

COMMONWEALTH OF PENNSYLVANIA



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May 4, 2020

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-2020-3017206

Dear Secretary Chiavetta:

Attached for electronic filing please find the Answer of the Office of Consumer Advocate in Support of the Expedited Motion of the Bureau of Investigation and Enforcement to Extend the Statutory Suspension Period During the Emergency Interruption of Normal Operations of the Pennsylvania Public Utility Commission in the above-referenced proceeding.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

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Enclosures:

cc: The Honorable Charles E. Rainey, Jr. (Chief ALJ, PUC Philadelphia – **email only**)  
The Honorable Darlene Heep (**email only**)  
The Honorable Marta Guhl (**email only**)  
Certificate of Service

\*287701

## CERTIFICATE OF SERVICE

Re: Pennsylvania Public Utility Commission :  
v. : Docket No. R-2020-3017206  
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 Answer in Support of the Expedited Motion of the Bureau of Investigation and Enforcement to Extend the Statutory Suspension Period During the Emergency Interruption of Normal Operations of the Pennsylvania Public Utility Commission, 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 4<sup>th</sup> day of May 2020.

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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY	:	
COMMISSION	:	
	:	
V.	:	R-2020-3017206
	:	
PHILADELPHIA GAS WORKS	:	

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ANSWER OF THE OFFICE OF CONSUMER ADVOCATE IN SUPPORT OF  
THE EXPEDITED MOTION OF THE BUREAU OF INVESTIGATION AND  
ENFORCEMENT TO EXTEND THE STATUTORY SUSPENSION PERIOD DURING THE  
EMERGENCY INTERRUPTION OF NORMAL OPERATIONS OF THE PENNSYLVANIA  
PUBLIC UTILITY COMMISSION

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Pursuant to Section 5.103 of the Pennsylvania Public Utility Commission’s (Commission) Regulations, 52 Pa. Code Section 5.103, the Office of Consumer Advocate (OCA) files this Answer in Support of the Bureau of Investigation and Enforcement’s (I&E) Motion to Extend the Statutory Suspension Period During the Emergency Interruption of Normal Operations of the Pennsylvania Public Utility Commission (Answer) in the above-referenced proceeding. Extending the statutory suspension period is necessary and proper due to the OCA and other parties’ reduced ability to properly and fully investigate the Company’s filing during this emergency period. In addition, the extension would provide the Commission and the parties the opportunity to receive PGW consumers’ comments on the proposed rate increase through conducting an appropriate amount of telephonic or “Smart Hearing” public input hearings and, after, respond to any issues introduced during the hearings before direct testimony is due.

**I. Background.**

On February 28, 2020, PGW filed Supplement No. 128 to PGW’s Gas Service Tariff-Pa. P.U.C. No. 2 (Supplement No. 128). In Supplement No. 128, PGW is seeking an increase in annual distribution revenues of \$70 million to become effective April 28, 2020 for a fully projected future test year (FPFTY) ending on August 31, 2021. PGW is engaged in the business of furnishing natural gas to approximately 500,000 residential, commercial and industrial natural gas consumers in Philadelphia, Pennsylvania.

On April 16, 2020, the Commission issued an Order initiating an investigation into the lawfulness, justness and reasonableness of the proposed rate increase in this filing, in addition to the Company’s existing rates, rules, and regulations, and suspended the effective date of Supplement No. 128 until November 28, 2020, by operation of law. The case was assigned to the Office of Administrative Law Judge (OALJ) and further assigned to Administrative Law Judges Darlene Heep and Marta Guhl (the ALJs).

After the submission of Formal Complaints, Notices of Appearance, and Petitions to Intervene by numerous parties, including, but not limited to, the OCA, I&E, the Office of Small Business Advocate (OSBA), the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania (CAUSE-PA), and the Tenant Unit Representative Network (TURN), a telephonic prehearing conference was scheduled for 2:00pm on May 5, 2020. The Prehearing Conference Order<sup>1</sup> was issued establishing the telephonic prehearing and proposed the following schedule in this proceeding:

Hearings	Week of July 13, 2020 (Philadelphia)
Close of Record	July 17, 2020

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<sup>1</sup> See Prehearing Conference Order at 3, Docket No. R-2020- 3017206 (issued April, 16, 2020).

Main Briefs

August 6, 2020

Reply Briefs

August 17, 2020

On March 6, 2020, the Governor of the Commonwealth of Pennsylvania, Tom Wolf, issued a Proclamation of Disaster Emergency.<sup>2</sup> The Proclamation established the existence of a disaster emergency throughout the Commonwealth as a result of the novel coronavirus (hereinafter COVID-19). As a result of this emergency disaster Proclamation, Governor Wolf issued the following directive:

*FURTHER*, I hereby suspend the provisions of any regulatory statute prescribing the procedures for conduct of Commonwealth business, or the orders, rules or regulations of any Commonwealth agency, if strict compliance with the provisions of any statute, order, rule or regulation would in any way prevent, hinder, or delay necessary action in coping with this emergency...<sup>3</sup>

At the time of issuing the Proclamation, Pennsylvania had 2 presumed positive cases of COVID-19.<sup>4</sup>

On March 15, 2020, Governor Wolf issued an Executive Order implementing telework protocol for state employees for at least fourteen days beginning March 16, 2020, and the closing of all state offices in Dauphin County and the Capitol Complex.<sup>5</sup> As a result, the Commission's offices and the OCA's office in Harrisburg are closed and all employees are required to work from home, with extremely limited exception.

On March 20, 2020, an Emergency Order was issued by the Commission at Docket No. M-2020-3019262. The Emergency Order provides the Commission with the authority to waive

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<sup>2</sup> See Proclamation of Disaster Emergency (March 6, 2020) <https://www.governor.pa.gov/wpcontent/uploads/2020/03/20200306-COVID19-Digital-Proclamation.pdf>.

<sup>3</sup> Id.

<sup>4</sup> Id.

<sup>5</sup> See Motion to Extend the Statutory Suspension Period at 3.

any statutory or procedural deadline, *sua sponte*, in any proceeding if strict adherence to an established deadline will interfere with its ability to administer the Public Utility Code.<sup>6</sup> Moreover, the Emergency Order authorizes the Chief Administrative Law Judge to establish reasonable deadlines in rate case proceedings after consideration of the positions of the parties.<sup>7</sup>

On April 29, 2020, I&E filed its Motion to Extend the Statutory Suspension Period During the Emergency Interruption of Normal Operations of the Pennsylvania Public Utility Commission (Motion to Extend the Statutory Suspension Period). Through its Motion to Extend the Statutory Suspension Period, I&E requested that the Chief Administrative Law Judge Charles Rainey, Administrative Law Judge Darlene Heep and Administrative Law Judge Marta Guhl issue an Order granting an extension of the statutory suspension period, arising under 66 Pa C.S. §1308(d), until January 14, 2021.<sup>8</sup>

As of April 30, 2020, Pennsylvania has experienced 45,763 confirmed COVID-19 cases and 2,292 deaths as a result of this pandemic.<sup>9</sup> Furthermore, Governor Wolf has issued further restrictions on travel and business operations, including closing non-life-sustaining businesses until further notice.<sup>10</sup> Accordingly, the OCA files this Answer in support of I&E's Motion to Extend the Statutory Suspension Period.

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<sup>6</sup> See Suspension of Regulatory and Statutory Deadlines; Modification to Filing and Service Requirements, Docket No. M-2020-3019262, Emergency Order at 2 (Mar. 20, 2020) (Emergency Order).

<sup>7</sup> Id. at 2-3.

<sup>8</sup> Id.

<sup>9</sup> See Pennsylvania Dept. of Health, <https://www.health.pa.gov/topics/disease/coronavirus/Pages/Cases.aspx>

<sup>10</sup> See Order of the Governor of the Commonwealth of Pennsylvania Regarding the Closure of All Businesses That Are Not Life Sustaining (Mar. 19, 2020).

## **II. Answer.**

The Office of Consumer Advocate supports I&E's Motion to Extend the Statutory Suspension Period. Extending the statutory suspension period until January 14, 2021 is necessary during this emergency disaster period due to the OCA's and the other parties' reduced ability to properly and fully investigate the Company's filing during the emergency period. In addition, the COVID-19 pandemic will likely prevent "in-person" public input hearings from being convened in this rate proceeding and it is unknown, at this time, how many alternative telephonic or "Smart Hearings" must be conducted over an appropriate length of time to capture the participation levels of the well-attended and productive public input hearings held in PGW's service territory for prior base rate proceedings.

### **A. Legal Authority.**

Generally, base rate increase proceedings have a nine-month statutory deadline that ensures prompt investigation and review of the filing.<sup>11</sup> If the Commission fails to render a decision within that period, the increase can go into effect as filed, subject to refund plus interest for any amounts paid that are subsequently not determined to be just and reasonable.<sup>12</sup> The Public Utility Code further provides that Presiding Officers shall have the authority, subject to the Commission's Regulations, to regulate the course of the hearing, dispose of procedural requests or similar matters, and take any other action authorized by Commission rule.<sup>13</sup>

As noted above, however, the Proclamation issued by Governor Wolf states that regulatory statutes governing the business of a Commonwealth agency, or order, rule or regulation of that

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<sup>11</sup> See 66 Pa. C.S. § 1308(d).

<sup>12</sup> Id.

<sup>13</sup> See 66 Pa. C.S. § 331(d).



agency, is suspended to the extent strict compliance would prevent, hinder, or delay the actions necessary to comply with the emergency declaration.<sup>14</sup> The Commission has since recognized in its Emergency Order that certain statutory and regulatory deadlines may hinder the public service mission of the Commission and its affected stakeholders.<sup>15</sup> The Commission's Emergency Order states, "...in a pending rate case litigation, the Chief Administrative Law Judge is authorized to establish reasonable deadlines under the circumstances after consideration of the position of the parties and the presiding Administrative Law Judge."<sup>16</sup> Thus, the Commission is allowing these deadlines to be postponed where appropriate, without violating the timing requirements set forth in the Public Utility Code.

Accordingly, the Chief Administrative Law Judge in consultation with the Presiding Officer has the authority, pursuant to the Public Utility Code, the Governor's Proclamation, and the Commission's Emergency Order, to extend the statutory suspension period in this proceeding, without violating the statutory deadline set forth in the Public Utility Code.<sup>17</sup> This will assist all parties in being able to comply with the ongoing emergency declarations, while providing the parties the opportunity to fully investigate and review the Company's rate increase filing in this proceeding.

B. Extension of the Statutory Suspension Period Will Prevent a Limited Investigation and Review of PGW's Rate Increase Filing.

The statutory suspension period as currently set forth will limit the ability of the OCA, and the other parties, to investigate and analyze the Company's filing, thus hindering the development

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<sup>14</sup> See Motion to Extend the Statutory Suspension Period at 2-3; see also 35 Pa. C.S. § 7301.

<sup>15</sup> See Emergency Order at 2.

<sup>16</sup> Id.

<sup>17</sup> 66 Pa. C.S. Section 1308(d).

of a full and complete record. In addition, the COVID-19 pandemic will likely prevent “in-person” public input hearings from being convened during this base rate proceeding and obtaining the levels of consumer participation similar to public input hearings held in PGW’s service territory in prior base rate proceedings will likely require multiple remote or virtual public input hearings held over a longer period of time. The OCA concurs with I&E that public input hearings are a vital part of a rate increase proceeding and efforts must be taken to preserve PGW consumers’ due process rights.<sup>18</sup>

As indicated above, the circumstances surrounding the COVID-19 pandemic are changing rapidly. Since the issuance of the Proclamation, government offices have been closed in favor of telework arrangements and non-life-sustaining businesses have been closed until further notice. In the midst of all this, many of the parties are trying to adjust to these changes, while continuing to meet their obligations in this proceeding. That said, the full impact of the COVID-19 pandemic may not be known for some time. For example, the OCA concurs with I&E’s remarks that the parties will need an appropriate length of time to fully assess the financial and economic impacts resulting from this pandemic—especially on PGW’s low and moderate income consumers—and examine those impacts on PGW’s low-income programs.<sup>19</sup> Additionally, as noted by I&E, the extension of time is necessary to analyze the pandemic’s impact on the global financial markets to allow for sufficient review of the level of revenue PGW needs to continue safe and reliable operations. Providing additional time to analyze these issues will be critical going forward.

Lastly, the OCA requested that, in lieu of “in-person” public input hearings in this case, telephonic or “Smart Hearing” public input hearings be arranged to provide consumers the

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<sup>18</sup> See Motion to Extend the Statutory Suspension Period at 8.

<sup>19</sup> Id. at 9-10.

opportunity to speak on the record about how this rate increase will impact them. While remote or virtual public input hearings are an alternative under the current circumstances, it is unknown at this point in time if this alternative form of public input meeting will be as well-attended and fruitful as the “in-person” public input hearings held in PGW’s service territory in the past. An extension to the statutory suspension period will provide the Commission and the parties a longer period of time to hold the necessary amount of remote or virtual public input hearings to ensure that the PGW consumers are provided adequate opportunity to voice their comments on the impacts of the rate increase through these alternative methods of hosting public input hearings. Specifically, the extension would permit a longer period of time to notify PGW consumers of the meetings, ensure that the technologies are in place to conduct the remote or virtual type of meetings, and permit the parties to evaluate the consumers’ concerns and respond to any issues raised during the public input meetings before direct testimony is due. It is particularly important during this time that all PGW consumers—many of whom will likely experience financial hardship as a result of the COVID-19 pandemic—be provided a convenient and timely opportunity to respond to any issues they may have with the requested increase.

For these reasons, the OCA submits that the current situation will likely hinder its ability to fully investigate and analyze the Company’s rate increase request before the estimated due date for the filing of the OCA’s Direct Testimony. Accordingly, the OCA supports I&E’s Motion to Extend the Statutory Suspension Period to allow for additional time for the parties to analyze the Company’s filing in light of the current financial and economic situation and to provide sufficient opportunity for consumers to provide comments.

### III. Conclusion.

For the reasons set forth above, the OCA supports I&E's Motion to Extend the Statutory Suspension Period. This suspension is necessary to meet the mounting challenges resulting from the COVID-19 pandemic. It will also ensure that the OCA has sufficient time and resources to investigate and support its position in this proceeding and develop a full and complete record for the Commission's consideration.

Respectfully submitted,

*/s/ Laura J. Antinucci*

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