

COMMONWEALTH OF PENNSYLVANIA



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September 15, 2023

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

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Exceptions in the above-referenced proceeding.

Copies have been served on the parties as indicated on the enclosed Certificate of Service.

Respectfully submitted,

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The Honorable Eranda Vero (**email only**)
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Certificate of Service

*4872-4648-8703, v. 1

CERTIFICATE OF SERVICE

Pennsylvania Public Utility Commission :
 :
 v. : Docket No. R-2023-3037933
 :
 Philadelphia Gas Works :

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate’s Exceptions, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 15th day of September 2023.

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Dated: September 15, 2023
*4892-3229-4783, v. 1

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission :
v. : Docket No. R-2023-3037933
Philadelphia Gas Works :

EXCEPTIONS OF THE
OFFICE OF CONSUMER ADVOCATE

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Table of Contents

I. INTRODUCTION..... 1

II. EXCEPTIONS..... 2

OCA Exception No. 1: The ALJs Erred in Failing to Adopt the OCA’s Recommended Disallowance of \$7.1 million of Contingency Spending Related to Completion of PGW’s Customer Information System Project. R.D. at 30- 31; OCA M.B. at 45- 46; OCA R.B. at 8-9. 2

OCA Exception No. 2: The ALJs Erred in Failing to Adopt the OCA’s Recommended Disallowance of a Portion of Incentive Compensation Payments. R.D. at 45-46; OCA M.B. at 37-39; OCA R.B. at 15-16..... 4

OCA Exception No. 3: The ALJs Erred in Failing to Adopt the OCA’s Recommended Reduction of \$17.1 Million in Net Construction Expense for PGW. R.D. at 62; OCA M.B. at 18-20; OCA R.B. at 4-8..... 6

OCA Exception No. 4: The ALJs Erred In Adopting PGW’s Proposed \$19.50 Residential Customer Charge, Subject To A Proportional Scale Back. R.D. at 77-81; OCA M.B. at 63-67; OCA R.B. at 36-39..... 10

OCA Exception No. 5: It is a Matter of Record that PGW’s Payment Arrangements Conflict with Chapter 56. R.D. at 110-111; OCA M.B. at 72-74; OCA R.B. at 41-43 13

OCA Exception No. 6: PGW Should Be Directed to Establish Fee Free Payments for All of its Payment Options. R.D. at 111-113; OCA M.B. at 74-75; OCA R.B. at 43-45 15

OCA Exception No. 7: PGW Should Accept Documentation From the Government When Identifying Low-Income Customers. R.D. at 122-125; OCA M.B. at 81-86; OCA R.B. at 48-50 17

OCA Exception No. 8: PGW Should Be Required to Follow the Law Regarding Undeliverable Mail. R.D. at 131; OCA M.B. at 92-95; OCA R.B. at 50-54 19

OCA Exception No. 9: The R.D. Misapprehends the OCA’s Position Regarding Double Recovery of the CRP Cost Recovery Offset. R.D. at 132-134; OCA M.B. at 95-99; OCA R.B. at 58-62 21

III. CONCLUSION 25

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Petition of Metropolitan Edison Company, et al. for Consolidation of Proceedings and Approval of Energy Efficiency and Conservation Plans,</i> 2009 Pa. PUC LEXIS 2255	3
<i>Phila. Gas Works v. Pa. PUC,</i> No. 1914 C.D. 2007, 2009 Pa. Commw.	21
Administrative Decisions	
<i>Pa. PUC v. Aqua Pa., Inc.,</i> 2008 Pa. PUC LEXIS 50	5
<i>Pa. PUC v. Duquesne Light Co.,</i> 1987 Pa. PUC LEXIS 342	5, 6, 10, 11
<i>Pa. PUC v. Pennsylvania Power and Light Co.</i> 1995 Pa. PUC LEXIS 189	3
<i>Pa. PUC v. PGW,</i> R-2020-3017206, (Order entered Nov. 19, 2020).....	21
<i>Pa. PUC v. Philadelphia Gas Works,</i> R-0006193, (Order entered Sept. 28, 2007).....	23
<i>Pa. PUC v. PPL Elec. Util. Corp.,</i> R-2012-2290597 (Order entered Dec. 28, 2012).....	5
Statutes	
66 Pa. C.S. Section § 1406(b).....	20, 21
Other Authorities	
52 Pa. Code §56.97(b)	13
52 Pa. Code § 62.2	17
210 Pa. Code § 69.414(a).....	22

I. INTRODUCTION

On September 5, 2023, the Public Utility Commission's (Commission) Office of Administrative Law Judge issued the Recommended Decision (R.D.) of Administrative Law Judges Eranda Vero and Arlene Ashton (ALJs) regarding Philadelphia Gas Works's (PGW or Company) proposed base rate increases for natural gas service. Although the ALJs' overall recommendation is more reasonable than PGW's proposals, the Office of Consumer Advocate (OCA) files these Exceptions to certain issues where the ALJs did not adopt the OCA's adjustments or recommendations.

II. EXCEPTIONS

OCA Exception No. 1: The ALJs Erred in Failing to Adopt the OCA’s Recommended Disallowance of \$7.1 million of Contingency Spending Related to Completion of PGW’s Customer Information System Project. R.D. at 30- 31; OCA M.B. at 45- 46; OCA R.B. at 8-9.

PGW’s new Customer Information System (“CIS”) is expected to go live during the FPFTY. Total costs of the CIS are anticipated to be \$61,662,000. For the FPFTY, the remaining costs for the CIS project include (but are not limited to) contingency costs of \$7,119,731. The OCA proposed that the contingency costs related to the CIS be disallowed in their entirety and that there be a corresponding reduction to PGW’s Depreciation Expense. OCA St. 1 at 57. The R.D. rejected the OCA’s proposal, allowed the contingency costs to remain in rates, and denied the OCA’s related depreciation adjustment. R.D. at 30-31.

The OCA proposed the disallowance of these costs on the basis that contingency costs by their nature are not known and measurable, but rather speculative and uncertain. Such costs may or may not occur and customers should not be asked to bear these expenses on the *possibility* that they might occur. OCA St. 1 at 57; OCA St. 1SR at 4

The ALJs disagreed and determined that it is appropriate for PGW to include a reasonable allowance for contingencies in the FPFTY to account for potential cost over-runs. The ALJs agreed with PGW that the contingency costs are not purely speculative and that PGW had shown that they are measurable because they are based on the risks and the size of the CIS project. R.D. at 31. The OCA submits that the ALJs erred in adopting this position.

In its Reply Brief, the OCA observed that PGW’s argument in favor of recovery of the contingency costs is tantamount to saying that PGW should be able to recover the costs because it should be able to ensure that *any* uncertainty, risk of cost overrun, or unknown cost is planned for even if not foreseeable or likely to occur. Such a position is inconsistent with case law and sound ratemaking policy. OCA R.B. at 8.

In briefing this issue, the OCA cited and quoted from two prior cases in which the Commission denied recovery of utility-proposed contingency costs: *Pa. PUC v. Pennsylvania Power and Light Co.* 1995 Pa. PUC LEXIS 189 at *115-117 (*PPL*), where the Commission rejected PPL's claim for contingency costs related to its nuclear decommissioning plan, OCA M.B. at 45-46; and *Joint Petition of Metropolitan Edison Company, et al. for Consolidation of Proceedings and Approval of Energy Efficiency and Conservation Plans*, 2009 Pa. PUC LEXIS 2255 where it ruled against a contingency reserve the utilities proposed in connection with implementation of their Energy Efficiency and Conservation plans, OCA R.B. at 9. In both cases, the Commission carefully examined the contingency costs proposed by the Companies and determined that inclusion of speculative, unforeseen future costs in rates is unjust and unreasonable.

Although PGW essentially implies that contingency costs should be recoverable as a matter of routine, the cases cited by the OCA demonstrate that the Commission has closely scrutinized such claims in the past. The ALJs appear to have accepted PGW's simple assertion that its CIS contingency costs are measurable because they are based upon the risks and size of the project. As it has done in the cited cases, the OCA urges the Commission to carefully review the record to ascertain whether the ALJs' determination is well-founded. For its part, the OCA submits that PGW has failed to show that these costs are anything other than a speculative buffer against uncertainty, which is not a recognized category of costs for ratemaking purposes. PGW has the burden of proof on this issue. The OCA has provided case law that is directly on point, while PGW has provided nothing more than blanket assertions as to why speculative and unknown costs should be included in rates. For these reasons, the OCA's proposed reduction related to CIS contingency expenses should be adopted. At the same time, the OCA's related reduction to PGW's depreciation expense of \$325,571 should be adopted. *See* OCA St. 1 at 57.

OCA Exception No. 2: The ALJs Erred in Failing to Adopt the OCA's Recommended Disallowance of a Portion of Incentive Compensation Payments. R.D. at 45-46; OCA M.B. at 37-39; OCA R.B. at 15-16.

In this proceeding, PGW has requested recovery of bonus pay for senior management in the overall amount of \$129,000. This consists of \$32,000 for what is referred to as bypass bonus, \$32,000 for employee recognition and \$65,000 for contract and retention bonus. PGW St. 2-R at 41-42. Of these components, the OCA recommended disallowance of a portion of the \$65,000 earmarked for contract and retention bonuses. Specifically, the OCA recommended that PGW be denied recovery of \$21,666 of the \$65,000 because that amount related to certain incentive goals that would not benefit customers. OCA M.B. at 37-39. The R.D. rejected the OCA's proposed disallowance, finding that the incentives questioned by the OCA did benefit customers and that the compensation amounts were reasonable and not excessive. R.D. at 46.

The OCA's recommendation was based on the testimony of its witness Mr. Mugrace who reviewed the various goals used by PGW to determine the eligibility of its CEO and Acting CFO for the contract and retention bonus. Mr. Mugrace's review concluded that of the six goals identified by PGW for determining eligibility for this incentive, four are related to customers, efficiency, workforce satisfaction and PGW's role in transitioning to a clean energy future, while two goals are related to revenue enhancement and supplier diversity. Mr. Mugrace stated that incentive compensation paid to achieve the latter two goals should not be charged to customers as they are not likely to provide a benefit to customers. OCA M.B. at 38; OCA R.B. at 15-16. To determine the amount of the disallowance recommended, he assigned 1/6th of the \$65,000 to be spent on the contract and retention bonuses to each corporate goal, or \$10,333 per goal. OCA M.B. at 38. In testimony, Mr. Mugrace stated that:

I don't believe that ratepayers should be required to pay for costs that relate to increasing revenue streams and enhancing PGW's business image. With respect to

supplier diversity, I believe this is a business decision that may or may not benefit ratepayers in the provision of natural gas service.

OCA St. 1SR at 11-12.

As noted in the OCA's Reply Brief, the Commission has found that to be included in rates, incentive compensation plans must be reasonable, prudently incurred and not excessive in amount. In addition, they should be focused on improving operational effectiveness and provide a benefit to customers. *Pa. PUC v. PPL Elec. Util. Corp.*, R-2012-2290597 (Order entered Dec. 28, 2012), citing *Pa. PUC v. Aqua Pa., Inc.*, 2008 Pa. PUC LEXIS 50, *24; *Pa. PUC v. Duquesne Light Co.*, 1987 Pa. PUC LEXIS 342 at *99-100. OCA R.B. at 15-16.

The ALJs have determined that the incentives questioned by the OCA "improve the Company's operational effectiveness and provide a benefit to PGW's ratepayer." R.D. at 46. That said, the OCA submits that a careful review of the record will reveal that the evidence supporting the ALJs' determination on both counts – improved operational effectiveness and provision of benefits to ratepayers – is not substantial and is unlikely to support a Commission determination upholding the R.D. PGW's assertions as to how the questioned incentives produce customer benefits seem to be more conclusory than evidentiary. Accordingly, the OCA encourages the Commission to re-examine the record to determine for itself whether the ALJs' determinations are borne out. Such a careful review, the OCA submits, will support its recommendation for a partial disallowance of Incentive Compensation expense.

OCA Exception No. 3: The ALJs Erred in Failing to Adopt the OCA’s Recommended Reduction of \$17.1 Million in Net Construction Expense for PGW. R.D. at 62; OCA M.B. at 18-20; OCA R.B. at 4-8.

PGW proposed nearly \$207 million in net construction expenditures in the FPFTY. OCA M.B. at 11. The OCA recommended a reduction of \$17.1 million in FPFTY construction spending. The R.D. rejected the OCA’s proposed reduction and granted PGW its full \$207 million construction budget. R.D. at 62. The ALJs further rejected the adjustment to depreciation expense that corresponded with the proposed reduction in construction spending. *Id.* The OCA submits that the ALJs erred in not adopting the OCA’s reductions.

In rejecting the OCA’s proposal, the ALJs stated that they could not “identify any cancelled construction projects.” *Id.* In effect, by so ruling, the ALJs gave credence to PGW’s argument that because the OCA’s proposed reduction did not identify specific construction projects to be cancelled, it lacked merit. PGW witness Golden asserted that by not identifying projects to be cancelled or deferred, OCA witness Griffing, who proposed the reduction, assumed that \$17.1 million in planned construction would simply disappear. PGW St. 2-R at 13-14. Mr. Griffing addressed this argument in his Surrebuttal Testimony as follows:

Q. DO YOU AGREE WITH MR. GOLDEN THAT YOUR PROPOSED REDUCTION OF \$25.0 MILLION (NOW \$17.1 MILLION) IN NET CONSTRUCTION EXPENDITURES IN THE FPFTY CAUSES PGW CONSTRUCTION PROJECTS TO DISAPPEAR?

A. No. To understand why I disagree, please return to Schedule MFG-SR-2. Please note that for its 2020 rate case PGW projected net construction expenditures for fiscal years 2020, 2021, and 2022, the FTY and FPFTY, and a Forecast Year. There are entries in those three years, among others, in the actual net construction expenditures row. For the respective years the actual PGW expenditures are less by \$20.4 million, \$15.6 million, and \$23.3 million than the projected amounts submitted by PGW. By spending less in those years, did PGW make the construction projects not built because of the reduced spending disappear? Of course not. Rather, PGW staff or advisors with experience in construction planning, construction and assessing the effect of the projects on the safety and reliability of the PGW distribution system evaluated the set of projects proposed by PGW, then made the decisions to build

some projects and not build others. The unbuilt projects may have been deferred or cancelled, but they did not disappear.

Q. WHO SHOULD MAKE THE DECISIONS ABOUT WHICH PGW PROJECTS SHOULD BE BUILT IN THE FPFTY AND FOLLOWING YEARS IF PGW DOES NOT HAVE THE CASH FLOW TO FUND ALL PROJECTS?

A. The decisions as to which projects PGW should undertake in the FPFTY and following years should be made by the professionals who work for or advise the utility. They possess the experience and training to make informed choices. The managers of those professionals must work within the resource constraints of the utility, just as the managers of any organization must do.

OCA St. 2SR at 4-5.

In effect, Dr. Griffing underscores the inappropriateness of having a witness for a party in a rate case determine what is or is not built on the PGW system. The issue for ratemaking purpose is whether the *total* expense is reasonable and representative of the expenses that will be made into the future period based on both past practice, current practice, and future projections. It is not for Dr. Griffing to say what projects will or will not occur or should or should not occur and it was inappropriate to shift the burden to the OCA to demonstrate that certain projects would not occur.

Another argument raised against the OCA's proposed construction expense reduction is that it is "arbitrary." PGW witness Golden stated that, "That dollar amount appears to be arbitrary since, in offering that recommendation, Mr. Griffing does not identify specific projects to cancel or defer." PGW St. 2-R at 13. To the contrary, Dr. Griffing's recommendation was not arbitrary, but rather based on a detailed analysis of PGW's construction spending going back to 2017-2018. *See* OCA St. 2, Schedule MFG-3. Initially, Dr. Griffing proposed a reduction in construction expenditures of \$25 million. In response to PGW rebuttal that the adjustment was arbitrary and unsupported, Dr. Griffing provided further analysis, utilizing information from PGW's 2020 rate case, as reflected in OCA St. 2SR, Schedule MFG-SR-2. This further analysis resulted in his lowering the proposed reduction to \$17.1 million. He testified that:

My actual observation about the trend in PGW's Net Construction Expenditures was that the HTY amount is about \$151 million and the FTY amount is roughly \$170 million. I then noted that the FY 2024 (FPFTY) requested amount is almost \$207 million and that this increase is about 21 percent. My revised recommendation relies on expanded, more detailed analysis of the growth requested by PGW.

OCA St. 2SR at 3. Referring to Schedule MFG-SR-2, Dr. Griffing explained that:

This schedule shows fiscal year actual, requested, and projected Net Construction Expenditures amounts presented by Mr. Golden in PGW St. No. 2, Schedule JFG-2 in his PGW 2020 Rate Case Direct Testimony and the current PGW 2023 Rate Case Direct Testimony. I supplemented Mr. Golden's amounts with actual amounts spent by PGW in certain fiscal years. The sources for these supplementary amounts are reports concerning the audits of PGW prepared by KPMG, LLC. One of the reports covered fiscal years 2018 and 2019, while the other covered fiscal years 2021 and 2022. The schedule also includes debt service coverage ratios, actual and proposed for PGW.

The schedule shows net construction expenditures percentage changes year over year for amounts associated with the current PGW 2023 rate case. It also shows amounts and year over year percentage changes for net construction expenditures for the PGW 2020 rate case. Returning to the 2023 rate case data, please note that PGW's net construction expenditure increased from \$151.1 million in the historical test year of 2021-2022 to \$207.0 million two years later in the FPFTY of 2023-2024. As noted above, the increase for the two years is 36.9 percent and \$55.8 million in absolute terms. Subsequently, I identified \$25.0 million (since revised to \$17.1 million) as a reduction that PGW could make that was consistent with my recommended debt service coverage ratio of 2.40 percent (2.24 percent with PGW's annual \$18 million payment to the City of Philadelphia included). Therefore, while the \$25.0 million was not tied to any specific projects, it was not arbitrary. It addressed PGW's cash flow and recognized, as outlined more fully below, that PGW has a history of projecting the need for more construction-related cash flow than it actually spends.

OCA St. 2SR at 3-4 (footnote omitted). As discussed by Dr. Griffing, his proposed \$17.1 million reduction to PGW's projected construction spending is neither arbitrary nor unsupported. Further, as noted above, Dr. Griffing provided evidence in his Schedule MFG-SR-2 which showed that PGW has a history of over-projecting its construction expenditures. Specifically, in its 2020 rate case, PGW projected net construction expenditures for fiscal years 2020 through 2022. It projected

\$119.7 million for 2020, \$154.1 million for 2021 and \$174.5million for 2022. Actual expenditures in those years were \$99.3 million, \$138.5 million and \$151.1 million, respectively, significantly lower than projected. As Dr. Griffing’s testimony shows, the OCA’s reduction to PGW’s proposed level of construction spending is based on the facts of this case and PGW’s actual previous years’ spending. PGW’s claims that this adjustment is “arbitrary” or “unsupported” are without merit. Further, the conclusion in the R.D. that specific projects need to be identified in order for adjustments to be made is misplaced. The OCA has submitted substantial evidence to show that PGW’s proposed spending is well overstated. PGW has the burden of proof on this issue, and based on the record evidence, has failed to carry that burden. The OCA’s proposed reduction should be adopted, as should the OCA’s corresponding reduction of \$522,527 to PGW’s depreciation expense. *See* OCA St. 1 at 57-58.

OCA Exception No. 4: The ALJs Erred In Adopting PGW’s Proposed \$19.50 Residential Customer Charge, Subject To A Proportional Scale Back. R.D. at 77-81; OCA M.B. at 63-67; OCA R.B. at 36-39.

PGW proposed to increase the Residential customer charge from \$14.90 to \$19.50. OCA St. 3 at 22. OCA witness Glenn Watkins recommended no change to PGW’s current customer charge. OCA St. 3 at 24. Alternatively, should the Commission decide an increase is warranted, the percentage increase to the customer charge should be no more than the percentage distribution increase to the residential class. *Id.* In the R.D. the ALJs accepted PGW’s proposed \$19.50 customer charge, but recommended that it be included in any scale back of rates. R.D. at 81.

The OCA submits that the recommendation in the R.D. to accept PGW’s proposed \$19.50 residential customer charge, a 31% increase, but then applying a scale back is inappropriate and would, if accepted, create a poor policy choice. Purely applying the principles of gradualism and avoidance of rate shock should weigh heavily against accepting the ALJs’ recommendation. While the OCA appreciates the ALJs’ efforts to reduce the proposed increase, the OCA submits that following the path set out in the R.D. would send a clear message to PGW and every other utility – propose a high customer charge and a scale back will buffer the effects and make it appear reasonable. For these two reasons alone, the R.D. should not be adopted on this issue. Instead, the more reasonable approach is to retain the current charge or, if increased, to limit any increase in the customer charge to no more than the percentage distribution increase to the residential class.

As OCA Watkins testified, PGW’s current customer charge of \$14.90 is well within the range of other Pennsylvania gas utilities, and “it is important to note that PGW has the highest percentage of low-income customers (38.4%) of any natural gas distribution company in the State.” OCA St. 3 at 23. Further, high fixed charges send the wrong price signals to customers, as Mr. Watkins testified “If more revenue is collected from fixed monthly customer charges, then less

revenue will be collected from volumetric charges. As a result, these lower than appropriate volumetric charges do not provide an appropriate incentive to conserve natural gas usage.” *Id.*

OCA witness Roger Colton supplied substantial testimony as to why any increase in the customer charge falls more heavily on low-income customers. OCA St. 4 at 33-42. As Mr. Colton concluded:

The low-income customers of PGW have difficulty in paying their natural gas bills. Increasing the fixed monthly customer charge will increase the difficulties which those low-income customers will face. Not only will the increased customer charge take a higher proportion of household resources out of incomes that fall substantially short of allowing the customers to be financially self-sufficient to begin with, but it will also make it more difficult for low-income customers to control their exposure to unaffordable bills through the implementation of energy efficiency measures. In addition, the actions that low-income customers are forced to take as efforts to control their bills (e.g., keeping their homes too hot or too cold, shutting off their home but for a limited space) will have less of an impact on reducing their bills to more affordable levels.

OCA St. 4 at 42.

In rebuttal PGW had limited responses to Mr. Colton, but it appears PGW’s main argument is that enrolling in CRP would allow low-income customers to avoid any customer charge increase. OCA St. 4SR at 6; R.D. at 80-81. As Mr. Colton responded, however, “PGW enrolls only a fraction of its income eligible customers in CRP. While CRP protects a relatively small population, a much larger population of low-income customers not participating in CRP will be harmed by PGW’s increased customer charge.” OCA St. 4SR at 6; *see also*, OCA St. 4 at 28-33.

Mr. Colton also testified that increased fixed customer charges have a direct negative effect on low-income customers pursuing energy efficiency measures. OCA St. 4 at 36-37. PGW argued that it has energy efficiency programs that customers can participate in, but as Mr. Colton testified they are extremely limited in their reach, as follows:

While it is true that PGW offers LIURP services, as it is required to do, those LIURP services are not wide-spread. In its most recent Universal Service and Energy

Conservation Plan (USECP), PGW projects that it will serve 2,597 low-income households through LIURP each year. (PGW USECP, at 35). PGW stated in its USECP that it estimates that it has 197,855 low-income customers. (Id., at 34). At the rate of 2,597, it would, in other words, take more than 76 years for PGW to serve all of its low-income customers ($197,855 / 2,597 = 76.2$). Even if one were to narrow the population to those 44,168 low-income customers which PGW says “needs” efficiency investments (Id., at 10), it would take nearly 20 years to treat all of those customers. LIURP investments, in other words, cannot protect the vast majority of low-income customers from the harms of PGW’s increased residential customer charge.

OCA St. 4SR at 7 (citation omitted). As Mr. Colton testified, neither CRP enrollment nor energy efficiency programs will help the vast majority of PGW’s low-income customers deal with higher fixed charges.

For the reasons provided here and in the OCA’s Main and Reply Briefs, PGW’s current \$14.90 residential customer charge should not be increased. If the Commission considers any increase in the customer charge, that increase should be no more than the percentage increase in distribution revenues assigned to the Residential class. While applying a scale back to PGW’s proposed charge would result in some reduction, such an approach would lead to fixed charges becoming an increasing percentage on a total bill basis. For all the reasons testified to by Mr. Watkins and Mr. Colton, such a result could impede conservation and energy efficiency activities. Accordingly, the OCA submits that the ALJ’s customer charge recommendation should not be adopted.

OCA Exception No. 5: It is a Matter of Record that PGW's Payment Arrangements Conflict with Chapter 56. R.D. at 110-111; OCA M.B. at 72-74; OCA R.B. at 41-43.

The R.D. rejects the OCA's recommendation that PGW negotiate payment plans in conformity with Chapter 56. In the OCA's Main Brief, the OCA noted that PGW has programmed its computer to guide customer service representatives to gather household income data and offer predetermined payment options. OCA St. 5SR at 9; OCA M.B. at 72. PGW representatives are not allowed to offer payment plans that differ from these computerized calculations or that are based on the individual circumstances of the customer. *Id.* This practice is in direct conflict with Chapter 56 of the Code, which provides that the ability of the customer to pay must be a part of the payment arrangement determination made by the utility and states as follows:

(b) The public utility shall exercise good faith and fair judgment in attempting to enter a reasonable payment arrangement or otherwise equitably resolve the matter. **Factors to be taken into account** when attempting to enter into a reasonable payment arrangement include the size of the unpaid balance, **the ability of the customer to pay**, the payment history of the customer and the length of time over which the bill accumulated. Payment arrangements for heating customers shall be based upon budget billing as determined under § 56.12(8) (relating to meter reading; estimated billing; customer readings).

52 Pa. Code §56.97(b) (emphasis added).

The R.D. reached the following conclusion on this issue:

OCA does not dispute that PGW's computer program does take into account various factors and OCA has produced no evidence, other than the opinion of its witness, that the algorithm used by PGW's software program fails to do so or does so in an unreasonable manner.

R.D. at 111. The OCA submits that the ALJs' conclusion on this point is not in accord with the record evidence.

The fact that PGW's computer algorithm is not programmed to take into account individualized circumstances is not merely the opinion of the OCA's witness, it is based on

evidence provided by PGW in the record and is directly referenced in OCA witness Alexander's Direct Testimony as follows:

PGW Response to OCA0[sic]-10-1(i) states, "PGW representatives cannot negotiate individual payment plans. The system automatically provides the payment arrangement terms."

OCA St. 5 at 9, note 15. Moreover, in Surrebuttal Testimony, OCA witness Alexander testified as follows:

I documented that PGW does not allow its customer service representatives to enter a payment plan that is not otherwise reflected in the standard computerized options. Ms. Adamucci's response is that PGW's policy is to accept individual customer information, enter that information into their computer, and offer the payment arrangement calculated by their software program.

OCA St. 5SR at 3.

Simply put, PGW's payment arrangement practice does not comply with the Public Utility Code and PGW did not dispute the fact that their computer system does not take into account the customer's ability to pay. As such, the conclusion in the R.D. is misplaced in providing that the only evidence that the OCA relied on was the "opinion" of the OCA's expert witness.

Importantly, PGW has the burden of proof in this proceeding, and as stated in the OCA's Main Brief, "[t]here is no evidence to support the determination that the algorithm used by PGW's software program takes into account individual circumstances." OCA St. 5SR at 4; OCA M.B. at 73. As PGW's payment arrangement plans do not conform to Chapter 56, the Commission should reject the Recommended Decision as to this issue and require that PGW take into individual facts and circumstances, including a customer's ability to pay, when creating payment arrangements as required by the Public Utility Code.

OCA Exception No. 6: PGW Should Be Directed to Establish Fee Free Payments for All of its Payment Options. R.D. at 111-113; OCA M.B. at 74-75; OCA R.B. at 43-45.

Currently, to make a payment to PGW with no fee, customers must mail a personal check to PGW, pay by cash at a retail establishment, or enroll in autopay via the web portal using the customer's checking account. OCA St. 5 at 10; OCA M.B. at 74. Other electronic payment options, such as credit card, debit card, and one time bank payments, require a fee of \$2.95. *Id.* More than 50% of PGW customers paid a fee to make a payment on their PGW bill. *Id.*

The OCA recommended that PGW move to a fee free payment system in line with a growing trend among Pennsylvania utilities to eliminate payment fees, reflecting the expectation of most customers to use online payment methods. OCA St. 5 at 11; OCA M.B. at 74-75. The R.D. rejected the OCA's recommendation as follows:

We agree with PGW. PGW offers customers a variety of payment methods, including multiple no-fee alternatives. In addition, it absorbs the cost of making cash payments at locations throughout its service area convenient to customers. Furthermore, OCA has not provided substantial evidence in support of its argument that the approximately \$3.1 Million in credit card fees imposed by credit card companies based on payment methods voluntarily chosen by *certain* residential customers should be shared *by and among all* residential customers, when no-cost alternatives are available to all PGW customers. Finally, OCA has not identified any section of the Code or any Commission regulation or policy that prohibits PGW from collecting credit card processing fees from customers who choose to pay their PGW bill electronically. As a result, we reject OCA's recommendation.

R.D. at 112-113 (emphasis in original).

What the R.D. misses in this analysis is that all forms of payment are made by certain individuals and paid for by and among all customers, and all forms of payment incur a fee to process the payment. OCA St. 5SR at 6. Processing cash payments incurs expenses to handle the cash, allocate the payment to the correct account, and deposit the cash into PGW's accounts. OCA St. 5SR at 6. Even though PGW does not charge a fee to the customer for the receipt of cash

payments at commercial establishments, PGW incurs the costs for the payment of these fees which, in 2022, totaled \$60,376.60. *Id.* Additionally, the payment processing fees reflected in handling checks sent through the mail system, are spread throughout PGW's customer base. OCA St. 5 at 11-12. Moreover, including fees in the price of goods and services is the most common approach utilized by tens of thousands of businesses that accept credit card payments. OCA St. 5SR at 6. PGW, a Commission-regulated public utility offering essential natural gas service to its Philadelphia customers, should not be an exception to the common business practice of not charging an additional fee for credit card payments.

PGW closed all five of its customer service centers in April/May 2022 where customers could make in-person payments to avoid fees, which further limits the customer's ability to make an in-person payment and avoid processing fees. OCA St. 5 at 10. While not specifically required by the Public Utility Code, given the circumstances of PGW customer payment patterns and the closure of all of PGW's customer service centers, the reasonable and prudent costs that PGW incurs to implement a fee free payment system should be included in rates as are the costs for all other means of payment processing.

OCA Exception No. 7: PGW Should Accept Documentation From the Government When Identifying Low-Income Customers. R.D. at 122-125; OCA M.B. at 81-86; OCA R.B. at 48-50.

PGW currently uses CRP participation, receipt of a LIHEAP Cash or Crisis grant, and participation in a low-income payment agreement to identify Confirmed Low-Income customers. OCA St. 4 at 54; OCA M.B. at 84. This process for confirming low-income customers is not in compliance with the Commission's regulations governing Confirmed Low-Income customers for natural gas utilities. The PUC's regulations define "Confirmed Low-Income customers" as:

Accounts where the [Natural Gas Distribution Company] has obtained information that would reasonably place the customer in a low-income designation. This information may include receipt of LIHEAP funds (Low-Income Home Energy Assistance Program), **self-certification by the customer**, income source or information obtained in § 56.97(b) [relating to procedures upon rate-payer or occupant contact prior to termination].

52 Pa. Code § 62.2 (emphasis added).

OCA witness Colton recommended that PGW accept documentation of participation in any municipal, state or federal means-tested program as adequate documentation to identify a customer as a Confirmed Low-Income customer and/or to establish eligibility for the means-tested winter disconnection moratorium. OCA St. 4 at 9; OCA M.B. at 85. This is a lower standard than what is already required in the Public Utility Code, as the Code allows customers to self-certify.

The R.D. does not adopt the OCA's recommendation, but did provide the following:

We agree with OCA and CAUSE-PA/TURN that PGW's methodology for identifying low-income customers is flawed. While it is true that under Regulation 62.2, PGW may rely upon receipt of LIHEAP funds and CRP enrollment to establish confirmed low-income status, the regulation does not limit the definition of confirmed low-income customer to that subset of PGW's customers. To the contrary, the **regulation specifically contemplates, without restriction, any information that would reasonably place the customer in a low-income designation**. As OCA and CAUSE-PA/TU [sic] contend, census data gathered and published by the federal government and readily accessible to PGW falls within the scope of information that would reasonably place the customer in a low-income designation. We agree that use of census-based data will provide a more accurate

and meaningful measure of PGW's low-income customer service efforts. As a result, we recommend that the Commission direct PGW to improve identification of low income customers in universal service programs by adopting the BCS census-based estimated low-income customer count and to utilize such data to improve enrollment in PGW's universal service program and the evaluation of the effectiveness of PGW's universal service program outreach and participation. We suggest that this recommendation be implemented by PGW beginning with its next USECP filing and all reports concerning service to low-income consumers filed on or after December 31, 2023.

R.D. at 124-125 (emphasis added).

While the R.D. agrees with the OCA's reasoning and agrees that PGW's methodology for identifying low-income customers is flawed, the R.D. limits low-income customer identification to the BCS census-based estimated low-income customer count and directs PGW to utilize such data to improve enrollment in PGW's universal service programs. OCA witness Colton recommended as follows:

PGW should accept documentation of any municipal, state or federal means-tested public assistance benefits (e.g., Supplemental Nutrition Assistance, SSI) as documentation of a customer's low-income status for purposes of identifying that customer as a Confirmed Low-Income customer or as a customer eligible for the means-tested winter shutoff protections so long as the documentation includes documentation of actual income or so long as the program has a maximum income eligibility at or below 150% of Federal Poverty Level.

OCA St. 4 at 55.

The R.D., however, does not adopt the OCA's recommendation to require PGW to accept governmental documents proving that a customer is low-income in identifying low-income customers. This recommendation is reasonable, in accordance with the Commission's regulations, and should be adopted along with the ALJs' recommendation.

OCA Exception No. 8: PGW Should Be Required to Follow the Law Regarding Undeliverable Mail. R.D. at 131; OCA M.B. at 92-95; OCA R.B. at 50-54.

Currently, PGW disconnects essential utility service when mail is returned as undeliverable. OCA St. 4 at 64. The OCA recommended that, instead of disconnecting a ratepayer's vital utility service, a collection hold be placed on all accounts for which bills and/or disconnection notices are returned as undeliverable. OCA M.B. at 94. The R.D. states as follows:

In light of other recommendations herein to improve customer service that will almost certainly draw on the time, attention, and resources of PGW's administrative, managerial and IT staff and budgets, we decline to adopt OCA's recommendation regarding unreturned or undeliverable mail.

R.D. at 131.

PGW's treatment of undeliverable mail does not comply with the Commission's pre-termination notice requirements. Section 1406(b) states as follows:

(b) Notice of termination of service.—

(1) Prior to terminating service under subsection (a), a public utility:

(i) Shall provide written notice of the termination to the customer at least ten days prior to the date of the proposed termination. The termination notice shall remain effective for 60 days.

(ii) Shall attempt to contact the customer or occupant to provide notice of the proposed termination at least three days prior to the scheduled termination, using one or more of the following methods:

(A) in person;

(B) by telephone. Phone contact shall be deemed complete upon attempted calls on two separate days to the residence between the hours of 8 a.m. and 9 p.m. if the calls were made at various times each day; or

(C) by e-mail, text message or other electronic messaging format consistent with the commission's privacy guidelines and approved by commission order.

(D) In the case of electronic notification only, the customer must affirmatively consent to be contacted using a specific electronic messaging format for purpose of termination.

(iii) During the months of December through March, unless personal contact has been made with the customer or responsible adult by personally visiting the customer's residence, the public utility shall, within 48 hours of the scheduled date of termination, post a notice of the proposed termination at the service location.

(iv) After complying with paragraphs (ii) and (iii), the public utility shall attempt to make personal contact with the customer or responsible adult at the time service is terminated. Termination of service shall not be delayed for failure to make personal contact.

(2) The public utility shall not be required by the commission to take any additional actions prior to termination.

66 Pa. C.S. Section § 1406(b).

The current practice of disconnecting customers for returned mail by a Commission-regulated utility offering an essential service in Pennsylvania should be rejected by the Commission. Required pre-termination notice procedures under the Public Utility Code should not be entirely disregarded as a result of PGW's receipt of undeliverable mail. Nothing in the Public Utility Code permits PGW to engage in this type of practice.

The Commission should require PGW to comply with Chapter 14. As discussed in the OCA's Briefs, undeliverable mail is due to a variety of factors and is entirely outside of the control of ratepayers. *See* OCA M.B. at 92-95; OCA R.B. at 50-54. PGW's current practice of terminating a ratepayer's utility service as a result of undeliverable mail is contrary to the Code and harmful to ratepayers. The OCA's recommendation that a collection hold be placed on accounts in which undeliverable mail is returned to PGW allows PGW to comply with the Code instead of permitting PGW to continue disregarding pre-termination requirements. The OCA's recommendation should be adopted.

OCA Exception No. 9: The R.D. Misapprehends the OCA's Position Regarding Double Recovery of the CRP Cost Recovery Offset. R.D. at 132-134; OCA M.B. at 95-99; OCA R.B. at 58-62.

PGW's current cost offset for its CRP of 5.75% was established in the Settlement of PGW's most recent rate proceeding.¹ OCA M.B. at 95. This offset is a bad debt offset, in other words, it is for a debt that is uncollectible and PGW is permitted an allowance for bad debts. The difference between what a ratepayer would be billed and what the ratepayer enrolled as a CRP participant is billed is included in PGW's Universal Service and Energy Conservation Surcharge and is collected from non-CRP ratepayers.

The OCA recommended that (1) the current CRP offset bad debt offset of 5.75% be adjusted to 12.1%; (2) the offset be applied to all customers who are participating in the percentage of income program component of CRP above the participation number as of September 30, 2023, and; (3) the offset be applied to arrearage forgiveness credits granted to all CRP participants receiving arrearage forgiveness in excess of those receiving forgiveness as of September 30, 2023. OCA St. 4 at 72; OCA M.B. at 96. The basis for the OCA's recommendation of 12.1% is that the three-year average gross write-off ratio is 12.1%. *Id.* This gross write-off ratio shows that, even in the absence of CRP, PGW would expect to fail to collect 12.1% (using the three-year average) of the dollars billed to its low-income customers. *Id.*

The ALJs erred in rejecting the OCA's position on bad debt expense. See R.D. at 134. The requirement for PGW to implement a bad debt offset was the result of a Commonwealth Court Order arising from PGW's 2007 base rate case in which the Commission ordered PGW to develop a mechanism to automatically adjust PGW's actual collection of its bad debt expense in base rates based upon the change in participation in CRP. See *Phila. Gas Works v. Pa. PUC*, No. 1914 C.D.

¹ *Pa. PUC v. PGW*, R-2020-3017206, at 37 (Order entered Nov. 19, 2020).

2007, 2009 Pa. Commw. Unpub. LEXIS 797 (Pa. Commw. Ct. Feb. 4, 2009) (*PGW 2007 Commonwealth Court Order*). The Commonwealth Court stated as follows:

PUC ordered PGW to develop a mechanism to automatically adjust PGW's actual collection of its bad debt expense in base rates based upon the change in participation in the CRP. The purpose of the mechanism is to eliminate double recovery of uncollectible expenses.

...

Furthermore, PUC did not direct PGW to make an automatic adjustment to its bad debt expense; rather it only directed PGW to collect data to determine the net change in CRP participation and average shortfalls for its CRP participants. Such amounts are already included and established in the base rate case. PGW is already recovering these shortfalls through its base rates. What PGW is not recovering through its base rates is the cost of its universal service program. PGW recovers these costs through a USC surcharge, adjusted quarterly. The Consumer Advocate's witness testified that when a customer enrolls in the CRP, PGW's bad debt expense is reduced because a greater portion of PGW's charges are being collected from non-CRP customers. The Consumer Advocate's witness testified that, as a result, there is a potential for double recovery of costs associated with customer account shortfalls when customers are placed into or removed from CRP, which can be alleviated by the tracking mechanism implemented by PUC. We, therefore, conclude that PUC acted within its discretion when it directed PGW to implement a mechanism to collect data to determine the net change in its CRP participation compared to the number of CRP participants at the time its rates become effective and directed PGW to track the average shortfall per CRP participant.

Accordingly, the order of PUC is affirmed.

PGW 2007 Commonwealth Court Order at *21-24 (citations omitted).²

The Commonwealth Court affirmed the following Commission determination:

[W]e find OCA's argument to be convincing. Double recovery of uncollectible accounts expense is a possibility and can be alleviated by implementing a mechanism for reconciliation.

² In accord with 210 Pa. Code § 69.414(a), an unpublished memorandum opinion, although not binding precedent, may be cited for its persuasive value in accordance with Section 414(a) of this Court's Internal Operating Procedures.

Pa. PUC v. Philadelphia Gas Works, R-0006193, at 39, 42 (Order entered Sept. 28, 2007) (*PGW 2007*). The current proceeding presents the exact same circumstances and the Commission's decision should be the same.

The R.D., however, utilizes PGW's reply brief to summarize the OCA's position. R.D. at 133. PGW's summary, however, mischaracterizes the OCA's argument. As shown above, the Commission has already determined that a double counting would occur and that a bad debt offset is necessary. *See PGW 2007*. This fact has also been confirmed by the Commonwealth Court. *See PGW 2007 Commonwealth Court Order*. Instead of acknowledging prior precedent, PGW attempted to relitigate an issue that was already dealt with by both the Commission and the Commonwealth Court. The R.D., however, determined as follows:

We find that OCA's rationale for the proposal is flawed in several respects. First, OCA's position is based on a settlement in a prior proceeding, which, as PGW points out, has no binding effect on this matter. Second, we agree with PGW that OCA has not presented substantial evidence of "double counting." In addition, we note that the calculations used by OCA to arrive at a proposed 12.1% offset include years during which COVID disrupted CRP enrollment and collection activity. Further, we observe that the OCA's offset is one-sided in that it is applied to new CRP customers, but there is no adjustment if there are less CRP customers than the preset number. For these reasons, we find that OCA has failed to provide substantial evidence in support of its proposal and decline to recommend adoption of the proposal in this proceeding. Instead, we recommend that PGW reinstate the mechanism and practice established in the 2007 PGW Base Rate Case designed to monitor possible under-recovery and/or over-recovery of CRP bad debt expense by collecting information to establish the net outcome in CRP participation over the level existing at the time a final order is issued in this proceeding, and the average shortfall per participant and to present that information with its quarterly reconciliation.

R.D. at 134.

The current offset of 5.75% was established in PGW's most recent base rate case settlement. However, the creation of the offset was the result of PGW's fully litigated 2007 base rate case, which included a Commonwealth Court order and was implemented to prevent the

double counting which the R.D. claims the OCA is unable to provide substantial evidence of its existence. Moreover, while the R.D. critiques the fact that the OCA utilized years during which COVID disrupted CRP enrollment and collection activities, and the concept that the offset is applied to new CRP customers but not to customers who leave the program, the OCA's three-year average are based on the Company's actual three-year average gross write-off ratio. The OCA was using the most recent information available to determine the offset instead of a theoretical offset that would occur in the absence of a pandemic. As such, a 12.1% offset is reasonable and could be adjusted in future base rate cases based on the information provided at that time.

III. CONCLUSION

Based on the foregoing and for the reasons articulated in the OCA's Main and Reply Briefs, the OCA respectfully requests that the Commission grant the OCA's Exceptions and adopt the OCA's positions as discussed above.

Respectfully submitted,

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