



November 18, 2024

Via Efiling

Rosemary Chiavetta, Secretary
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Philadelphia Gas Works Universal Service and Energy Conservation Plan for 2023-2027 Submitted in Compliance with 52 Pa. Code § 62.4, Docket No. M-2021-3029323

Philadelphia Gas Works Petition for Modifications to the Hardship Funds Program in its Universal Service and Energy Conservation Plan for 2023-2027

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the **Answer of the Tenant Union Representative Network and Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania to PGW's Preliminary Objections** in the above captioned matter.

A copy of this Answer is being served via email, as indicated on the attached Certificate of Service.

Sincerely,

/s/ Robert W. Ballenger

Robert W. Ballenger, Esq.
Community Legal Services, Inc.

Counsel for Tenant Union Representative Network

Encl.

Cc. Certificate of Service



BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Philadelphia Gas Works Universal Service	:	
And Energy Conservation Plan for 2023-2027	:	Docket No. M-2021-3029323
Submitted in Compliance with 52 Pa. Code	:	
§ 62.4	:	
	:	
Petition for Emergency or Expedited Order	:	Docket No. P-2024-3048856
Approving Temporary Modifications to the	:	
Universal Service and Energy Conservation	:	
Plan for 2023-2027	:	

CERTIFICATE OF SERVICE

I hereby certify that I have, on this day, served copies of the **Answer of the Tenant Union Representative Network and Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania to PGW’s Preliminary Objections** in the above captioned matter upon the following persons and in accordance with the requirements of 52 Pa. Code § 1.54.

SERVICE BY EMAIL ONLY

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**JOINT ANSWER OF
TENANT UNION REPRESENTATIVE NETWORK AND
THE COALITION FOR AFFORDABLE UTILITY SERVICES
AND ENERGY EFFICIENCY IN PENNSYLVANIA
TO PHILADELPHIA GAS WORKS PRELIMINARY OBJECTIONS**

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THE PENNSYLVANIA UTILITY LAW PROJECT

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November 18, 2024

In response to Philadelphia Gas Works' (PGW) November 6, 2024 Preliminary Objections (Objections)¹ to the Joint Answer of Tenant Union Representative Network and Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (TURN/CAUSE-PA), TURN/CAUSE-PA submit that the Commission should deny the Objections and aver in support as follows:

I. BACKGROUND

1. Admitted in part; denied in part. It is admitted that PGW's Objections include an abbreviated description of portions of the relevant background. Likewise, it is admitted that PGW filed a petition on September 27, 2024. It is denied that PGW's September 27, 2024 petition sets forth all relevant procedural history concerning PGW's hardship funds.

2. Admitted in part; denied in part. It is admitted that PGW filed a petition on May 3, 2024, and that PGW's May 3, 2024 petition included proposed Appendix O. It is denied that actions PGW sought to take pursuant to its May 3, 2024 petition would adequately "make up for" lack of access to hardship funds PGW knew, or should have known, UESF was not distributing as of September 2023, or earlier.

3. Admitted in part; denied in part. It is admitted that the Commission entered its Tentative Order on May 9, 2024, tentatively granting PGW's May 3, 2024 petition and that the Temporary Order permitted PGW to temporarily modify its hardship fund program. It is denied that the Commission's Temporary Order approving PGW's May 3 petition found that the Utility

¹ PGW's Objections include two pages of introductory narrative text, not set forth in numbered paragraphs, which should be disregarded by the Commission as such submission fails to constitute a pleading pursuant to 52 Pa. Code §56.101(c). To the extent that a response is deemed required, the averments contained therein are denied.

Emergency Services Fund (UESF) failed to fulfill its commitment(s). By way of further answer, the Commission, in its May 9 Tentative Order, stated as follows:

As an NGDC serving over 470,000 customers, PGW must administer its universal service programs, including its Hardship Fund, consistent with its Commission-approved USECP. 52 Pa. Code § 62.4 (relating to universal service and energy conservation plans).²

4. It is admitted only that Appendix O contained temporary provisions to be applicable to PGW's hardship fund program. PGW's contention that it has complied with Commission order constitutes a conclusion of law to which no response is necessary.

5. It is admitted only that PGW filed a Petition on September 27, 2024, and included therewith a revised Appendix O. PGW's contention that its September 27 Petition complied with Commission Order constitutes a conclusion of law to which no response is necessary.

6. Admitted.

II. PRELIMINARY OBJECTIONS

A. Applicable Legal Standards

7. Admitted in part; denied in part. It is admitted that Commission's Rules of Administrative Practice and Procedure allow preliminary objections to some pleadings. However, it is denied that preliminary objections are available for all pleadings, as those rules do not permit TURN/CAUSE-PA to file preliminary objections to PGW's Objections. See 52 Pa. Code. § 5.101(a).

8. Admitted.

9. Denied as stated.

² May 9 Tentative Order at 7-8 (footnote reference omitted).

Commission preliminary objection practice is similar to Pennsylvania civil practice.³ PGW attempts, in reliance upon *County of Allegheny v. Com.*, 490 A.2d 402 (Pa. 1985), to articulate the legal standards applicable to preliminary objections in the nature of a demurrer (legal insufficiency). Additionally, PGW relies upon *Stanton-Negley Drug Co. v. Pa. Dept of Pub. Welfare*, 927 A.2d 671 (Pa. Cmwlth. 2007), a case that concerns a preliminary objection based on lack of jurisdiction. PGW has not raised a preliminary objection on the basis of legal insufficiency or lack of jurisdiction. Rather, PGW's objection contends only that statements in TURN/CAUSE-PA's Answer are "based upon" or "raise" scandalous or impertinent matter.⁴

"To be scandalous and impertinent...allegations must be immaterial and inappropriate to the proof of the cause of action."⁵ Scandalous matter consists of any unnecessary allegation that bears cruelly upon the moral character of an individual or entity, or states anything that is contrary to good manners, or anything that is unbecoming to the dignity of the court to hear, or that charges some person with a crime not necessary to be shown.⁶ Impertinent matter is matter that is irrelevant to the material issues of the case and that, whether proven or not, or whether admitted or denied, can have no influence in leading to the decision of the case. However, only if the allegation is wholly irrelevant to the action in every way, and without any influence on the result, will the matter be deemed impertinent.⁷ The power to grant a preliminary objection premised upon scandalous or impertinent matter "should be sparingly exercised and only when a

³ *Equitable Small Transportation Interveners v. Equitable Gas Company*, 1994 Pa.PUC LEXIS 69, PUC Docket No. C-000935435 (July 18, 1994).

⁴ PGW Objection ¶¶ 12-17 (claiming TURN/CAUSE-PA's Answer contains impertinent matter); PGW Objection ¶ 14 (including, without explication, PGW's assertion that TURN/CAUSE-PA's answer may "raise scandalous" matter.)

⁵ *Com., Dep't of Env'tl. Res. v. Peggs Run Coal Co.*, 423 A.2d 765, 769 (1980).

⁶ 5 Standard Pennsylvania Practice 2d § 25:60

⁷ 5 Standard Pennsylvania Practice 2d § 25:61

party can affirmatively show prejudice.”⁸ Allegations or averments that relate solely to evidentiary matters, to which the objecting party may otherwise have opportunity to respond, should not be found to be scandalous or impertinent, and may be regarded as surplusage for purposes of denying preliminary objections.⁹ Any doubt must be resolved in favor of the non-moving party by refusing to sustain preliminary objections.¹⁰

10. Denied as stated. See response to paragraph 9, supra.

11. Denied as stated. The filing of preliminary objections may serve judicial economy where such objections are appropriate, state their grounds with specificity and are well-founded. However, preliminary objections that improperly draw inferences or conclusions of law not supported by the pleadings, or fail to state grounds with specificity, create an unnecessary burden on the parties and the tribunal. Such is the case with PGW’s Objections.

B. TURN/CAUSE-PA’s Answer Does Not Include Impertinent (or Scandalous) Matter

12. Denied. PGW fails to identify any language in TURN/CAUSE-PA’s Answer to support its premise that such Answer “suggests that PGW has fallen short in some way, and as a result eligible customers are not receiving the full amount of hardship grants that should be provided.” PGW’s averment thus impermissibly seeks consideration of a conclusion or inference which is not supported by the factual allegations in TURN/CAUSE-PA’s Answer.¹¹ Moreover,

⁸ *Breslin v. Mountain View Nursing Home, Inc.*, 171 A.3d 818, 829 (2017), citing *Commonwealth Dep’t of Env’tl. Res. v. Hartford Accident and Indem. Co.*, 396 A.2d 885, 888 (1979) (internal citations omitted).

⁹ *Diess v. Pennsylvania Dep’t of Transp.*, 935 A.2d 895, 910 (Pa. Commw. Ct. 2007).

¹⁰ *Boyd v. Ward*, 802 A.2d 705 (Pa.Cmwlth. 2002).

¹¹ *Hart v. O’Malley*, 436 Pa. Super. 151, 647 A.2d 542, 553 (1994), *aff’d*, 544 Pa. 315, 676 A.2d 222 (1996) (A court is “precluded from considering any conclusions of law or inferences which are not supported by the factual allegations contained in the complaint.”)

PGW's averment submits that TURN/CAUSE-PA's Answer is "based on impertinent matter," but PGW fails to identify, with specificity, precisely which allegation contained in TURN/CAUSE-PA's Answer it alleges to be impertinent. As a consequence, PGW's assertion fails to satisfy the requirements of 52 Pa. Code §5.101 (requiring PGW to "state specifically" the legal and factual grounds for its objection). Furthermore, PGW has not shown, much less averred, that it will be in any way prejudiced by TURN/CAUSE-PA's Answer. PGW has failed to make this requisite showing and so its Objections must be denied.

Nonetheless, PGW's averment mistakenly submits that TURN/CAUSE-PA's Joint Answer raises issues not relevant to PGW's hardship funds, because those issues also relate to funding from the City of Philadelphia and/or UESF. In this way, PGW seeks to disclaim or disavow responsibility over the operation of its hardship funds, an essential element of PGW's Commission-approved Universal Services and Energy Conservation Plan (USECP).¹² It must be recalled that PGW is "a 'no-thing' without natural or legal existence."¹³ PGW lacks corporate existence separate and apart from its owner, the City of Philadelphia. Accordingly, the Commission must not distinguish or disregard factual issues regarding PGW's hardship funds simply on the basis that information relevant thereto may primarily reside in an office or division of Philadelphia City government. Furthermore, the extent to which UESF, the longstanding administrator of PGW's hardship funds pursuant to PGW's USECP, may bear some responsibility for delays in distribution of available funding is likewise a factual issue that is relevant and appropriate for consideration in this proceeding. Indeed, upon information and belief, PGW was aware that UESF was experiencing operational delays in September 2023, at

¹² See May 9 Tentative Order at 7-8; ¶3, *supra*.

¹³ *Philadelphia Facilities Mgmt. Corp. v. Biester*, 431 A.2d 1123, 1132 (1981).

the latest, but did not seek expedited relief until May 2024. Accordingly, the extent of hardship funding available through PGW's USECP, the source of such funding, and the adequacy of PGW's past and future oversight of its hardship fund administrator are all *pertinent* matters, indeed, they are central matters, before the Commission in this proceeding.

13. Admitted in part; denied in part. It is admitted that TURN/CAUSE-PA submit that PGW “seeks authorization to significantly reduce (by 50%) the annual assistance available through PGW’s hardship program for the duration of PGW’s USECP.”¹⁴ The remaining averments of this paragraph are denied. By way of further answer, PGW submits that it “supports these funds being made available to qualifying PGW customers, and...continues to explore whether there is a way to facilitate this.” However, PGW fails to explain how its proposed modified USECP would permit it, without further amendment and associated delay, to utilize the additional funds if they were again made available. PGW’s Objections thus verify that factual issues require exploration on the record of this proceeding to determine whether, and how, additional resources can support PGW’s hardship fund program. TURN/CAUSE-PA deny their Answer is “based on impertinent matter” and incorporate by reference their response to paragraph 12 hereof.

14. Admitted in part; denied in part. It is admitted that TURN/CAUSE-PA’s Answer states that “PGW provides no explanation for why its hardship fund administrator going forward would be incapable of obtaining the same or similar funding, presumably from the City of Philadelphia, in the same or similar fashion that UESF has done for many years.” It is likewise admitted that TURN/CAUSE-PA’s Answer includes a footnote containing the language quoted by PGW in the second sentence of its paragraph 14. It is denied that TURN/CAUSE-PA’s

¹⁴ TURN/CAUSE-PA Answer at 2.

Answer “raises scandalous or impertinent matter.” TURN/CAUSE-PA incorporate by reference their responses to paragraphs 12 and 13 hereof.

15. Admitted in part; denied in part. It is admitted that TURN/CAUSE-PA’s Answer states that, if PGW’s USECP modifications are approved, “PGW’s ratepayer funded hardship assistance would stand alone, without the historic level of contribution from the City of Philadelphia that has been available, on an annual basis, through UESF.” PGW’s Objections contend, as a factual matter, that PGW “has proactively taken aggressive and through [sic] steps to continue the Hardship Program.” TURN/CAUSE-PA are without knowledge or information sufficient to form a belief about the truthfulness of PGW’s statements that it has been proactive in taking aggressive and/or thorough steps, and accordingly those statements are denied. It is denied that TURN/CAUSE-PA’s Answer contains or raises impertinent matter. TURN/CAUSE-PA incorporate by reference their responses to paragraphs 12 and 13 hereof.

16. Admitted in part; denied in part. It is admitted that TURN/CAUSE-PA’s Answer states that “every effort should be made to ensure that the maximum grant amount of \$1500, as set forth in PGW’s current USECP, is again available.” Regarding PGW’s assertion that it “supports the maximum grant amounts being made available to its customers,” TURN/CAUSE-PA incorporate by reference their responses to paragraphs 12 and 15 hereof. The remaining averments of this paragraph are denied. TURN/CAUSE-PA’s Answer does not state or raise impertinent matter.

17. Admitted in part; denied in part. It is admitted only that TURN/CAUSE-PA’s Answer states that PGW has provided “no information regarding the criteria PGW would utilize in selecting a winning bidder.” The remaining averments of this paragraph are denied. PGW has

stated that, if approved, it will issue an RFP for a new long-term administrator.¹⁵ Exploration of the criteria to be utilized in selecting a new long-term administrator is a relevant and fact-specific inquiry not to be confused with the manner in which the City of Philadelphia manages procurement generally. By way of further response, TURN/CAUSE-PA incorporate by reference the response to paragraph 12 hereof. TURN/CAUSE-PA's Answer does not state or raise impertinent matter.

III. CONCLUSION

TURN/CAUSE-PA respectfully request that the Commission deny PGW's Objections.

Respectfully Submitted,

Counsel for TURN



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¹⁵ PGW September 27, 2024 Petition at ¶13.

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VERIFICATION

I, Robert W. Ballenger, hereby state that the facts set forth in the Answer of TURN and CAUSE-PA to PGW’s Preliminary Objections are true and correct (or are true and correct to the extent of my knowledge, information, and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. §4904 (relating to unsworn falsification to authorities).



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November 18, 2024