and performance metrics because it did not involve the tariff or rates. Even when an issue involved rates, the Commission recently carved it out of a base rate proceeding because it related to an adjustment clause and was more appropriately addressed in the utility's distribution service infrastructure charge proceeding.¹³

Rather than permitting OCA to challenge PGW's partial payment allocation practices in this base rate proceeding, the Commission appropriately observed that OCA is free to raise these issues in a complaint proceeding.¹⁴ In lieu of pursuing these issues in a separate complaint proceeding, OCA may petition the Commission to initiate a generic investigation into public utilities' partial payment allocation practices and/or launch a proposed rulemaking proceeding

¹¹ Similarly, in addressing a burden of proof issue in the November 8 Order, the Commission recognized that it would not be appropriate to permit a party to bring an issue into a base rate proceeding by proposing that certain language be added to the tariff. November 8 Order at 47.

¹² *Pa. PUC v. PPL Electric Utilities Corporation*, Docket No. R-2015-2469275 (Sixth Prehearing Order dated July 14, 2015). See also *Pa. PUC, et al. v. Pennsylvania American Water Co.*, Docket No. R-00932670, 1994 Pa. PUC LEXIS 120 at *158 (Final Order entered July 26, 1994) (Commission declined to address issues raised by OCA during a rate case, noting they would be better raised in a statewide rulemaking proceeding).

¹³ *Pa. PUC, et al. v. Metropolitan Edison Company, et al.*, Docket No. R-2016-2537349 et al. at 39 (Order entered January 19, 2017).

¹⁴ November 8 Order at 48.

proposing modifications to the methods followed by various public utilities.¹⁵ In fact, PGW has argued that a proposed rulemaking is the lawful and appropriate way for the Commission to examine system-wide modifications to the Company's (and other public utilities') partial payment allocation practices if it wishes to do so.¹⁶

B. The Commission Appropriately Rejected OCA's Quality of Service Claims

Properly finding that OCA's claims regarding PGW's partial payment allocation practices do not involve the existing or proposed tariff, the Commission determined that OCA's claims relate to PGW's quality of service under Code Sections 523 and 526.¹⁷ As the Commission correctly concluded, "the burden of proof on this complainant-initiated claim squarely resides with the OCA under Section 332(a) of the Code."¹⁸ The Commission explained its reasoning as follows:¹⁹

We believe it would be improper burden shifting in a general rate proceeding to allow a party to bring forth an issue that does not challenge a proposed or existing rate, rule or regulation, and then require the utility to carry the burden with respect to that issue.

The Commission further noted that OCA has not proposed or presented evidence regarding any specific adjustments to the Company's cost of service claims; nor has it proposed that the Commission reject, in whole or in part, PGW's revenue requirements. In fact, OCA has settled

¹⁵ November 8 Order at 48.

¹⁶ PGW Main Brief at 36-39.

¹⁷ November 8 Order at 47; 66 Pa. C.S. §§ 523 and 526.

¹⁸ November 8 Order at 47.

¹⁹ *Id.*