

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

Pennsylvania Public Utility Commission, et al. **Public Meeting November 9, 2023**
v. **3037933-OSA**
Philadelphia Gas Works **Docket No. R-2023-3037933, et al.**

STATEMENT OF COMMISSIONER JOHN F. COLEMAN, JR.

Before the Commission for disposition are Exceptions and Reply Exceptions to the Recommended Decision (RD) of September 5, 2023, in the above captioned proceeding. My focus in this statement is to address Philadelphia Gas Work’s (PGW) Exceptions 14 through 18, pertaining to customer service and low-income assistance issues. Based on a review of the record, I find that these Exceptions should be granted.

Burden of Proof

In any proceeding involving rates, the burden of proof to show that a proposed rate is just and reasonable rests with the public utility.¹ However, the Commonwealth Court has held that where the challenge is to an existing rate, the burden of proof falls on the party to show that the existing rate is no longer reasonable.² The Commission provided the following interpretation of the burden of proof in PGW’s last base rate case:

Additionally, Section 315(a) of the Code, 66 Pa. C.S. § 315(a), cannot reasonably be read to place the burden of proof on the utility with respect to an issue the utility did not include in its general rate case filing and which, frequently, the utility would oppose.³

PGW did not propose any changes to its customer service practices or low-income assistance programs as part of this rate case.⁴ The Public Utility Code (Code) assigns the burden of proof to the proponent of a rule or order.⁵ Accordingly, the parties who have requested that the Commission enter an order at this docket directing changes to PGW’s customer service and low-income assistance programs bear the burden of proof on these issues, not PGW. This is acknowledged by the presiding Administrative Law Judges (ALJs) in the RD:

Furthermore, a party that raises an issue that is not included in a public utility’s general rate case filing bears the burden of proof regarding that issue.⁶

¹ 66 Pa.C.S. § 315(a).

² *Brockway Glass v. Pa. Pub. Util. Comm’n*, 437 A.2d 1067 (Pa. Cmwlth. 1981).

³ *Pa. Pub. Util. Comm’n v. PGW*, Docket R-2020-3017206 (Order entered November 19, 2020) at 20.

⁴ PGW Main Brief at 67.

⁵ 66 Pa.C.S. § 332(a).

⁶ Recommended Decision at 11.

Parties must demonstrate that they have met their burden by a preponderance of the evidence.⁷ This evidence must be substantial and legally credible.⁸

The presiding ALJs concluded that PGW met its burden of proof for some of the proposed revenue increase and recommended that PGW be permitted to put into effect tariff supplements to produce an increase in revenues for service rendered on or after November 28, 2023. The presiding ALJs also recommended that the approval of any rate relief be conditioned on compliance with a number of recommendations requiring actions by PGW on customer service and low-income assistance programs. PGW has filed Exceptions to each of these recommendations. In short, I do not believe the parties recommending changes to PGW's customer service and low-income assistance programs met their burden of proof to adopt the changes.

Exception No. 14 – Customer Service Call Center Performance

PGW excepted to the requirement that it develop and file with the Commission, for review and approval by the Bureau of Consumer Services (BCS), a call center performance improvement plan as a condition of any rate relief. The Office of Consumer Advocate (OCA), one of the complainants in this proceeding, had identified concerns about call center performance, both in terms of call abandonment rate, and variations in call center performance between winter moratorium and non-winter moratorium periods. In particular, the OCA was troubled by the 9% call abandonment rate during 2021. However, the OCA's witness acknowledged that PGW's 30 second response rate for the 2019-2021 period was average when compared to other natural gas distribution companies (NGDCs), that the PGW call center performed adequately during the winter moratorium period, and that call center performance had improved during 2022.⁹ The ALJs acknowledged that PGW had "returned the call center response time to the pre-pandemic rate."¹⁰ Nevertheless, the ALJs recommended that PGW's rate increase be conditioned on developing and filing a call center performance improvement plan with BCS for review and later implementation.

PGW excepted to this requirement, noting that there had been no finding that PGW had violated Section 1501 of the Code, a Commission regulation, or a Commission order. Nor had the OCA identified any Commission call center performance standard with which PGW had failed to comply. PGW showed that two NGDCs had experienced a call abandonment rate of 7% during the 2021 period, and that two EDCs had call abandonment rates of 9% during this same period.¹¹ All of this information is reported to BCS on an annual basis for review. The Commission may act on such information in a comprehensive way if necessary.

Based on the record before us, I cannot conclude that the OCA met its burden of proof. The OCA has not alleged or provided evidence that PGW is in violation of any Commission regulation or order relating to call center performance. Nor has the OCA provided substantial evidence to sustain a finding that PGW is in violation of Section 1501 of the Code. Controlling case precedent requires that a complainant demonstrate that a Section 1501 violation has

⁷ *Lansberry v. Pa. Pub. Util. Comm'n*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

⁸ *Id.*

⁹ Recommended Decision at 107.

¹⁰ Recommended Decision at 108.

¹¹ PGW Exceptions at 32.

occurred before the Commission can direct a utility to implement a remedial measure.¹² Here, the OCA made no such demonstration.

Exception No. 15 – Quarterly Reporting on Adverse Initial Decisions

PGW excepted to the recommendation that any rate relief be conditioned on the implementation of a plan for the quarterly review of Initial Decisions adverse to PGW, the tracking of trends, and the implementation of actions based on this review. As with the call center performance concern, the OCA did not allege that PGW was in violation of any statute, regulation, or order of the Commission. The presiding ALJs deemed the “OCA’s suggestion reasonable.”¹³ PGW, in its Exceptions, noted that it provided testimony that it already reviews and analyzes the outcomes of litigated proceedings.

Based on the record before us, I cannot conclude that the OCA met its burden of proof. The OCA has not alleged or provided evidence that PGW is in violation of any Commission regulation or order regarding its internal review of the outcome of Commission proceedings. Nor has the OCA provided substantial evidence to sustain a finding that PGW is in violation of Section 1501 of the Code. The Commission is not a super board of directors and may not interfere with a utility’s management decisions absent a finding of some abuse of discretion.¹⁴

While not contributing to my conclusions on these Exceptions, I think it appropriate to revisit an issue that was presented in PGW’s last base rate case. The ALJs had recommended, as part of their decision, that PGW file a climate change plan in its next base rate case. PGW excepted to this filing requirement, arguing that there was no legal requirement that it do so. In reviewing that Exception, the Commission observed that the primary purpose of rate cases is to set rates. The Commission granted PGW’s Exception, concluding that it would be “unadvisable for the Commission to make new policy or establish new filing requirements via individual rate cases.”¹⁵ I agree that it would be best to consider and adopt new filing and reporting requirements for our public utilities in a deliberate, systematic way, and only after determining that establishing new obligations is in the public interest.

Exception No. 17 - Identification of Low-income Customers

PGW excepted to the ALJs’ recommendation that it adopt the BCS census-based estimated low-income customer count and utilize such data to increase enrollment in PGW’s universal service program. PGW argued that its current criteria for identifying low-income customers complies with Commission regulations and that the ALJs have misunderstood the census data they recommend PGW be ordered to use. The OCA asserted that by enrolling fewer than half of its confirmed low-income customers in its customer assistance program (CAP), PGW is in violation of Section 62.2 of the Commission’s regulations.¹⁶ The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) and the Tenant Union Representative Network (TURN) asserted that PGW fails to adequately identify and assess the need for rate assistance. CAUSE-PA/TURN further asserted that the proportional

¹² *West Penn Power Co. v. Pa. Pub. Util. Comm’n*, 478 A.2d 947 (Pa. Cmwlth 1984)

¹³ Recommended Decision at 109.

¹⁴ *Pa. Pub. Util. Comm’n v. Philadelphia Electric Co.*, 561 A.2d 1224 (Pa. 1989).

¹⁵ *Pa. Pub. Util. Comm’n v. PGW*, Docket R-2020-3017206 at 94.

¹⁶ 52 Pa. Code § 62.2.

census-based estimated low-income customer count is more accurate for assessing the effectiveness of PGW's universal service program participation and outreach.

Section 62.2 of the Commission's regulations defines "[c]onfirmed low-income residential account" as "[a]ccounts where the NGDC 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)." PGW contended that it uses the information sources listed in Section 62.2 to identify low-income customers.¹⁷ Neither the OCA nor CAUSE-PA/TURN disputed PGW's contention. Section 62.2 addresses the *identification* of confirmed low-income residential accounts, not the *enrollment* of those accounts into CAPs. PGW's enrollment levels are not relevant to a review of this section. Further, PGW cannot use aggregate census data to confirm that any specific individual is a PGW customer, low-income, and otherwise eligible for its CAP.

Pursuant to Section 62.4 of the Commission's regulations, each NGDC's Universal Service and Energy Conservation Plan (USECP) shall include a description of outreach and intake efforts for each program component and an identification of the specific steps used to identify low-income customers with arrears and to enroll them in appropriate universal service and energy conservation programs.¹⁸ PGW's recently approved 2023-2027 USECP addressed these issues to the Commission's satisfaction. I am not aware that the Commission has set any targets or guidelines related to enrolling confirmed low-income customers into a CAP for PGW, specifically, or utility companies, generally.¹⁹ Neither the OCA nor CAUSE-PA/TURN have identified any such enrollment targets or guidelines.

Based on the record before us, I cannot conclude that OCA or CAUSE-PA/TURN met their burden of proof. These complainants have not provided evidence that PGW is in violation of any Commission regulation or order relating to the identification of low-income customers, universal service program enrollment, or the use of the BCS census-based estimated low-income customer count. Nor have the complainants provided substantial evidence to sustain a finding that PGW is in violation of Section 1501 of the Code.

We should not lose sight of the fact that PGW's current CAP is robustly funded and supports a significant number of enrolled customers. In 2022, over \$74 million was collected from PGW's customers to fund its CAP, \$53 million of which was collected from residential customers.²⁰ On a per-customer basis, PGW's annual CAP spend was just over \$108 per residential ratepayer, which is more than twice the natural gas utility industry average in Pennsylvania.²¹ PGW's annual CAP spend resulted in over 50,000 low-income residential

¹⁷ PGW M.B. at 77.

¹⁸ 52 Pa. Code § 62.4(b)(9), (10).

¹⁹ I question if enrollment targets or guidelines could be established. Low-income customers are not required to participate in universal service programs. Not all low-income customers are payment troubled. Not all low-income customers choose to participate in universal service programs.

²⁰ *Pennsylvania Public Utility Commission, Bureau of Consumer Services 2022 Report on Universal Service Programs & Collections Performance of the Pennsylvania Electric Distribution Companies & Natural Gas Distribution Companies (Universal Service Report)* at 88, Appendix 6.

²¹ *Id.*

customers being enrolled in the program. This enrollment number too is almost twice the next closest natural gas utility in Pennsylvania.²²

Exception No. 18 - Data Sharing and Coordination

PGW excepted to the ALJs' recommendations regarding data sharing and coordination. PGW argued that the recommendations go considerably beyond PGW's current system capabilities and data availability, are too costly to implement, and are not supported by statute. The OCA proposed that PGW coordinate with multiple City of Philadelphia offices to enter into data sharing agreements and use the information provided to enroll eligible customers into its CAP. CAUSE-PA/TURN proposed that PGW create a system for automatically enrolling CAP participants using LIHEAP data when it becomes accessible through the Pennsylvania Department of Human Services. Additionally, the OCA and CAUSE-PA/TURN recommended that PGW be instructed to incorporate outreach for CAP enrollment in its yearly cold weather surveys.

The Commission does not have sufficient information to require PGW to pursue any of these recommendations. The record is undeveloped on the associated administrative and technology costs, the effect on CAP enrollment and budget projections, and what cost containment measures may be needed to protect PGW's ratepayers upon implementation of these recommendations. Regarding the data sharing agreements with City of Philadelphia offices, the Commission does not have jurisdiction over the organizations identified by the OCA, and the Commission cannot compel these entities to sign data sharing agreements with PGW. The OCA suggests it is logical to assume that the City of Philadelphia will work with PGW. This speculation is not sufficient for a Commission order. In addition, automatic enrollment conflicts with a policy position recently adopted by the Commission. As I previously stated, automatic enrollment may not be consistent with the statutory mandate and goals of universal service, and the Commission is continuing to examine the issue.²³ I note that the Commission has the right to modify any directives for automatic enrollment in future Commission orders.²⁴ As to cold weather surveys, these surveys are provided for in Section 56.100(h) of the Commission's regulations.²⁵ Neither the OCA nor CAUSE-PA/TURN have alleged or provided evidence that PGW is in violation of this section.

Based on the record before us, I cannot conclude that the OCA or CAUSE-PA/TURN met their burden of proof. These complainants have not provided evidence that PGW is in violation of any Commission regulation or order relating to data sharing and coordination. Nor have the complainants provided substantial evidence to sustain a finding that PGW is in violation of Section 1501 of the Code.

Exception No. 16 - Appropriate Forum

Having addressed specific customer service and low-income assistance issues, I turn to a general discussion of universal service issues in base rate cases. PGW excepted to the

²² *Id.*, at 59.

²³ *Pa. Pub. Util. Comm'n, et al. v. UGI Utilities – Electric Division*, Docket R-2022-3037368, et al. (Order entered September 21, 2023), JFC Statement dated September 21, 2023.

²⁴ 66 Pa. C.S. § 703(g).

²⁵ 52 Pa. Code § 56.100(h).

consideration of low-income programming in this base rate case. I recently expressed my growing concerns with the modification of universal service programs within base rate cases, and I incorporate those comments into this Statement.²⁶

While the Public Utility Code permits consideration of a broad range of issues in base rate proceedings, a rate case is not the best forum for considering the complex issues related to universal service design. In fact, the Commission's Policy Statement on Customer Assistance Programs suggests a division of labor between universal service reviews and base rate cases. The Policy Statement reads, in relevant part:

Before implementing, revising or expanding a CAP, a utility should file its CAP proposal with the Commission and serve copies on the Bureau of Consumer Services and on stakeholders from the utility's most recent USECP proceeding. This will allow for staff review, comments, discovery and revisions prior to Commission approval of design elements. This review is not for ratemaking purposes, and the rate consequences of any CAP will be addressed within the context of subsequent Commission rate proceedings as described in § 69.266 (relating to cost recovery).²⁷

I acknowledge that this division has not always been applied consistently in cases. However, as the Commission noted in *Aqua Pennsylvania, Inc.*'s last base rate case, there are "prior decisions in which we have determined that it was not appropriate to consider proposals relating to a public utility's energy burdens, CAP, and other universal service program issues within the context of a base rate proceeding, finding that such proposals are more properly considered in a public utility's Universal Service and Energy Conservation Plan (USECP) proceeding."²⁸

Regarding this case, I must first highlight the timeline of PGW's most recent USECP. On October 29, 2021, PGW filed its Proposed 2023-2027 USECP. On July 21, 2022, PGW filed Supplemental Information in response to a Commission Order. On August 30, 2022, the Low Income Advocates,²⁹ the OCA, and POWER Interfaith (POWER) individually filed comments in response to PGW's Proposed USECP. By Order entered on January 12, 2023, the Commission approved, subject to the conditions established therein, PGW's 2023-2027 USECP. On January 27, 2023, PGW filed a Petition for Reconsideration. On February 6, 2023, the OCA, CAUSE-PA, and TURN individually filed comments in response to PGW's Petition for Reconsideration.³⁰ By Order entered on March 16, 2023, the Commission granted in part and denied in part PGW's Petition for Clarification and Reconsideration.³¹ Since then, PGW has been in the process of implementing its 2023-2027 USECP, including compliance filings and monthly updates due to the Commission.

²⁶ *Pa. Pub. Util. Comm'n, et al. v. UGI Utilities – Electric Division*, Docket R-2022-3037368, et al. (Order entered September 21, 2023), JFC Statement dated September 21, 2023.

²⁷ 52 Pa. Code § 69.263.

²⁸ *Pa. Pub. Util. Comm'n v. Aqua Utilities, Inc.*, Docket R-2021-3027385 (Order entered May 16, 2022), at 333.

²⁹ The Low Income Advocates consisted of the Tenant Union Representative Network (TURN), Action Alliance of Senior Citizens of Greater Philadelphia (Action Alliance), and the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA).

³⁰ PGW filed this base rate case on February 27, 2023.

³¹ *Philadelphia Gas Works Universal Service and Energy Conservation Plan for 2023-2027 Submitted in Compliance with 52 Pa. Code § 62.4*, M-2021-3029323.

After a 16-month proceeding, which concluded just eight months ago, the same stakeholders who participated in PGW's USECP proceeding now request changes to a USECP that has not even been fully implemented, let alone evaluated. PGW's next proposed USECP is not due until November 1, 2028. A third-party independent evaluation of PGW's universal service programs is not due until November 1, 2027.³² The Commission, PGW, and the stakeholders expended considerable resources to reach a final result in PGW's USECP. That final result is now almost immediately modified in a separate proceeding that does not take into consideration the full context of PGW's USECP.

Second, concerns about delayed resolution of universal service issues are misplaced. Between USECP filings, interested parties have the opportunity to raise concerns and request information from utilities through regularly scheduled Universal Service Advisory Committee meetings. A utility can also file and serve a petition to amend its current USECP at any time. As has been the case for the past several years, the Commission has several ongoing initiatives regarding universal service.³³ Finally, complaints may be filed against a public utility for any alleged violation of any law, regulation, or order that the Commission has jurisdiction to administer.³⁴

Finally, PGW did not propose any changes to its universal service design as part of this rate case. More importantly, PGW did not propose any changes to the rates charged through universal service programming. Customers enrolled in PGW's CAP pay a fixed monthly bill that is based on their household size and gross income or an average bill, whichever is lower. The minimum monthly CAP payment amount is \$25. PGW did not propose to change these CAP features in its rate filing. Rather, as previously noted, these CAP features were approved by a final Commission Order that was not appealed. Consequently, the Order approving PGW's CAP is *prima facie* evidence of the CAP features, and the Order approving them has conclusive effect upon all parties affected by the Order under Section 316 of the Code.³⁵ This means PGW's CAP features are presumed reasonable and cannot be collaterally attacked absent a showing of changed circumstances.³⁶ Upon review of the evidence, no such changed circumstances were shown here, as PGW's CAP rates, including the CAP minimum monthly payment amount, are unchanged by this rate case.

³² For a full discussion of the filing and evaluation intervals, see *Universal Service and Energy Conservation Plan (USECP) Filing Schedule and Independent Evaluation Filing Schedule*, Docket M-2019-3012601 (Order entered October 3, 2019).

³³ For example, *Initiative to Review and Revise the Existing Low-Income Usage Reduction Program (LIURP) Regulations at 52 Pa. Code §§ 58.1—58.18*, Docket L-2016-2557886 (Order entered May 18, 2023) and *2023 Review of All Jurisdictional Fixed Utilities' Universal Service Programs*, Docket M-2023-3038944 (Sec. Letter dated August 22, 2023).

³⁴ 66 Pa.C.S. § 701.

³⁵ Section 316 of the Code provides, in pertinent part, that:

Whenever the commission shall make any rule, regulation, finding, determination or order, the same shall be prima facie evidence of the facts found and shall remain conclusive upon all parties affected thereby, unless set aside, annulled or modified on judicial review.

³⁶ *Mclaughlin v. DQE*, Docket C-20065798 (2009); *Duquesne Light Co. et al. v. Pa. Pub. Util. Comm'n*, 715 A.2d 540 (Pa. Cmwlth. 1998); *Popowsky v. Pa. Pa. Pub. Util. Comm'n*, 669 A.2d 1029, 1037 n. 14 (Pa. Cmwlth. 1995), rev'd in part on other grounds, 550 Pa. 449, 706 A. 2d 1197 (1997); *Zucker v. Pa. Pa. Pub. Util. Comm'n*, 401 A.2d 1377, 1380 (1979); *Schellhammer v. Pa. Pa. Pub. Util. Comm'n*, 157 Pa. Cmwlth. 86, 629 A.2d 189, 193 (1993).

For these reasons, PGW's Exception No. 16 should be granted. PGW's Exceptions Nos. 14, 15, 17, and 18 should be granted as well, consistent with this Statement.

A handwritten signature in black ink, appearing to read "J.F. Coleman, Jr.", written over a horizontal line.

Date: November 9, 2023

**JOHN F. COLEMAN, JR.
COMMISSIONER**