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May 29, 2020

**Via Electronic Filing**

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

Re: PA Pennsylvania Public Utility Commission et al., v. Philadelphia Gas Works – Docket Nos. R-2020-3017206; C-2020-3019161; C-2020-3019100; and C-2020-3019430

Dear Secretary Chiavetta:

Enclosed for Electronic Filing please find Philadelphia Gas Works' Answer in Opposition to Petition to Intervene of Environmental Stakeholders in the above referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,

*Kristine E. Marsilio*

Kristine E. Marsilio

KEM/lww

cc: Hon. Marta Guhl w/enc. (via email only)  
Hon. Darlene Heep w/enc. (via email only)  
Cert. of Service w/enc. (via email only)  
Graciela Christlieb w/enc. (via email only)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	R-2020- 3017206
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Office of Consumer Advocate	:	C-2020-3019161
Office of Small Business Advocate	:	C-2020-3019100
Philadelphia Industrial and Commercial Gas User Group	:	C-2020-3019430
	:	
v.	:	
	:	
Philadelphia Gas Works	:	

**PHILADELPHIA GAS WORKS’ ANSWER  
IN OPPOSITION TO PETITION TO INTERVENE  
OF ENVIRONMENTAL STAKEHOLDERS**

Pursuant to 52 Pa. Code § 5.66, Philadelphia Gas Works (“PGW” or the “Company”), hereby files this Answer in Opposition to the Petition to Intervene (“Petition”) of Environmental Stakeholders (“Petitioners”) in the above-captioned proceeding. PGW objects to Petitioners’ intervention in this proceeding, because: 1) their intervention is untimely, and they have failed to establish “good cause” for their late intervention; and 2) Petitioners do not meet the standard for intervention, as they have not articulated an interest in the proceeding which may be directly affected and which is not adequately represented by one or more of the other parties, they have failed to demonstrate that they will somehow be bound by the action of the Commission in this proceeding, and they have failed to demonstrate that their intervention is in the public interest.

In support of this Answer, PGW avers as follows:

**1. Petitioners’ Intervention Is Untimely, And Petitioners Have Failed To Demonstrate “Good Cause” For Their Late Intervention.**

**a. Legal Standard**

Section 5.74(b) of the Commission’s regulations provides, in pertinent part, that Petitions to Intervene shall be filed “[n]o later than the date fixed for the filing of responsive pleadings in an order or notice with respect to the proceedings [...]”<sup>1</sup> On April 16, 2020, Administrative Law Judges Darlene Heep and Marta Guhl (collectively, “the ALJs”) issued a Prehearing Order in this proceeding, which provides, in pertinent part, as follows:

Parties shall be limited to those persons or entities who: (1) file a complaint or petition to intervene pursuant to 52 Pa.Code §§ 5.32, 5.71-76 (or a notice of intervention for those entities with a statutory right of participation) and (2) attend the initial prehearing conference. After the prehearing conference, intervention is limited to those persons or entities granted party status pursuant to 52 Pa.Code §§ 5.71-5.76, as set forth in *Re: Mercer Gas Company*, 71 Pa. PUC 19 (1989), and *Re: S.T.S. Motor Freight, Inc.*, 54 Pa. PUC 343, 344 (1980) or who file a complaint.

In *S.T.S. Motor Freight*, the Commission held that a potential intervenor must establish good cause for its late appearance.<sup>2</sup> The Commission further held that the “good cause” requirement for late intervention requires a showing that: (1) the petitioner has a reasonable excuse for missing the protest [or intervention] due date; (2) the proceeding is contested at the time of the filing of a petition to intervene; (3) the grant of intervention will not delay the orderly progress of the case; **and** (4) the grant of intervention will not broaden significantly the issues, or shift the burden of proof.<sup>3</sup> To establish good cause, all of these elements must be met. Similarly, in *Mercer*, the Commission denied an untimely intervention when the intervening party failed to “allege in its notice of intervention due cause as to why its notice was untimely filed or what benefit or purpose the grant of its intervention would have served.”<sup>4</sup>

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<sup>1</sup> 52 Pa. Code § 5.74(b)(1).

<sup>2</sup> *S.T.S. Motor Freight*, 54 Pa. PUC 343, 343 (1980).

<sup>3</sup> *Id.* at 344 (emphasis added).

<sup>4</sup> *Re: Mercer Gas Company*, 71 Pa. PUC 19 (1989).

**b. Petitioners Do Not Meet the Standards for Late Intervention.**

Petitioners did not attend the Prehearing Conference held on May 5, 2020 in this proceeding<sup>5</sup> and, as such, their intervention should be denied, absent a showing of good cause. As discussed below, Petitioners do not meet the requirements to establish good cause for late intervention.

**i. Petitioners have failed to establish a reasonable excuse for missing the intervention due date.**

First, the Petitioners have failed to establish a reasonable excuse for missing the intervention due date. PGW filed for a general rate increase on February 28, 2020; the Environmental Stakeholders' Petition was filed on May 22, 2020. The ALJs issued their Prehearing Order on April 16, 2020, in which they required interested parties to file a notice of intervention and attend the telephonic Prehearing Conference on May 5, 2020. As such, Petitioners had nine and one half weeks to monitor the proceeding prior to the Prehearing Conference to see whether other energy efficiency and environmental groups would intervene.

Further, Petitioners knew, or should have been aware, of the requirement to participate in the Prehearing Conference two and one half weeks prior to the Prehearing Conference. When the Petitioners realized that no other energy efficiency and environmental groups had intervened prior to the Prehearing Conference, the Petitioners could have sought to intervene at that time, but they did not. Instead, Petitioners waited until May 22, 2020 (over two weeks *after* the Prehearing Conference) to file their Petition to Intervene. Simply put, the fact that the Petitioners did not want to expend resources on this proceeding does not justify their failure to file a timely intervention.

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<sup>5</sup> See *Pa PUC, et. al. v. PGW*, Docket Nos. R-2020-3017206, *et. al.*, Corrected Prehearing Order at 3 (May 15, 2020) (identifying the participants at the Prehearing Conference).

Additionally, the allegation that the Petitioners had a reasonable excuse for missing the intervention deadline because of the burden of having to work remotely as a result of COVID-19 is unsubstantiated and relies on an inaccurate timeline. Governor Tom Wolf issued the initial Order directing “Individuals to Stay at Home,” on March 23, 2020. This Order was limited to specific counties and was issued almost a month after PGW filed for a general rate increase. This directive was not extended to all Pennsylvania counties until April 1, 2020.<sup>6</sup> Petitioners had ample time to intervene in this proceeding after PGW made its filing and prior to the effective date of Governor Wolf’s Stay at Home Order.

Additionally, by the time the ALJs issued the April 16 Prehearing Order in this proceeding, the ALJs (and all interested parties) would have been aware of the additional burdens placed on all parties as a result of COVID-19 and the Governor’s Stay at Home Order. Nevertheless, the ALJs, appropriately, directed interested parties to file interventions and participate in the telephonic Prehearing Conference on May 5, 2020. Neither Petitioners, nor any other party, expressed a concern with this direction or their ability to comply therewith. Petitioners have offered no reasonable excuse for missing this deadline.

**ii. The grant of intervention will delay the orderly progress of the case.**

The procedural schedule that was adopted in this case provides that non-Company Direct Testimony is due on June 15, 2020, Rebuttal Testimony is due on July 13, 2020, and Surrebuttal Testimony is due on July 24, 2020.<sup>7</sup> The intervention of the Petitioners would most certainly require PGW to respond to additional interrogatories and (potentially) testimony. This additional

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<sup>6</sup> See *Order of the Governor of the Commonwealth of Pennsylvania for Individuals to Stay at Home* (April 1, 2020) (“Stay at Home Order”).

<sup>7</sup> See *Pa PUC, et. al. v. PGW*, Docket Nos. R-2020- 3017206, *et. al.*, Corrected Prehearing Order at 7 (May 15, 2020).

workload was not contemplated by PGW at the time the procedural schedule was established. The extent of this additional workload is unknown since the Petitioners have merely indicated that they are interested in issues affecting “the environment” and “energy efficiency.” But requiring PGW to answer discovery from yet another party and potentially an additional expert witness (Petitioners have not indicated that they definitely intend to present a witness) will further complicate the proceeding and will most certainly burden PGW (and potentially other parties). It is important to understand that PGW has already answered or is in the process of answering 550 interrogatories, *not including subparts*. While the Petitioners have indicated that they will “accept all scheduling decisions made to this point,” the burden placed on PGW in having to respond to additional discovery and potential testimony could likely delay the orderly progress of this case.

iii. **Petitioners’ intervention has the potential to broaden the issues in this proceeding.**

In the Prehearing Memorandums filed by the parties in advance of the May 5 Prehearing Conference, the parties identified the pertinent issues in this case. As identified by PGW in its Prehearing Memorandum, the primary issue in this proceeding is what level of base rate increase is justified, just, and reasonable. Additional issues include the appropriate allocation of the rate increase among the customer classes and PGW’s proposed tariff modifications.

Petitioners’ intervention has the potential to broaden the issues in this proceeding. Specifically, Petitioners seek to intervene in this proceeding to be the “voices for energy efficiency or environmental concerns [...]”<sup>8</sup> Petitioners articulate their interests as being “in energy efficiency, air quality, and clean energy [...]”<sup>9</sup> They further provide that their

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<sup>8</sup> Joint Petition at ¶ 7.

<sup>9</sup> *Id.*

participation in this proceeding will help ensure that environmental and energy efficiency issues are adequately considered.<sup>10</sup>

Even assuming these interests meet the standard for intervention (which, as discussed below, PGW submits they do not), it is clear that permitting these issues to be raised in this proceeding will broaden the issues. Petitioners offer no guarantees to the contrary. In fact, if Petitioners intended merely to raise issues that have been identified by other parties, Petitioners' intervention would not meet the threshold standard that an Intervenor's interest must not be adequately represented by other parties in the proceeding.<sup>11</sup>

For the reasons explained above, Petitioners do not meet the "good cause" requirements, and their late-filed intervention should be denied.

## **2. Petitioners Do Not Meet the Standard for Intervention.**

### **a. Legal Standard**

The Commission's regulations allow intervention where a person has an interest in the proceeding which may be directly affected, which is not adequately represented by existing parties, and as to which the person may be bound by the action of the Commission in the proceeding.<sup>12</sup> Intervention is also permitted where participation of the person may be in the public interest.<sup>13</sup> A "person" includes a corporation and an association.<sup>14</sup>

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<sup>10</sup> *Id.* at ¶ 8.

<sup>11</sup> *See* 52 Pa. Code § 5.72(a)(2).

<sup>12</sup> 52 Pa. Code § 5.72(a)(2).

<sup>13</sup> 52 Pa. Code § 5.72(a)(3).

<sup>14</sup> 52 Pa. Code § 1.8.

## **b. Analysis**

Petitioners' sole attempt to show that they meet the standards for intervention is their bald statement that their "interests in energy efficiency, air quality, and clean energy will be directly affected by this Proceeding."<sup>15</sup> But such a broad, unsupported statement does not meet any of the requirements for intervention because it fails to articulate any actual issues *in this proceeding* with which they have a direct interest. For example, since Petitioners fail to allege that they (or even their members) are customers of PGW, they do not explain how any decision in this case will bind them. Nor does the vague assertion that Petitioners intend to raise "environmental issues" show that they will be advancing positions that are not adequately represented by existing parties.

Finally, Petitioners' allegation that their intervention is in the public interest is equally unsupported. Issues pertaining to energy efficiency and environmental concerns have not been raised in this case, and this proceeding is not the appropriate forum to adjudicate these issues. An underlying (and false) assumption of the Environmental Stakeholders appears to be that a base rate case is in essence a "free-for-all," in which any issue or complaint that a party might have with the utility filing the base rate case is fair game. But this is a legal proceeding and the requirements of standing still apply. An entity should not be permitted to participate in a utility's base rate case simply because of some professed and generalized "concerns" about the utility's affect on the environment. Assuming that the issues that the Petitioner has with PGW are in fact within the jurisdiction of the PUC, there are more appropriate forums in which to raise such issues. For example, energy efficiency issues can and should be raised in PGW's Universal Service and Energy Conservation Plan proceeding (in which its low income energy efficiency

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<sup>15</sup> Petition to Intervene at ¶ 7.



program is at issue). PGW's Plan in this respect was just approved by the PUC and is actually on appeal to Commonwealth Court.<sup>16</sup> Such issues therefore are clearly beyond the scope of this proceeding. Further, to the extent Petitioners want to identify their concerns in this proceeding, they can do so at the Public Input Hearings.

As explained above, Petitioners do not meet the standard for intervention. They do not have an interest in the proceeding which may be directly affected, and they have failed to demonstrate that they will be bound by the action of the Commission in this proceeding. Further, they have failed to demonstrate that their intervention in this proceeding is in the public interest.

**WHEREFORE**, PGW respectfully requests that the Petition to Intervene of the Environmental Stakeholders be denied.

Respectfully submitted,



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Dated: May 29, 2020

Counsel for:  
Philadelphia Gas Works

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<sup>16</sup> Philadelphia Gas Works Universal Service and Energy Conservation Plan for 2017-2022 and Petition to Amend Philadelphia Gas Works Universal Service and Energy Conservation Plan for 2017-2022, Docket Nos. M-2016-2542415, *et. al.*, Order (March 26, 2020).



## CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of PGW's Answer in Opposition to Petition to Intervene of Environmental Stakeholders 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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Dated: May 29, 2020

A handwritten signature in black ink that reads "Daniel Clearfield". The signature is written in a cursive style with a long, sweeping underline that extends across the width of the signature.

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Daniel Clearfield, Esq.