

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17120**

**Pennsylvania Public Utility
Commission, et al. v. Philadelphia
Gas Works**

**Public Meeting May 3, 2018
2586783-OSA
Docket No. R-2017-2586783**

MOTION OF COMMISSIONER DAVID W. SWEET

Before the Commission is the Petition for Reconsideration (Petition) filed by the Office of Consumer Advocate (OCA) in the case of Philadelphia Gas Works' (PGW) Section 1308(d)¹ tariff filing. At our November 8, 2017 Public Meeting, we denied² certain exceptions filed in this proceeding and adopted the Administrative Law Judges' Recommended Decision approving a Joint Petition for Partial Settlement. Additionally, we dismissed without prejudice OCA's claims regarding PGW's partial payment allocation practices. The Petition before us requests reconsideration of our decision regarding the relevance of PGW's partial payment allocation practices to its existing rates, rules and regulations and the proper application of the burden of proof standard. OCA's arguments are persuasive. The petition has met the *Duick* standard³ for reconsideration, having raised new and novel arguments, and I move that the Petition be granted.

In its Petition, OCA argues that reconsideration is appropriate under *Duick* because it appears that the Commission:

- (1) Failed to consider or overlooked that PGW's partial payment allocation practices fall within the definition of "rates" under the Public Utility Code;
- (2) Concluded that a quality of service issue may only be addressed in a base rate proceeding if there is a financial impact in the overall revenue requirement or cost of service;
- (3) Overlooked that quality of service issues are regularly raised in base rate proceedings and do not alter the burden of proof (which OCA argues is PGW's burden);
- (4) Overlooked the fact that its dismissal of OCA's Formal Complaint regarding PGW's partial payment allocation practice would result in a judicial waste of resources when all parties have already had the required due process in this proceeding.

Due Process

First, OCA argues that our statement in the November 8th Order that there would be a potential impact on the due process rights of the parties in this case overlooks that dismissal of the OCA complaint regarding partial payment allocation would result in a judicial waste of resources when all parties have already had the required due process in this proceeding. I agree that reconsideration of our dismissal of OCA's Formal Complaint in this proceeding is necessary. As OCA outlines in the Petition, "due process requires 'notice and opportunity to be heard.'"⁴ The

¹ See 66 Pa. C.S. § 1308(d) (Regarding general rate increases).

² Hereinafter referred to as the November 8th Order.

³ See *Duick v. Pennsylvania Gas and Water Company*, 56 Pa. P.U.C. 553 (Order entered December 17, 1982) (quoting *Pennsylvania Railroad Co. v. Pennsylvania Public Service Commission*, 179 A. 850, 854 (Pa. Super. Ct. 1935) (*Duick*)).

⁴ OCA Petition at 12, citing *Schneider v. Pa. P.U.C.*, 479 A.2d 10 (Pa. Cmwlth. 1984).

record shows that due process has been afforded to all parties in this proceeding and that the merits of OCA's Formal Complaint may be addressed. This issue was addressed at length in testimonies, main briefs and reply briefs of multiple parties, including PGW. The issue is ripe for decision and I agree with OCA that reconsideration is necessary as we overlooked that due process had been adequately provided and that further litigation would be a judicial waste of resources. Consequently, OCA's request for reconsideration regarding due process and addressing the issue of partial payment allocation on its merits should be granted. Consistent with our findings in a separate complaint case against PGW,⁵ PGW's current practices constitute violations of § 56.22⁶ and § 56.24⁷ of our regulations.

Partial Payment Allocation Practices

The methodology used by PGW to apply partial payments – applying them to all late payment charges due before applying the payment to the balance due for prior basic service – conflicts with our regulations. Section 56.24 requires that a partial payment first be applied to a customer's balance due for prior service. This Commission determined, in its *SBG Order*, that our regulations require that a partial payment be applied equally to all basic charges⁸ due for prior service, with no prioritization given to late payment charges over other types of charges for basic service. In order to comply with Section 56.24 of our regulations, PGW should not be prioritizing late payment charges over other basic charges due for prior service. As such, PGW is in violation of Section 56.24 and I move that PGW be required amend its partial payment allocation practices to conform with that section of our regulations and with the *SBG Order*.

In prioritizing late payment charges over other basic charges, PGW uses a method which applies a partial payment against more recent, non-interest-bearing late payment charges followed by older, interest-bearing principal. This methodology fails to comply with Section 56.22(a) of our regulations, which prohibits utilities from assessing late payment charges that lead to amounts that exceed 1.5% interest per month, or 18% *simple* interest per annum, on the overdue balance of the bill. In applying the partial payments out of sequence, PGW effectively charges interest in excess of the 18% annual limit.⁹ PGW is in violation of Section 56.22(a) and I move that PGW be required to amend its partial payment allocation practices to conform with that section of our regulations.¹⁰

⁵ See *SBG Management Services, Inc./Colonial 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*).

⁶ See 52 Pa. Code §§ 56.22(a) and (c) (Regarding the accrual of late payment charges).

⁷ See 52 Pa. Code § 56.24 (Regarding the application of partial payments among several bills for public utility service).

⁸ See 52 Pa. Code § 54.4 (Regarding the bill format for residential and small business customers). The following charges are considered basic charges: generation charges, transmission charges, distribution charges, customer/basic charges, advanced metering charges, transition charges, taxes, late payment charges, security deposits and reconnection fees.

⁹ OCA Main Brief, at pp. 11-22, in which OCA calculates that PGW's practice leads to the charging of approximately 19% interest per year.

¹⁰ I note that this finding is consistent with this Commission's finding, in our *SBG Order*, that PGW's partial payment allocation methodology fails to comply with 52 Pa. Code § 56.22(a).

Quality of Service Issues

In its Petition, OCA also notes that the November 8th Order categorizes the partial payment allocation issue as a quality of service issue that could only be addressed in the base rate proceeding if it led to a financial impact on the overall revenue requirement or cost of service authorized to the Company. OCA argues that reconsideration is warranted because the Commission appears to have raised a new and novel interpretation of the law by concluding that a quality of service issue may only be addressed in a base rate proceeding if there is a financial impact in the overall revenue requirement or cost of service. Additionally, OCA argues that the Commission overlooked that quality of service issues are regularly raised in base rate proceedings and do not alter the burden of proof (which OCA argues is PGW's burden) and, therefore, reconsideration is warranted.

I recognize that quality of service issues are frequently raised in base rate cases and I agree with OCA that we failed to consider that an adjustment to the revenue requirement or cost of service is not always the remedy necessary to resolve a quality of service issue in a base rate proceeding. PGW's application of partial payments out of order and, as a result, imposing excessive interest, constitutes a failure to provide adequate and reasonable service under Section 1501 of the Public Utility Code.¹¹ The remedy necessary in this proceeding is not one that would involve the revenue requirement or cost of service and would, instead, be a revision to the partial payment allocation methodology. Therefore, OCA's request for reconsideration regarding our determinations surrounding quality of service should be granted.

Because PGW's partial payment allocation methodology fails to comply with Section 1501 of the Public Utility Code and Sections 56.22(a) and 56.24 of our regulations, I move that PGW be directed to amend its practices to be in compliance. Consistent with our similar directives in the SBG proceeding,¹² I move that PGW be required to complete this modification within 90 days of an entry date of an order on this Motion.

THEREFORE, I MOVE THAT:

1. The Petition for Reconsideration of the Office of Consumer Advocate be granted consistent with this motion.
2. Within 90 days of the date of entry of the Opinion and Order, Philadelphia Gas Works revise its methodology for the application of partial payments on customer accounts to be in accordance with this Commission's regulations.
3. The Office of Special Assistants prepare an Opinion and Order consistent with this Motion.

Date: May 3, 2018



David W. Sweet, Commissioner

¹¹ See 66 Pa. C.S. § 1501 (Regarding the character of service and facilities).

¹² See *SBG Management Services, Inc./Colonial Garden Realty Co., L.P. v. Philadelphia Gas Works*, Docket Nos. C-2012-2304183 and C-2012-2304324 (Joint Motion of Chairman Gladys M. Brown and Commissioner John F. Coleman, Jr. adopted January 18, 2018).