



COMMONWEALTH OF PENNSYLVANIA

August 7, 2023

E-FILED

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

**Re: Pennsylvania Public Utility Commission v. Philadelphia Gas Works /
Docket No. (R-2023-3037933) & Grays Ferry Cogeneration Partnership and
Vicinity Energy Philadelphia, Inc. v. Philadelphia Gas Works / Docket No. C-
2021-3029259**

Dear Secretary Chiavetta:

Enclosed please find the Reply Brief, on behalf of the Office of Small Business Advocate (“OSBA”), in the above-captioned proceedings.

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

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

Sincerely,

/s/ Sharon E. Webb

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

Enclosures

cc: Robert D. Knecht
Parties of Record

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	R-2023-3037933
Office of Consumer Advocate	:	C-2023-3038846
Office of Small Business Advocate	:	C-2023-3038885
Philadelphia Industrial And Commercial Gas	:	C-2023-3039059
User Group	:	
Grays Ferry Cogeneration Partnership and	:	C-2023-3038727
Vicinity Energy Philadelphia, Inc.	:	
James M. Williford	:	C-2023-3039130
	:	
v.	:	
	:	
Philadelphia Gas Works	:	
Grays Ferry Cogeneration Partnership and	:	
Vicinity Energy Philadelphia, Inc.	:	
	:	
v.	:	C-2021-3029259
	:	
Philadelphia Gas Works	:	

**REPLY BRIEF
ON BEHALF OF THE
OFFICE OF SMALL BUSINESS ADVOCATE**

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Dated: August 7, 2023

I. INTRODUCTION AND PROCEDURAL HISTORY

A. Introduction

The Office of Small Business Advocate (“OSBA”) is an agency of the Commonwealth of Pennsylvania authorized by the Small Business Advocate Act (Act 181 of 1988, 73 P.S. §§ 399.41 – 399.50) to represent the interests of small business consumers as a party in proceedings before the Pennsylvania Public Utility Commission (“Commission”). On February 27, 2023, Philadelphia Gas Works (“PGW” or “Company”) filed Supplement No. 159 to Philadelphia Gas Work’s Gas Service Tariff – Pa. P.U.C. No. 2, and proposed Supplement No. 105 to Philadelphia Gas Works Supplier Tariff-Pa. P.U.C. No 1 (“Supplement No. 105”). The proposed Tariffs, if approved by the Commission, would increase the retail distribution rates of Philadelphia Gas Works (“PGW” or “Company”) by \$85.5 million per year before the effects on universal service charges and distribution system improvement charges are recognized. In addition to the rate filing, PGW filed a Petition for Waiver seeking a waiver of the application of the statutory definition of the fully projected future test year (“FPFTY”) to permit PGW to use a FPFTY beginning September 1, 2023 in this proceeding.

B. Procedural History

The OSBA’s Main Brief set forth a complete procedural history. *See* OSBA M.B. at 2-3

Evidentiary hearings were held before ALJs Vero and Ashton on July 11 and 12, 2023. At the July 11, 2023 hearing, the OSBA moved the testimony of its witness, Robert D. Knecht, into the record.

Main Briefs were filed on July 27, 2023, by the Company; the OSBA; the OCA; I&E; PICGUG; GFCP/VEPI; and CAUSE-PATURN.

The OSBA submits this Reply Brief in response to issues raised in the Main Briefs of other parties.

II. LEGAL STANDARDS

A. Burden of Proof

Section 332(a) of the Public Utility Code, 66 Pa. C.S. § 332(a), provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding. It is axiomatic that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. Pennsylvania Public Utility Commission*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

Although the burden of proof remains with the public utility throughout the rate proceeding, when a party proposes an adjustment to a ratemaking claim of a utility, the proposing party bears the burden of presenting some evidence or analysis tending to demonstrate the reasonableness of the adjustment. *Pa. PUC v. Aqua Pennsylvania, Inc.*, Docket No. R-00072711 (Order entered July 17, 2008). “Section 315(a) of the Code, 66 Pa. C.S. § 315(a), applies since this is a proceeding on Commission Motion. However, after the utility establishes a prima facie case, the burden of going forward or the burden of persuasion shifts to the other parties to rebut the prima facie case.” *Pa. PUC v. Philadelphia Gas Works*, Docket No. R-00061931 (Order entered September 28, 2007), at 12.

The burden of proof to establish the justness and reasonableness of every element of the utility's rate increase rests solely upon the public utility. 66 Pa. C.S. § 315(a). "It is well-established that the evidence adduced by a utility to meet this burden must be substantial." *Lower Frederick Township. v. Pa. PUC*, 409 A.2d 505, 507 (Pa. Cmwlth. 1980).

B. Just and Reasonable Rates

Section 1301 of the Public Utility Code, 66 Pa. C.S. § 1301, provides that "every rate made, demanded, or received by any public utility, or by any two or more public utilities jointly, shall be just and reasonable, and in conformity with regulations or orders of the commission."

Furthermore, Section 523 of the Public Utility Code, 66 Pa. C.S. § 523, requires the Commission to "consider . . . the efficiency, effectiveness and adequacy of service of each utility when determining just and reasonable rates." In exchange for customers paying rates for service, which include the cost of utility plant in service and a rate of return, a public utility is obligated to provide safe, adequate, and reasonable service. "[I]n exchange for the utility's provision of safe, adequate and reasonable service, the ratepayers are obligated to pay rates which cover the cost of service which includes reasonable operation and maintenance expenses, depreciation, taxes and a fair rate of return for the utility's investors In return for providing safe and adequate service, the utility is entitled to recover, through rates, these enumerated costs." *Pa. PUC v. Pennsylvania Gas & Water Co.*, 61 Pa. PUC 409 (1986), at 415-16. *See also* 66 Pa. C.S. § 1501. As a result, the legislature has given the Commission discretionary authority to

deny a proposed rate increase, in whole or in part, if the Commission finds “that the service rendered by the public utility is inadequate.” 66 Pa. C.S. § 526(a).

III. Summary of Reply Argument

In its Main Brief, the OSBA addressed many of the arguments raised by the parties in their Main Briefs. The OSBA relies on the arguments set forth in its Main Brief and has only responded to those arguments in the briefs of other parties that require clarification.

IV. REPLY ARGUMENT

A. Revenue Requirement

The OSBA did not offer a specific revenue requirement proposal in this proceeding. *See* OSBA Main Brief at 6-7 for discussion of Revenue Requirement.

B. Expenses

The OSBA is not addressing this issue in this Reply Brief.

C. Rate Structure

1. Cost of Service

This proceeding involves three cost allocation issues subject to debate: classification and allocation of mains costs, assignment of mains costs to Rate IT customers, and the assignment of cost responsibility for universal service and energy conservation (“USEC”) program costs.

a.) Mains Costs

PGW’s Proposal

The OSBA's Main Brief set forth a more complete overview of PGW's proposal. OSBA M.B. at 12-24. In its Main Brief, PGW also summarizes its proposal at 35-40.

PGW witness Heppenstall used the "Average and Extra Demand Method ("Average/Excess" or A&E").¹ As noted in PGW's Main Brief this method was approved in PGW last fully litigated case.² On the subject of cost allocation, PGW proposes to use the 50/50 A&E method for mains costs allocation in this proceeding, consistent with Commission precedent. The OSBA readily acknowledges that the Commission approved the Company's 50/50 A&E approach in 2007.³ However, as set forth in the OSBA's Main Brief, the Commission has recently made it clear that, for matters of cost allocation, Commission precedent even for a specific utility is not binding, and that cost allocation will be evaluated in each proceeding based on the evidence. The OSBA notes that two of the three experts offering independent cost allocation testimony in this proceeding opine that PGW's approach is not consistent with cost causation. Even PGW's own witness acknowledges, from a cost causation perspective, mains costs can reasonably include a customer component.⁴ Witness Heppenstall attempts to dismiss this important cost causation factor citing the need for a more robust analysis.⁵ As Witness Heppenstall agrees that a customer component can reasonably be included in the classification of mains costs but neglected to update the

¹ PGW Main Brief at 37.

² PGW Main Brief at 37, *fn* 197 *citing Pa. Public Utility Commission v. PGW*, Docket No. R-00061931(Order entered September 28, 2007, at 120-124)("2007 PGW Base Rate Order")

³ OSBA M.B. at 12. *See* also, OSBA Statement No. 1 SR at 6.

⁴ OSBA M.B. at 14, *citing* PGW St. 5R at 5-6. *See* also PICGUG Statement No 1 at 3 and Vicinity Statement No. 1-R at 10, lines 8-11.

⁵ PGW M.B. at 37 (*fn.* Omitted).

Company's own analysis, Witness Heppenstall's complaint is a commentary on the Company's failure to prepare a complete filing. Moreover, Mr. Knecht did provide an updated customer classification analysis with supporting workpapers which indicated that the customer component of mains costs using the minimum system method would be 65 percent.⁶ No party contested this analysis, nor did any other party offer any alternative mains classification analysis based on the evidence in this proceeding. The OSBA submits that the 25 percent factor based on prior PGW zero-intercept analysis is a more reasonable value for this proceeding, until such time as PGW gets around to updating its earlier calculations.

OCA's Proposal

OCA, through its Witness Mr. Watkins, presented four separate class cost of service studies in this proceeding. However, Mr. Watkins, contrary to Witness Heppenstall, Witness LaConte, and Witness Crist, and OSBA's Witness Mr. Knecht, concludes that mains costs should not include a customer component.

Conclusion

The OSBA observes, however, that Mr. Knecht's CD method is a moderate approach among various extremes, and it reasonably reflects the obvious that it costs less per unit of peak demand to extend the gas distribution system to serve larger customers than to serve smaller customers. The OSBA recommends that the Commission adopt Mr. Knecht's CD method for classifying and allocating mains costs in this proceeding.

⁶ OSBA Statement No. 1 at 2, RDK WP7.

b.) Rate IT

As Mr. Knecht testified, PGW retains its internally inconsistent positions. First, the Company treats Rate IT as entirely firm for cost allocation purposes, while making no attempt to define a dollar value associated with interruptibility. Second, PGW proposes to require Rate IT customers to comply with existing tariff language regarding alternative fuel or demonstrated interruptibility requirements, despite indicating that the Company has no expectation of ever interrupting these customers.⁷

As Mr. Knecht explained in surrebuttal, the Company's position regarding eligibility requirements for the Rate IT class is not based on any credible need to be able to interrupt these customers, but based on the fear that eliminating the alternative fuel requirement will cause other industrial customers to switch to Rate IT service (so they too can receive firm transportation service at heavily discounted rates, and avoid paying their share of the USEC costs).⁸

The OSBA respectfully submits that PGW should stop distorting its rates and engaging in illogical and internally inconsistent ratemaking in order to prevent customer migration, and begin a transition to setting the eligibility requirements and the tariff rates for the Rate IT class based on credible cost analysis as well as a reasonable sharing of the USEC revenue requirement.

For the current proceeding, the OSBA recommends that the Commission adopt the OSBA's proposed rate increase for Rate IT given the huge difference between the costs assigned to Rate IT if it were firm service (which, of course, it is).

⁷ OSBA St. No. 1-SR at 7.

⁸ *Id.*, at 8

Conclusion

The OSBA therefore respectfully recommends that the Commission require PGW to undertake a serious evaluation as to the specific magnitude of avoided cost benefits associated with Rate IT customers in its next base rates case, and use that information to evaluate whether the current alternative fuel eligibility requirements for Rate IT are necessary and reasonable. If no such benefits are identified, PGW should begin transitioning these customers to firm service.

c.) USEC

Since before the time PGW was regulated by the Commission, PGW's universal service costs have been recovered from all classes of customers despite 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.⁹ The OSBA has an economic interest in PGW's universal service programs because most non-residential customers are required (at this time) to pay the Universal Service and Energy Conservation Surcharge ("USEC").¹⁰ As Mr. Knecht testified, from a cost causation standpoint, universal service costs should only be assigned to the classes who

⁹ The Commission has specifically declined to allocate universal service costs to non-residential customers in numerous gas proceedings, including the following: (a) Valley Energy, Inc. at Docket No. R-00049345; (b) Equitable Gas Company at Docket No. P-00052192; and (c) PPL Gas Utilities Corporation at Docket No. R-00061398. The Commission has also declined to allocate universal service costs to non-residential customers in numerous electric proceedings, including the following: (a) PPL Electric Utilities Corporation at Docket No. R-00049255, and (b) Metropolitan Edison Company and Pennsylvania Electric Company at Docket Nos. R-00061366 and R-00061367. The OCA appealed the Commission's decision in the Metropolitan Edison Company and Pennsylvania Electric Company case to the Commonwealth Court. The Commonwealth Court affirmed the Commission's decision with regard to allocating universal service costs solely to the residential class. *Popowsky v. Pennsylvania Public Utility Commission*, 960 A. 2d 189 (Pa. Cmwlth. 2008).

¹⁰ OSBA M.B. at 18, *citing* OSBA St. No. 1 at 33

are eligible for the benefits, namely residential customers.¹¹ This conclusion was echoed by PICGUG witness LaConte and GFCP/VEPI Witness Crist.¹²

In ruling on the USEC issue in the 2007 base rates case, the Commission agreed that cost causation is an appropriate measure for universal service, but rejected the OSBA's proposal on the basis of rate shock. PGW's 2010 base rates case was resolved by settlement. As part of the settlement in the 2010 case, the OSBA agreed not to pursue the argument any further in that proceeding.¹³ However, the Settlement provides that the withdrawal of any argument by a party to the Settlement (*e.g.*, the OSBA's argument against non-residential customers paying for universal service) is without prejudice and allows the OSBA to raise its argument about the allocation of universal service costs in a future proceeding.¹⁴

In its Main Brief, the Company suggests that Mr. Knecht withdrew his proposal for an alternative allocation of USEC cost responsibility in surrebuttal. PGW Main Brief at 41. This is false. Mr. Knecht merely offered an alternative revenue allocation proposal in the event "the Commission chooses to retain the existing method for allocation and recovery of USEC costs . . ."¹⁵ The OSBA does not support Mr. Knecht's surrebuttal alternative and recommends that the Commission adopt the USEC cost recovery mechanism and associated revenue allocation set forth in Mr. Knecht's direct testimony.

¹¹ OSBA M.B. at 18 (*citation omitted*)

¹² *Id.*

¹³ *See* Settlement at Paragraph 38, R-2009-2139884.

¹⁴ *Id.*

¹⁵ OSBA Statement No. 1-SR at 15.

In its Main Brief, PICGUG indicates that OSBA's proposal in this respect is inconsistent with the current policy basis for USEC cost recovery.¹⁶ The OSBA acknowledges that interruptible service customers have traditionally been exempt from responsibility for USEC costs, dating back to the beginning of Commission regulation of PGW and the market-based rates that applied to interruptible service at that time. As Mr. Knecht explained, however, interruptible service customers were not explicitly subject to the USEC, because delivery rates were set based upon the alternative cost of fuel.¹⁷ Once the Commission adopted cost-based rates for Rate IT (at the urging of PICGUG), the policy basis for exempting these customers from explicit USEC responsibility disappeared. As Mr. Knecht explained, all of the public policy reasons offered by the Company for assigning USEC costs to Rate GS-XLT apply to all other rate classes. The alleged interruptibility of Rate IT has no bearing on its cost responsibility for the USEC tax. Moreover, even if interruptibility were somehow related to USEC responsibility, the OSBA observes that as a practical matter Rate IT service is firm.

In its Main Brief, GFCP/VEPI limit their argument to the claim that GFCP/VEPI is not eligible for USEC benefits and therefore should not be required to contribute to the program funding.¹⁸ GFCP/VEPI did not, however, reach the obvious conclusion that other small, medium and large business customers are similarly ineligible for such benefits, but that, but for the long-favored Rate IT class, all such business customers must currently contribute. Granting an exemption of GFCP/VEPI on this basis would be patently inequitable and unreasonable.

¹⁶ PICGUG Main Brief at 26.

¹⁷ OSBA Statement No. 1 at 33-34.

¹⁸ GFCP/VEPI Main Brief at 28.

Conclusion

As a matter of simple fairness, the USEC tax should apply to all of PGW's customers who are subject to cost-based rates, including Rate IT and Rate GS-XLT. (See OSBA's Main Brief at 32 and Section D below for specific discussion on Rate GS-XLT)

2. Revenue Allocation

Revenue allocation is the assignment of the dollar net increase or decrease to each of the Company's rate classes in a base rates proceeding. From a cost recovery standpoint, revenue allocation addresses *inter-class* cross-subsidization issues while rate design addresses *intra-class* cross-subsidization issues."¹⁹ In its Main Brief, PGW simply acknowledges the OSBA's reasonable alternative revenue allocations (See PGW MB at 45) but then summarily dismisses all other revenue allocations by indicating that PGW Witness Heppenstall addressed the concerns raised about the CCOSS upon which all other parties' revenue allocations are based.²⁰

PGW's blanket assertion is oversimplistic.

Mr. Knecht summarized the Company's and his revenue allocation proposals in the following table in the OSBA's Main Brief at page 27:

¹⁹ OSBA M.B. at 24

²⁰ PGW M.B. at 45.

Table RDK-6 Comparison Revenue Allocation Proposals						
	PGW Proposal		RDK A&E		RDK CD	
	\$000	%	\$000	%	\$000	%
Residential	80,515	17.6%	73,830	16.2%	78,264	17.1%
Commercial	13,910	15.4%	19,752	21.9%	15,802	17.5%
Industrial	1,217	16.9%	1,265	17.5%	949	13.2%
Municipal	1,743	23.5%	1,951	26.3%	1,951	26.3%
PHA-GS	424	19.3%	385	17.5%	385	17.5%
PHA-Rate 8	497	13.2%	662	17.5%	496	13.2%
NGV	14	18.4%	20	26.3%	16	21.9%
Interruptible	3,743	29.3%	3,362	26.3%	3,362	26.3%
GS-XLT	0	0.0%	950	84.1%	950	84.1%
Total	102,064	17.5%	102,177	17.6%	102,175	17.6%
Sources: RDK WP2, RDK WP4, RDK WP5						

OSBA Statement No. 1 at 44.

It is important to recognize that Mr. Knecht’s proposal reflects the results both the re-assignment of USEC costs and the allocation of the base rate increase. As Mr. Knecht explained, this is a “package deal,” which balances the impacts of both types of changes with consideration of the principle of rate gradualism.²¹ The specific impacts on the USEC, DSIC and base rates charges are all detailed in Mr. Knecht’s workpapers, labeled RDK WP4 and RDK WP5.

In that context, however, Mr. Knecht’s analysis indicates that the differences across the various rate classes are relatively modest and that these alternatives provide a reasonable range for revenue allocation in this proceeding.²²

As a final note, the OSBA observes that Mr. Knecht’s allocation of rate

²¹ OSBA M.B. at 27 (*citation omitted*).

²² OSBA M.B. at 27. (*citation omitted*)

increase to RateGS-XLT is relatively modest compared to PGW's various proposals. This results because it is OSBA's position that the Alternative Receipt Service to GFCP/VEPI is a GCR issue, and that revenues associated with that service should be credited to the customers who pay for the capacity used to provide the service, namely the GCR customers. That issue is more fully addressed in Section D of OSBA's Main Brief, however it should be noted here that the ARS revenues will provide considerable value to smaller customer ratepayers, but it is the OSBA's position that these benefits should be reflected in the GCR and not in base rates.

The revenue allocation proposed by Mr. Knecht complies with the decision of the Commonwealth Court in *Lloyd v. Pennsylvania Public Utility Commission* 904 A.2d 1010, 1020 (Pa. Cmwlth. 2006). In *Lloyd*, the Court stated that the cost of service is the "polestar" guiding rates cases such as this one. Therefore, using Mr. Knecht's accurate, just, and reasonable allocation proposal the rationale, and the requirements of *Lloyd*, the OSBA respectfully submits that the ALJs and the Commission adopt the OSBA's revenue allocation.

3. Rate Design for GS-Commercial Class

a. Customer Charge

The OSBA stands by the arguments made in the Main Brief. The OSBA respectfully requests that, if the overall requirement is scaled back, so too should the proposed increase to the GS Commercial customer charge.

Regarding this scaleback, the Company trots out the absurd argument offered by Mr. Teme that scaling back the customer charge to reflect a reduced revenue requirement would move customer charges further away from

allocated costs. Mr. Knecht explained the obvious, namely that a scaleback in the allowed revenue requirement implies a reduction in costs and most especially in the net income requirements demanded by PGW. Since the cost basis used to derive the customer charge necessarily relies on the net income requirement, a scaleback in the rate increase implies a scaleback in allocated costs.²³ As such, a scaleback in the customer charge increase is reasonable and appropriate.

b. Other Tariff Charges

D. GFCP/VEPI – Class GS-XLT

The OSBA stands by the arguments made in its Main Brief noting that the OSBA's position is that Alternative Receipt Service to GFCP/VEPI is a GCR issue, and that revenues associated with that service should be credited to the customers who pay for the capacity used to provide the service, namely the GCR customers.

The OSBA respectfully disagrees with parties position that *base rate* charges associated with ARS can reasonably be developed based on the market value of upstream pipeline capacity that is paid-for by GCR customers. ARS is a gas supply transaction.

E. Customer Service Issues

The OSBA took no position on these issues.

F. Low-Income Customer Service Issues

Other than addressing the recovery of USEC costs from rate classes, the OSBA willnot address these issues in its Reply Brief.

²³ OSBA Statement No. 1-SR at 19.

G. Pipeline Replacement /Alternatives

The OSBA will not address these issues its Reply Brief.

H. Miscellaneous Issues

The OSBA will not address any miscellaneous issues its Reply Brief.

V. CONCLUSION

Wherefore, the OSBA respectfully requests that the ALJs and the Commission adopt the OSBA's customer-demand ("CD") method for classifying and allocating mains costs in adopted his proceeding.

Rate IT should be treated as firm service customers for cost allocation purposes in this proceeding. However, PGW is directed to undertake a detailed evaluation of any avoided costs associated with the interruptibility of Rate IT customers for the next base rates case.

The Universal Service Charge should apply to all of PGW's customers who are subject to cost-based rates, including Rate IT and Rate GS-XLT.

Furthermore, if the overall revenue requirement is scaled back, so too should the proposed increase to the GS Commercial customer charge.

Respectfully submitted,

/s/ Sharon E. Webb

Sharon Webb
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Attorney ID No. 73995

Dated: August 7, 2023

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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v.	:	C-2021-3029259
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Philadelphia Gas Works	:	

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing have been served via email (*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).

The Honorable Judge Eranda Vero
The Honorable Judge Arlene Ashton
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DATE: August 7, 2023

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