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October 19, 2023

Via Electronic Filing

Rosemary Chiavetta, Secretary
PA Public Utility Commission
400 North Street, 2nd Floor
Harrisburg, PA 17120

Re: PA Public Utility Commission, et al., v. Philadelphia Gas Works
2023 PGW Base Rate Case Filing – Docket No. R-2023-3037933

Dear Secretary Chiavetta:

Enclosed for electronic filing please find Philadelphia Gas Works' ("PGW") Answer to Philadelphia Industrial and Commercial Users Group's ("PICGUG") Motion to Strike with regard to the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely

Karen O. Moury
Karen O. Moury

KMO/lww

Enclosure

cc: Hon. Eranda Vero w/enc.
Hon. Arlene Ashton w/enc.
Cert. of Service w/enc.

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of PGW's Answer to PICGUG's Motion to Strike, upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

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Date: October 19, 2023

IT customers have only been interrupted once (in 2004) in almost 20 years and cannot be truly considered as interruptible for purposes of allocating distribution mains costs.

The Recommended Decision (“RD”) of Administrative Law Judge (“ALJ”) Eranda Vero and ALJ Arlene D. Ashton, which was served on September 5, 2023, recommended approval of PGW’s cost allocation method. In addition, the RD expressly rejected PICGUG’s proposed approach of setting Rate IT’s extra demand to zero,¹ which was inconsistent with PGW’s original proposal² and which PGW had opposed in testimony and briefs.³

In filing Exceptions to the RD, PICGUG argued in Exception No. 2 that adoption of the RD would result in discrimination against Rate IT customers in violation of Section 1304 of the Public Utility Code (“Code”).⁴ Directly responding to this argument, PGW’s Reply Exception (“RE”) No. 4 contended that its original proposal for allocating the costs of distribution mains to interruptible customers is reasonable since these customers have not been interrupted since 2004. As such, this approach does not violate Code Section 1304. PGW further explained that if costs are not allocated in the manner proposed by the Company, and as approved by the RD, interruptible customers will avoid any cost responsibility for maintaining the gas distribution system that has served and will continue to serve them every day.⁵

The legal arguments set forth in PGW’s Reply Exceptions, which PICGUG seeks to strike, regarding the inapplicability of Code Section 1304 to cost allocation methods are consistent with the primary position advanced by the Company from the outset of the proceeding and should be considered by the Commission in adjudicating this matter. Even if the

¹ RD at 69.

² PGW St. No. 5 at 5-6

³ PGW St. No. 5-R at 13; PGW Main Brief (“MB”) at 36-39; PGW Reply Brief (“RB”) at 28-31.

⁴ 66 Pa. C.S. § 1304.

⁵ PGW RE at 5-6.

Commission would find that PGW should have made these specific legal arguments in opposing PICGUG’s proposal during the briefing phase, the clear language of Code Section 1304 is that the prohibition on unreasonable discrimination applies only to rates that are charged by a public utility. As PICGUG’s challenge is to the underlying cost allocation method, it was not properly made pursuant to Code Section 1304 and should be rejected. Regardless of when or if parties present certain arguments, the Commission may not issue an order that is inconsistent with the Public Utility Code. Moreover, to the extent that the Commission concludes that Code Section 1304 is applicable to a utility’s cost allocation method, PICGUG has failed to show any “unreasonable” disadvantage resulting to the Rate IT customers from being treated the same for cost allocation purposes as firm customers are treated since they effectively receive the same gas distribution service.

Notwithstanding a dispute as to the applicability of Code Section 1304 in this context, the bottom line is that PGW has presented a solid rationale in support of its proposed allocation approach – IT customers should not be able to avoid any cost responsibility for maintaining the gas distribution system upon which they rely. Therefore, PGW respectfully requests that the Commission adopt the RD’s recommendation regarding the allocation of distribution mains costs to Rate IT customers.

II. PROCEDURAL BACKGROUND

PGW incorporates herein the procedural background set forth in its Main Brief.⁶

III. ARGUMENT

PICGUG seeks to strike PGW’s legal argument included in its Reply Exceptions regarding the inapplicability of the anti-discrimination language in Code Section 1304 to a

⁶ PGW MB at 1-5. *See also* RD at 2-6.

utility's underlying cost allocation methods.⁷ Specifically, PICGUG asks that the Commission strike one sentence and one clause on page 6 of PGW's Reply Exceptions on a cost allocation issue where PGW's position has been clear and consistent from the outset - interruptible customers should be treated like firm customers for purposes of the allocation of distribution mains costs since they are effectively firm customers. To be clear, PICGUG is not claiming that the argument in PGW's Reply Exceptions is inconsistent with the factual, policy and legal positions taken by the Company throughout the proceeding regarding the allocation of distribution mains costs to Rate IT customers. Stated differently, it is without question that PICGUG has been on notice since the outset of this base rate case that PGW views the IT customers as effectively receiving firm service, which justifies the allocation of distribution mains costs to these classes through application of the A&E method. Contrary to a situation in which a party claims to have been sandbagged by a new position being advanced for the first time in reply exceptions, PICGUG is complaining only that a particular legal angle that PGW relied upon in its Reply Exceptions – in directly responding to PICGUG's Exception No. 2 – had not been previously asserted. In support of this argument, PICGUG refers to Section 5.501 of the Commission's regulations⁸ and the Commission's decision in *Pa. P.U.C. v. Mechanicsburg Water Company*.⁹

Neither Section 5.501 of the Commission's regulations nor *Mechanicsburg Water* support the striking of PGW's legal argument regarding the inapplicability of Code Section 1304 to the cost allocation method proposed by the Company. Section 5.501 of the Commission's regulations require the party with the burden of proof to completely address, to the extent

⁷ Motion at 5-7.

⁸ 52 Pa. Code § 5.501.

⁹ *Pa. P.U.C. v. Mechanicsburg Water Company*, 1993 Pa. PUC LEXIS 112 (Pa. P.U.C. July 22, 1993) ("*Mechanicsburg Water*").

possible, in its main or initial brief, “every issue raised by the relief sought and the evidence adduced at hearing.”¹⁰ In its Main Brief, PGW fully addressed its cost allocation proposal as reflected in its testimony, as well as the issues raised by PICGUG’s testimony that was admitted into the evidentiary record.¹¹ PGW’s argument contained specific references to the record in support of its original proposal, including the testimony of the Company’s cost-of-service witness that Rate IT customers have not been interrupted since 2004 and “should be treated as firm customers who are supplied natural gas during peak periods and should be allocated costs accordingly.”¹² Additionally, PGW specifically responded to the testimony presented on behalf of PICGUG which recommended that the IT classes’ excess demand be set to zero since they are technically interruptible. In opposing that recommendation, PGW relied on the testimony of its expert witness who explained that since PGW provides gas during the period of Interruptible classes’ peak day demand, the cost allocation should reflect that service.¹³ Therefore, PGW fully complied with the requirements of Section 5.501(a) by setting forth its position in its Main Brief regarding the allocation of costs to interruptible customers with specific references to record evidence.

As to *Mechanicsburg Water*, PICGUG’s reliance on the Commission’s decision is misplaced. In *Mechanicsburg Water*, the Office of Consumer Advocate (“OCA”) contended that the utility did not criticize OCA’s growth rate methodologies in the context of common equity in the rate of return analysis during the briefing stage and raised their criticisms for the first time in its exceptions. The Commission agreed with OCA and did not consider those arguments raised by the utility. By contrast, in this proceeding, PGW directly responded to PICGUG’s criticisms

¹⁰ 52 Pa. Code § 5.501(a).

¹¹ PGW MB at 35-40.

¹² PGW MB at 38; PGW St. No. 5-R at 4; PGW St. No. 5 at 5-6.

¹³ PGW MB at 39; PGW St. No. 5-R at 13.

of its cost allocation approach in Rebuttal Testimony and, as noted above, carried those arguments over to both its Main Brief¹⁴ and Reply Brief.¹⁵

Neither Section 5.501 nor *Mechanicsburg Water Company* precludes a party from advancing specific legal angles in their exceptions that may not have been expressly stated in prior pleadings. This is particularly true when the party is directly responding in reply exceptions to an argument raised in exceptions contending that adoption of the RD's recommendation will violate a statutory provision. Of note, Code Section 1304 was the sole focus of PICGUG Exception No. 2, while PICGUG's Main Brief only referenced Code Section 1304 in passing without devoting a particular section of its argument to this issue.¹⁶ In placing a stand-alone argument in front of the Commission through Exception No. 2 that adoption of the RD's recommendation to approve PGW's method for allocating the costs of distribution mains to interruptible customers would violate the anti-discrimination provisions of Code Section 1304, PICGUG opened the door for the filing of a reply by PGW.¹⁷

In directly responding to PICGUG's Exception No. 2, PGW made the following points:¹⁸

- While Code Section 1304 precludes a public utility – as to rates – from subjecting any person to “unreasonable prejudice or disadvantage,” PICGUG is not challenging proposed rates but rather the underlying cost allocation approach;
- PICGUG did not establish that PGW's cost allocation method was “unreasonable” since the Company's rationale for allocating mains costs to Rate IT classes is that they are not actually interrupted;

¹⁴ In *Ackie et al v. Philadelphia Gas Works*, Docket No. C-2019-3013933 (Order entered September 15, 2022, adopting Initial Decision dated September 2, 2021, as modified and clarified, the Commission denied PGW's Motion to Strike certain portions of the complainant's reply brief, finding that the issues raised therein were made apparent during the proceeding. (Initial Decision at 10).

¹⁵ PGW RB at 29-31.

¹⁶ PICGUG MB at 14. In reply briefs, parties are not required to address every nuance of each issue raised by other parties' main briefs, particularly in view of the wide array of topics that are covered in a base rate case and page limitations are imposed.

¹⁷ PICGUG Exceptions at 8-11. While reply exceptions also have page limitations, PGW sought to respond to each exception raised by the parties.

¹⁸ PGW Reply Exception No. 4 at 6.

- PICGUG did not point to evidence of any costs incurred by IT customers to preserve their interruptibility; and
- IT customers have long enjoyed (and will continue to enjoy under proposed rates) the advantage of much lower distribution rates than are paid by PGW's firm service customers.

All of these arguments are consistent with the primary position taken by PGW throughout this proceeding that a fair and reasonable way to allocate distribution mains costs is to treat Rate IT classes as receiving the firm service that, in reality, they receive. It is worth noting that in responding to PICGUG's arguments, PGW's Reply Brief distinguished between the cost allocation and revenue allocation phases of ratemaking, noting that the Commonwealth Court's decision in *Lloyd v. Pa. P.U.C.*,¹⁹ is not applicable to cost allocation methods, but rather addresses adherence to those methods during the revenue allocation phase.²⁰ PGW's argument in its Reply Exceptions regarding the inapplicability of Code Section 1304 to cost allocation methods was similar in that it contended that PICGUG is improperly seeking to rely on principles that are applicable to rates to evaluate PGW's cost allocation approach.

Regardless of when or even if a party raises a particular legal argument in advancing or defending a position, the Commission has an independent obligation to ensure that its orders comply with the Public Utility Code. For example, the Commission analyzes settlements to determine whether the terms are in the public interest.²¹ An important factor in determining whether a result is in the public interest is whether it complies with the applicable law.²²

As consistently maintained by PGW, it is advantageous (as opposed to "discriminatory") for Rate IT customers to receive the lower distribution rates they enjoy as a result of their

¹⁹ *Lloyd v. Pa. P.U.C.*,¹⁹ 904 A.2d 1010, 1020 (Pa. Commw. Ct. 2006).

²⁰ PGW RB at 31.

²¹ *Pa. P.U.C. v. PPL Utilities Corporation*, Docket No. M-2009-2058182 (Order entered November 23, 2009).

²² *Dauphin County Indus. Dev. Auth. v. Pa. P.U.C.*, 123 A3d 1124, 1133 (Pa. Cmwlth. 2015).

interruptible status. Of note, the record in this case shows that even if costs of mains are allocated to the IT classes based on their average usage, as opposed to their peak usage, that approach would make no difference in the revenue allocation phase.²³ As PGW has set forth ample justification for the application of its proposed cost allocation method to Rate IT customers, and PICGUG has not demonstrated that this approach would unreasonably discriminate against these customers – or subject them to an unreasonable disadvantage – PGW’s proposal should be approved for the reasons set forth from the outset of this proceeding.

IV. CONCLUSION

For the foregoing reasons, Philadelphia Gas Works respectfully requests that the Commission deny the Motion to Strike filed by the Philadelphia Industrial and Commercial Gas Users Group on September 29, 2023.

Respectfully submitted,

/s/ Karen O. Moury

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²³ PGW MB at 38-39.