



September 22, 2023

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17121

Re: Pa. PUC v. Philadelphia Gas Works, Docket No. R-2023-3037933

Secretary Chiavetta:

Please find the attached *Joint Reply Exceptions of The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania and The Tenant Union Representative Network* in the above noted proceeding.

As indicated on the attached Certificate of Service, service on the parties was accomplished by email only.

Respectfully,

A handwritten signature in black ink, appearing to read "John W. Sweet". The signature is written in a cursive style with a horizontal line above the name.

John W. Sweet, Esq.
Counsel for CAUSE-PA

CC: *Certificate of Service*

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

Certificate of Service

I hereby certify that I have this day served copies of *Joint Reply Exceptions of The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania and The Tenant Union Representative Network* upon the parties of record in the above captioned proceeding in accordance with the requirements of 52 Pa. Code § 1.54 in the manner and upon the persons listed below.

VIA Email

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Pennsylvania Public Utility Commission :
 :
 v. : R-2023-3037933
 :
 Philadelphia Gas Works :

**JOINT REPLY EXCEPTIONS OF
THE COALITION FOR AFFORDABLE UTILITY SERVICES AND ENERGY
EFFICIENCY IN PENNSYLVANIA AND TENANT UNION REPRESENTATIVE
NETWORK**

THE PENNSYLVANIA UTILITY LAW PROJECT

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September 22, 2023

I. INTRODUCTION

Pursuant to Section 5.535 of the regulations of the Pennsylvania Public Utility Commission (Commission) and the Secretarial Letter dated September 5, 2023 issued in the above-captioned proceeding, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) and the Tenant Union Representative Network (TURN) (collectively CAUSE-PA/TURN or Joint Parties), through their respective counsel at the Pennsylvania Utility Law Project (PULP) and Community Legal Services (CLS), file the following replies to certain exceptions of Philadelphia Gas Works (PGW) and Grays Ferry Cogeneration Partnership and Vicinity Energy Philadelphia, Inc. (Vicinity).

As discussed in detail below, the Joint Parties agree with the conclusion of Administrative Law Judges (ALJs) Eranda Vero and Arlene Ashton that issues related to PGW’s customer service practices, such as such as identification of low income customers and applicants, and enrollment and retention in the Customer Responsibility Program (CRP), are appropriately considered in the context of the current rate case. PGW has proposed substantially increasing its rates in this current proceeding, which will impact the ability of low income customers to access and afford service. PGW’s proposal to relegate these important issues to be considered solely within the context of the quinquennial review of PGW’s Universal Service and Energy Conservation Plan (USECP) would, as the RD explains, “deny low-income customer relief for an extended period of time.”¹ It is thus imperative that the Commission ensure that PGW provides adequate service to its low income customers before any rate increase can be approved.²

The Joint Parties also support the ALJs’ recommendations in the RD that PGW be required to take certain measures to improve services to its low income customers in light of increasing

¹ RD at 120.

² See 66 Pa.C.S. §§ 1301, 1501.

rates, including identification and enrollment of low income customers in its CRP program and improving its low income data tracking by utilizing its estimated low income customer count to evaluate universal service outreach. We also urge the Commission to ensure that all firm customers contribute to the funding for PGW's USECP programs as these programs benefit all PGW customers, as well as the entire Philadelphia community.

For these reasons, and the reasons more fully explained below, CAUSE-PA/TURN respectfully assert that the Commission should deny PGW's exceptions which, if granted, would: (1) curtail review of the effects of its proposed rates on universal services; (2) maintain deficiencies in identifying the need for universal services assistance in PGW's service territory; and (3) avoid improving outreach, data sharing and coordination to better serve its low income customers. Additionally, CAUSE-PA/TURN submit that the Commission should deny Vicinity's exception to the ALJ's recommendation that it be required to contribute to the Universal Service and Energy Conservation surcharge (USEC) paid by all firm PGW customers.

II. REPLY EXCEPTIONS

a. Reply to PGW Exception No. 16: The RD was correct to evaluate PGW's universal service programs in relation to the proposed rate increase and to make recommendations to address the rate impact on low income customers.³

In their respective main briefs, the Joint Parties, the Office of Consumer Advocate (OCA), and POWER Interfaith (POWER) each evaluated the impact of PGW's proposed rate increase on PGW's low income customers, identified needed improvements to universal service programs, and made recommendations that specifically relate to PGW's customer service practices. Among their

³ RD at 119-121.

recommendations, these parties supported improvements in identification of low-income customers and applicants, and enrollment and retention in CRP. PGW opposed those recommendations and argued that its universal service programs should be reviewed solely within the context of its USECP review, which occurs once every five years.

In the RD, the ALJs agreed with the Joint Parties, OCA, and POWER that the identified customer service issues are appropriate to address within the context of the current rate case.⁴ The RD explains that, “PGW’s suggestion regarding alternative proceedings would effectively delay the timing of any effort to address or take action to resolve these issues for several years.”⁵ Relative to that delay, the RD notes that, in comments concerning the Commission’s review of universal service programs, PGW indicated that because it “is currently in the process of receiving final approval of its 2023-2027 USECP [PGW] needs time to implement and evaluate its current changes before looking to change its programs again.”⁶ The RD states:

In light of the current level of PGW rates, the magnitude of PGW’s proposed rate request, the delay involved in the proposal or timing of an alternative proceeding, and the impact on all PGW customers of the outcome of this proceeding, we find such an outcome unacceptable.⁷

In its exceptions, PGW opposes consideration of its low income program and service improvements within the context of its current base rate case due to the existence of the quinquennial USECP review process and an ongoing statewide universal service docket.⁸

PGW’s reliance on the USECP review process and the statewide docket as the sole venues to address the rates, terms, and conditions of service to low income customers is flawed. In fact, as explained in the Joint Parties’ reply brief and the RD, the Commission’s Policy Statement on

⁴ RD at 120-121.

⁵ Id. at 120.

⁶ Id. at 120, fn. 612 (citing Comments of Philadelphia Gas Works to March 27, 2023, Secretarial Letter Docket M-2023-3038944, at 11 (June 7, 2023)).

⁷ Id. at 121.

⁸ PGW Exceptions at 33-34.

PGW's cash flow ratemaking directs that, in determining just and reasonable rate levels for PGW, the Commission must consider the effect of rates on universal service.⁹ Section 69.2703 of the Commission's regulations, on "Ratemaking procedures and considerations" for PGW states:

(a) In determining just and reasonable rate levels for PGW, the Commission will consider, among other relevant factors:

....

(8) Effect on Universal Service.¹⁰

It is therefore illogical to conclude, as espoused by PGW, that universal service issues should be precluded from the current review of the lawfulness, justness, and reasonableness of PGW's rates, rules, and regulations simply due to the existence of other proceedings where similar issues may be addressed. It is also illogical to conclude that the Commission lacks the authority to order PGW to remediate issues identified during the analysis of the lawfulness, justness, and reasonableness of the programs and services PGW provides to low income customers.

Regarding the cash flow rate making policy statement, PGW's exception contends: "PGW had requested that the Commission provide this guidance so that it would know the nature and type of evidence it was expected to submit in support of requested base rate increases."¹¹ Thus, PGW attempts to argue that the inclusion of universal service considerations in the review of "just and reasonable" rates is merely a filing requirement for PGW, that does not permit other parties or the Commission to consider programmatic issues in the context of a base rate proceeding. This argument is without merit as the Commission's policy statement is not directed to PGW filing requirements. Rather, the policy statement clearly articulates that, in setting just and reasonable rates, the Commission will consider their effect on universal service. The Commission would not

⁹ CAUSE-PA/TURN RB at 9, 20; RD at 121.

¹⁰ 52 Pa. Code § 69.2703.

¹¹ PGW Exceptions at 36.

have included this language if it did not intend for these issues to be explored by the parties and addressed by the Commission.

PGW's exceptions repeatedly cite a Commission order in an Aqua Pennsylvania rate case as support for the premise that universal service issues are "better reviewed in a universal service stakeholder process."¹² PGW fails to take note of the fact that the order it relies upon was modified following reconsideration. Indeed, in response to CAUSE-PA's petition for reconsideration, the Commission specifically found that the ALJ and the Commission in that case did not bar consideration of recommendations regarding Aqua's universal service programs in its rate proceeding, holding instead that such matters had, in fact, been reviewed and considered.¹³ The Commission explained that its previous order summarized the parties' positions regarding affordability and universal service plan (USP) design, analyzed the parties' positions, exceptions and replies, but that "[t]he Commission simply rejected CAUSE-PA's position that Aqua's USP should be structured as PIP in the circumstances of the present case."¹⁴ The Commission therefore did not foreclose consideration of universal service issues within the context of a rate case as PGW appears, mistakenly, to believe.

PGW asserts in its Exceptions that the concerns expressed by the RD regarding a delay in the resolution of low income issues is unfounded because the five-year timeframe allows for a more thorough review of the issues.¹⁵ However, the usual USECP review process, being limited to comments and reply comments, is not as robust and thorough as PGW purports. Typically, there is no opportunity for formal discovery and no opportunity for a hearing before an ALJ. In the context of a base rate case, parties have an opportunity to perform a more thorough review through

¹² PGW Exceptions at 33.

¹³ Pa. PUC v. Aqua Pennsylvania, Inc., Docket No. R-2021-3027385 et al. (Order entered Oct. 27, 2022), at 23.

¹⁴ Id.

¹⁵ PGW Exceptions at 34.

the discovery process, submission of expert witness testimony, cross examination of witnesses, and on-the-record hearings before an ALJ. This process, unlike the typical USECP review process, provides valuable opportunities to evaluate the quality of customer service provided to all customers, including those having low household incomes. Furthermore, issues such as identification and outreach to low income customers are important to consider when assessing the likely impact of a rate increase on customers' ability to pay.

Finally, the Commission should recognize that CAUSE-PA/TURN testimony regarding universal service programming, and improvements thereto, was entered on the record without objection by any party. Moreover, PGW submitted its own responsive rebuttal testimony, extensively promoting its views on the merits of the proposals advanced by the Joint Parties and others regarding universal service issues, which was likewise entered on the record without objection.¹⁶ Accordingly, PGW's exception, to the extent it now contends these matters are off limits in this base rate proceeding, is directly contradicted by PGW's witnesses who themselves undertook to review and proffer testimony regarding universal services issues. For this reason, PGW's exception is not supported by record evidence, including its own witness testimony.

b. Reply to PGW Exception No. 17: The RD was correct in requiring PGW to rectify deficiencies in its confirmed low income customer count and to utilize its estimated low income customer figure in evaluating universal service.¹⁷

Pursuant to the Commission's reporting requirements, PGW and other utilities assess low income customer needs two ways, by using "estimated low income" and "low income customer" counts.¹⁸ In testimony, the Joint Parties' expert witness Harry Geller explained that the estimated

¹⁶ See, generally, PGW St. 1-R at 2-33; PGW St. 9-R at 14-37.

¹⁷ RD at 122-125.

¹⁸ 52 Pa. Code §§ 62.2, 62.4, 6.25.

low income customer count, which uses census data provided by the Commission's Bureau of Consumer Services (BCS) proportional to PGW residential customer count to estimate PGW's low income customers, presents a more accurate picture the low income consumers in PGW's territory.¹⁹ He explained that the confirmed low income customer count provides only a limited assessment of the low income population, whereas, it is more accurate to utilize the proportional census-based estimated low income customer count.²⁰ Also, in OCA's main brief, it identified that the criteria that PGW uses to classify a customer as a "confirmed low-income residential account" is stricter than the criteria defined by the Commission's regulations.²¹

In the RD, the ALJs agreed with the Joint Parties and OCA that PGW's methodology for identifying low-income customers is flawed due to the undue limitations it places on counting confirmed low income customers. The ALJs opined that "use of census-based data will provide a more accurate and meaningful measure of PGW's low-income customer service efforts."²² The RD recommended that the Commission direct PGW to improve identification of low income customers in universal service programs and use the BCS census-based estimated low income customer count to improve enrollment in PGW's universal service program beginning with its next USECP filing.²³

In its exceptions, PGW contends that it is compliant with the regulations regarding confirmed low income customer counts by limiting its information sources to those specifically outlined in the regulation.²⁴ PGW also claims that "the RD also misunderstands the data it is directing PGW to use," and that the data provided by BCS does not provide sufficient information

¹⁹ CAUSE-PA/TURN MB at 24-25

²⁰ Id.

²¹ OCA MB at 85; 52 Pa. Code § 62.2.

²² RD at 124-25.

²³ Id. at 125.

²⁴ PGW Exceptions at 36-37.

to determine if the estimated low income customers are PGW customers.²⁵ However, it is PGW who seems to misunderstand the datapoints provided by BCS. As explained above and in the Joint Parties main brief and underlying testimony, the data provided by BCS to PGW for calculating estimated low income customers provides the census count of the residents in its service territory with income at or below 150% FPL.²⁶ BCS then adjusts this data proportionately to PGW's residential customer count to reach a more accurate estimate of the number of low income PGW customers.²⁷ Thus, the estimated low income customer count presents a more accurate picture of PGW's low income consumers for purposes of outreach to under-served customers than simply counting those customers who have already provided income information to PGW.

PGW's argument that the RD's recommended use of the estimated low income count somehow encroaches on BCS's purview is also misplaced as it is BCS who calculates and provides the estimated low income data as directed by the Commission. It bears noting that, contrary to PGW's arguments, BCS is a bureau of the Commission, not a separate entity with its own jurisdictional purview. PGW also makes a questionable argument that the RD's timeline is unreasonable by recommending that PGW implement the changes in its next USECP filing and in all reports concerning service to low-income customers filed on or after December 31, 2023.²⁸ To the contrary, the RD's timeline is reasonable because this data is readily available for use in reporting under PGW's current plan (in place through 2027) as well as the preparation and submission of PGW's next needs assessment (due February 2025).²⁹

²⁵ Id. at 37.

²⁶ CAUSE-PA/TURN MB at 24.

²⁷ Id.

²⁸ PGW Exceptions at 37-38.

²⁹ RD at 120.

Thus, the RD is correct in requiring PGW to rectify deficiencies in its confirmed low income customer count and to utilize its estimated low income customer figure in evaluating universal service needs across its service territory. Taking these steps will help PGW gain a more accurate picture of the effectiveness of its outreach in identifying low income customers in its service territory who have not yet had the opportunity provide PGW with confirmation of their low income status. This better, more thorough, identification of low income customers will help improve CRP enrollment levels and, in turn, help reduce payment trouble and terminations among those who cannot afford to pay PGW's full tariff rate.³⁰

c. Reply to PGW Exception No. 18: The ALJs were correct to require PGW to improve outreach and engage in data sharing and coordination with local and state agencies.³¹

In their respective main briefs, OCA and the Joint Parties each provided recommendations on ways that PGW could improve its outreach, screening, and enrollment efforts to better serve its low income customers.³² Specifically, both OCA and the Joint Parties recommended that PGW be required to coordinate and share data with state and local agencies that interact with PGW's low income customers to get a better understanding of the low income community and improve identification of low income customers and CRP enrollment. The Joint Parties also specifically recommended that PGW include outreach with its annual winter surveys to increase enrollment in CRP.³³

The RD recommends that PGW be directed to develop and deliver to the Commission for its approval plans to implement several strategies for outreach and coordination with local and

³⁰ CAUSE-PA/TURN MB at 25.

³¹ RD at 125-128.

³² CAUSE-PA/TURN MB at 28-31; OCA MB at 81-89.

³³ CAUSE-PA/TURN MB at 28.

state agencies as recommended by the Joint Parties and OCA.³⁴ In its exceptions, PGW argues that there is no statutory or regulatory basis for it to be required to implement these steps and that these proposals are best evaluated on a statewide basis.³⁵ However, PGW is under an obligation to provide just and reasonable service to low income customers.³⁶ As of December 2022, less than half of PGW's confirmed low income customers were enrolled in CRP and less than a third of its estimated low income customers were enrolled.³⁷ As Mr. Geller explained in his testimony, "It is unacceptable that less than half of customers whom PGW has *identified* as low income were enrolled in the program."³⁸

Improving the identification of low income customers, and better matching them to critical rate assistance and usage reduction services, is essential to PGW's ability to provide just and reasonable rates and services to low income households.³⁹ The availability of LIHEAP data sharing and auto enrollment could be vital to curbing the decline in PGW's CRP enrollment and improving the CRP enrollment for hard-to-reach customers.⁴⁰ Thus, the Joint Parties respectfully assert that the ALJs were correct to recommend that PGW be required to take steps to improve its CRP enrollment in light of its increasing rates.

It is also noteworthy that PGW's exception makes no argument against the ALJs' recommendation that PGW "include outreach to assist with enrollment in CRP as part of its annual cold weather surveys, beginning with the pre-December 2023 survey."⁴¹ This recommendation, unlike the others endorsed by the ALJs concerning data sharing and cooperation, does not require

³⁴ RD at 127.

³⁵ PGW Exceptions at 38.

³⁶ 66 Pa. C.S. §§ 1301, 1501.

³⁷ CAUSE-PA/TURN MB at 25.

³⁸ *Id.* (emphasis added).

³⁹ *Id.* at 30.

⁴⁰ *Id.* at 31.

⁴¹ RD at 126.

any coordination with non-PGW entities. Given PGW's lack of specific exception to this facet of the recommended service improvements, the Joint Parties submit that PGW has waived any objection to implementation of this aspect of the RD.

d. Reply to Vicinity Exception No. 2: The ALJs were correct to assign the Universal Service and Energy Conservation Surcharge to Vicinity.

The Joint Parties disagree with Vicinity's argument that it should not be assessed the Universal Service and Energy Conservation surcharge (USEC).⁴² The Joint Parties do not take a position on Vicinity's argument regarding other charges outlined in its Exception No. 2. However, with respect to the USEC charge, the Joint Parties' Reply Brief explains at length why all customers benefit from and should contribute to the USEC.⁴³ The RD correctly recommends imposing this surcharge on Vicinity, recognizing the surcharge applies to other small, medium and large business customers.⁴⁴

PGW's longstanding policy of allocating its USEC costs to all firm residential, commercial, and industrial customer classes was most recently litigated in PGW's 2017 rate case.⁴⁵ There the Commission once again affirmed PGW's longstanding policy of requiring these customers to contribute to the public purpose cost of ensuring all Philadelphians can access and maintain gas service to their home:

There are several reasons why we shall continue to approve PGW's unique allocation of universal service costs. PGW is unique in that it is a large, municipal natural gas utility situated within the City of Philadelphia and serves more low-income customers than any other jurisdictional gas utility.⁴⁶

⁴² Vicinity Exceptions at 17.

⁴³ CAUSE-PA/TURN RB at 5-7.

⁴⁴ RD at 96.

⁴⁵ Pa. PUC v. PGW, R-2017-2586783, Final Order at 74 (Entered Nov. 8, 2017).

⁴⁶ Id.

In affirming PGW's allocation of USEC costs, the Commission explicitly recognized the benefits of universal service programs to nonresidential customers:

We also find merit in the argument of the opposing Parties that all firm customers, including commercial and industrial customers, benefit indirectly from PGW's extensive low-income assistance programs.⁴⁷

The Joint Parties stand by our position that all firm PGW customers should be required to pay PGW's USEC, regardless of rate class.⁴⁸ PGW's universal service programs benefit all customers, as well as the city of Philadelphia as a whole. It is, therefore, just and reasonable that all of these customers share the cost.⁴⁹ Thus, regardless of the Commission's determination on the other charges, Vicinity and all other firm customers should contribute to the USEC.

III. CONCLUSION

For the reasons stated above, CAUSE-PA and TURN respectfully assert that the Commission should deny PGW's Exceptions Numbered 16-18 and Vicinity's Exception Number 2 as it relates to the USEC. Further, the Joint Parties note that there were several recommendations in the RD that PGW did not except to, including (1) that PGW be required to cease its practice of requiring victims of domestic violence to produce photo identification in addition to PFA or court order;⁵⁰ and (2) that PGW be ordered to inform potential residential service applicants of its identification requirements via PGW's in-person, telephone, and on-line communication channels, and that such requirements be reflected on the forms used by applicants to apply for service.⁵¹ The Commission should adopt the RD with respect to those customer service improvements and any others which PGW did not specifically address in its Exceptions.

⁴⁷ Id.

⁴⁸ CAUSE-PA/TURN RB at 6-7.

⁴⁹ Id.

⁵⁰ RD at 118.

⁵¹ RD at 119. Note the Joint Parties maintain their Exception, filed on September 15, 2023, that PGW must cease violating Commission regulation and be permitted to require no more than one government-issued photo identification for applicants for residential service (and other adult household members).

Respectfully Submitted,

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