


COMMONWEALTH OF PENNSYLVANIA



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June 30, 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 to the Motion in Limine of Philadelphia Gas Works Regarding Certain Portions of Testimony Submitted by the Office of Consumer Advocate Regarding Universal Service Programs 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 Darlene Heep (**email only**)
The Honorable Marta Guhl (**email only**)
Certificate of Service

*291212

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 Answer of the Office of Consumer Advocate to the Motion in Limine of Philadelphia Gas Works Regarding Certain Portions of Testimony Submitted by the Office of Consumer Advocate Regarding Universal Service Programs, 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 30th day of June 2020.

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Dated: June 30, 2020
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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:		
	:		
v.	:	Docket No.	R-2020-3017206
	:		
Philadelphia Gas Works	:		

**ANSWER OF THE OFFICE OF CONSUMER
ADVOCATE TO THE MOTION IN LIMINE OF
PHILADELPHIA GAS WORKS REGARDING CERTAIN
PORTIONS OF TESTIMONY SUBMITTED BY THE
OFFICE OF CONSUMER ADVOCATE REGARDING
UNIVERSAL SERVICE PROGRAMS**

Pursuant to Section 5.103(c) of the Public Utility Commission’s regulations, 52 Pa. Code Section 5.103 (c), the Pennsylvania Office of Consumer Advocate (OCA) hereby files this Answer to the Motion in Limine (Motion) of Philadelphia Gas Works (PGW) to exclude portions of the testimony of the Office of Consumer Advocate witness Roger Colton regarding Universal Service Programs. The OCA submits that the Motion should be denied because the testimony that PGW seeks to have stricken is relevant and critical to the ultimate issues that the Presiding Officer and Commission must address in disposing of this case –the just and reasonable level of rates and the quality of service provided by PGS. In support of its Answer, the OCA submits as follows:

I. INTRODUCTION

On June 25, 2020, PGW filed a Motion in Limine seeking to exclude portions of the Direct Testimony of Office of Consumer Advocate witness, Roger D. Colton relating to portions of the

Universal Service Programs offered by PGW. PGW wishes to avoid consideration of OCA witness Colton's testimony which raises issues regarding the effectiveness of PGW's Programs, in light of the significant increase in rates proposed here. PGW's effectiveness in its program delivery is a key quality of service point that should be reviewed in a base rate case. Quality of service has a bearing on the amount of the rate increase eventually found to be just and reasonable. OCA witness Colton's recommendations in this case are based on a number of reasons, including the portions of testimony PGW wishes to strike. Therefore, OCA witness Colton's testimony as filed is material, relevant, and needs to be included to guarantee the PUC has a full and complete record upon which to render their decision.

II. 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. Specifically, PGW has proposed to increase the residential monthly customer charge from \$13.75 per month to \$19.25 per month, or by approximately 40%. Additionally, the delivery charge for residential customers would increase by 10.3% from \$6.6967/Mcf to \$7.3893/Mcf. According to PGW's filing, the bill for a typical PGW residential heating customer who uses 75 Mcf per year will increase from \$99.52 to \$110.68 per month, or by approximately 11.2%.

On March 10, 2020, the OCA filed its Formal Complaint. The OCA has initiated an extensive review process to ensure that any increases in rates, and any proposed changes in tariff design and policies contained in the filings, are just and reasonable and otherwise consistent with

Pennsylvania law. On April 16, 2020, the Commission instituted an investigation into the lawfulness, justness, and reasonableness of the proposed rate increase. Pursuant to Section 1308(d) of the Public Utility Code, 66 Pa. C.S. Section 1308(d), Supplement No. 128 and Supplement No. 85 were suspended by operation of law until November 28, 2020, unless permitted by Commission Order to become effective at an earlier date. Additionally, the Commission ordered that the investigation include consideration of the lawfulness, justness and reasonableness of PGW's existing rates, rules and regulations. The matter was assigned to the Office of Administrative Law Judge for prompt scheduling of hearings culminating in the issuance of a Recommended Decision.

A telephonic prehearing conference was held on May 05, 2020, which resulted in the issuance of a Corrected Prehearing Order dated May 15, 2020. Pursuant to the May 15, 2020 Corrected Prehearing Order, other parties' direct testimony was required to be served by June 15, 2020. Rebuttal testimony will be due on July 13, 2020 and surrebuttal testimony will be due on July 24, 2020. Hearings are scheduled for July 28-30, 2020. On June 15, 2020, OCA served OCA Statement No. 5 which is the direct testimony of Roger D. Colton. In the Contested Portions of the OCA testimony, Mr. Colton testifies regarding PGW's CRP, including existing enrollment and outreach practices, as well as changes related to access for Limited English Proficiency (LEP) households in light of the requirements established in the Philadelphia Home Rule Charter and Title VI. For the reasons set forth above and more fully explained hereinafter, the Contested Portions of OCA Statement No. 5 should be permitted to be addressed in this proceeding.

III. ANSWER

The OCA submits that PGW's Motion in the instant proceeding should be denied. The portions of OCA witness Roger Colton's direct testimony that the Company seeks to strike, is essential to the issues that must be decided in this case.

A. OCA's Proposals Regarding Additional Outreach to Low Income Customers.
(OCA St. 5, pg. 4, lines 9-22 and pg. 60, lines 6-21)

In its Motion, the Company seeks to exclude from the record in this case the Direct Testimony of OCA witness Roger Colton at page 4, lines 9-22 and 60, lines 6-21. This portion of Mr. Colton's testimony recommends that PGW more actively seek to enroll confirmed low income customers in its Customer Responsibility Program (CRP) and that PGW enhance its Consumer Education and Outreach Plan. The Company's assertion that the OCA's testimony regarding universal service program and related policies and procedures "are not relevant to this base rate proceeding" is wholly inaccurate. In this case, PGW is seeking a significant rate increase. The impact on customers and the steps that can be taken to mitigate the impact of this significant increase go directly to the reasonableness of PGW's actions and efforts. This is an issue of the quality of service that PGW will provide, particularly as it seeks to increase its rates. The OCA would also note that there were numerous witnesses participating in the Public Input Hearings that raised an inability to pay for any rates, and even the current rates. Steps to assist these customers should be thoroughly considered in this cases.

It is beyond dispute that interactions PGW has with its customers involve the quality of service being provided. Section 1501 provides a broad sweep for the Commission's consideration, and Section 526(a) seeks to ensure that quality of service is considered in a base rate case. 66 Pa. C.S. §§ 1501 and 526. More specifically, the Company's claims that "[t]he testimony related to

PGW's CRP [customer responsibility program], is not relevant to this proceeding" are unfounded. Motion at 7. This assertion is in direct contradiction to Section 526(a) of the Code, 66 Pa. C.S.

Section 526 provides:

(a) General rule. - The commission may reject, in whole or in part, a public utility's request to increase its rates where the commission concludes, after hearing, that the service rendered by the public utility is inadequate in that it fails to meet quantity or quality for the type of service provided.

Section 526 has been referenced in numerous rate cases when considering whether a utility has provided adequate quality of service. Indeed, in PGW's 2007 base rate case, the ALJs and the Commission specifically considered PGW's process for enrolling eligible customers in its CRP program and the potential for inadequate service under Section 526. Pa. PUC v. PGW, 2007 Pa. PUC LEXIS 45, at 187 (Pa. P.U.C. September 28, 2007), (2007 PGW Order). The Commission Order provided:

The ALJs noted that they were troubled by the allegation that PGW violated 52 Pa. Code § 69.265(6)(i). The ALJs determined that there was nothing in the record that demonstrates that PGW gives automatic referrals to income eligible customers for CRP when customers call for payment arrangements. The ALJs noted that they agreed with AA that evidence of inadequacy in service quality is rationale to reject or modify the Company's request for an increase in rates. 66 Pa. C.S. § 526 [*193]. Accordingly, the ALJs considered this regulatory violation regarding automatic referrals to income eligible customers for CRP with the totality of the evidence regarding the rate increase requested by the Company and recommended that PGW's rate increase request be modified to provide less than the amount requested. R.D. at 109.

Id. at 192-193. The 2007 PGW Order provided that PGW filed Exceptions to the ALJs' findings on this issue, as PGW argued the "violation" was related to a Policy Statement. Id. At 192-194. The PUC addressed PGW's exceptions there, as follows:

A policy statement is not a regulation and does not have the force of law. Pa. Human Relations Comm. v. Norristown School District, 374 A.2d 671. [*195] 677-679 (Pa. 1977). While a policy statement does not establish a binding norm, it does represent an agency's tentative future intentions, and provides the agency with the flexibility to follow the announced policy or modify it if the circumstances are appropriate. The Mid-Atlantic Power Supply Assoc. v. Pa. PUC, 746 A.2d 1196, 1201 (Pa. Cmwlth. 2000). PGW's failure to fully comply with the directives of Section 69.265(6)(i) is not, in and of itself, a sufficient basis for finding that the utility provided inadequate service under the Code. We wish to clarify that the ALJs did not make such a finding, instead, the ALJs considered PGW's failure to automatically refer income eligible customers for CRP with the totality of the evidence regarding the rate increase requested by the Company and recommended that PGW's rate increase request be modified to provide less than the amount requested. R.D. at 109. Once this Commission makes a conclusion of inadequate service, a request by the utility, even a rate increase, is in jeopardy of unfavorable treatment. Accordingly, PGW's Exception on this issue is denied.

Id. At 194-195.

PGW's claims that its existing universal service policies and procedures are not relevant fail as they routinely and greatly effect customer quality of service as belied by its own prior base rate case.

As described more fully in OCA witness Roger Colton's testimony, the PUC explicitly included "universal service" in the PGW ratemaking policy statement. OCA Statement No. 5 at 36. Section 69.2703(8) specifically states that universal service is to be taken into account when addressing PGW's rates. 52 Pa. Code §69.2703(a)(8). To take PGW's motion at face value would practically eliminate that part of the Policy Statement. PGW's Motion would also preclude consideration of this important issue in this case where PGW is requesting a substantial rate increase during the on-going COVID-19 pandemic that has so affected the citizens of Philadelphia, our state and our nation.

PGW also cites to the doctrine of collateral estoppel, also known as issue preclusion, to apply in the proceeding at bar. As PGW details, Collateral Estoppel applies when (1) the issue decided in the prior adjudication is identical with the one presented in the later action; (2) there was final judgment on the merits; (3) the party against whom the plea is asserted was a party or in privity with a party to the prior adjudication; and (4) the party against whom it is asserted has had a full and a fair opportunity to litigate the issue in question in a prior action. Motion at 9. This too fails as the above elements must be satisfied and number four (4) has clearly not been met. In the proceedings the Company references as already occurring, the OCA never received any type of hearing, no discovery process, and in effect, no due process. Therefore, the fourth element cannot be met and thereby Collateral Estoppel is wholly inappropriate here.¹

Additionally, the Company leans on the fact that the OCA has appealed the prior Universal Services Energy Conservation Plan (USECP) order to the Commonwealth Court and therefore that somehow bars the OCA from discussing this in testimony. This too is misleading, as it is important for OCA witness Colton's testimony to be included in the record for the Commission to evaluate the quality of service that PGW is providing in these areas for the case at bar. Therein lies the evidentiary value, the testimony is relevant and material as to quality of service. For argument purposes, even if the Commission cannot order PGW to change anything due to the appeal issue (as suggested in PGW's motion), the testimony is important information for the Commission to consider in assessing whether any rate increase is just and reasonable.

¹ Section 5.403(b) of the Commission's regulations requires presiding officers to "actively employ these powers to direct and focus the proceedings consistent with due process." 52 Pa. Code § 5.403(b).

B. OCA's Testimony on Language Access Plan Issues.
(OCA St. 5, pg. 3, lines 26-27; pg. 4, line 31 to page 5, line 18; page 65,
line 16 to page 73, line 20)

In its Motion, the Company seeks to exclude Mr. Colton's Direct Testimony at page 3, lines 26-27; page 4, line 31 to page 5, line 18, and pages 65, line 16 to page 73, line 20. This testimony evaluates PGW's lack of a Language Access Plan that meets the requirements of the City of Philadelphia ordinance. The Company's motion states the Commission lacks requisite authority to act regarding Title VI of the Civil Rights Act of 1964,² and therefore, portions of OCA witness Colton's testimony should be excluded.

Regarding the local ordinance language access plans and Title VI, these issues fall squarely within the rubric of customer service that should be assessed here. If PGW is not following a local ordinance, and is not providing information about critical programs to its consumers in an understandable manner, this goes to PGW's quality of service. Mr. Colton's testimony goes to the importance of the local ordinance given the local citizenry, and the need to assure that all customers can receive necessary information in their language. When compared to the other host of laws considered by the Commission, this local ordinance cannot be ignored.

Moreover, as to language access, as was the case in the Commission decision in Docket No. M-0004-1802F0002, which dealt with the implementation of Chapter 14, the PUC addressed language access issues. Community Legal Services (CLS) raised Title VI in that docket and the Commission did not find it outside its jurisdiction:

CLS urges the Commission to establish regulations to ensure that LEP customers and individuals with disabilities receive effective communications. In regard to LEP customers, CLS maintains that

² 46 U.S.C. § 2000d.

language access is not only a good business practice but also argues that since utilities receive LIHEAP funds, it is required pursuant to the requirements of Title VI of the Civil Rights Act of 1964. In support of this position, CLS points out census data that indicates significant populations in Pennsylvania who speak English "less than well." With respect to individuals with disabilities, CLS suggests that the Commission and utilities consult with appropriate advocacy groups and offers to assist in identifying such groups. PGW references its prior written comments and essentially maintains that PGW and other utilities already take sufficient steps to communicate with LEP customers.

Resolution

Chapter 14 is silent in regard to the issues involving customers with LEP or disabilities. Chapter 56 at § 56.201, a section not inconsistent with Chapter 14, addresses the LEP issue to a limited extent. We anticipate further consideration of the issues raised by CLS when the Commission, pursuant to § 1418, Section 6 amends the provisions of Chapter 56 to comply with the provisions of Chapter 14. Prior to the rulemaking to amend Chapter 56, we encourage parties to engage in discussions to determine if agreement can be reached on appropriate steps to communicate with LEP customers and customers with disabilities.

35 Pa. Bull. 5338, 5351.

The City Ordinance, and the need to have understandable information conveyed to consumers are important issues when considering the quality of service provided by PGW. As noted above, Section 526(a) of the Public Utility Code, as well as Section 69.2703(a)(6),(7),(8) of the Commission's Policy Statement regarding PGW ratemaking, identify the importance of these issues in assessing PGW's rate request. Again, PGW is seeking a substantial rate increase. Information for consumers on programs that can assist them, and PGW's effectiveness in making these programs known to its consumers, are quality of service issues that should not be ignored.

IV. CONCLUSION

Mr. Colton's testimony in this matter goes directly to PGW's quality of service. Quality of service is always reviewed in a base rate case. And, quality of service always has some bearing on the amount of the rate increase eventually granted. For these reasons and those discussed herein, Mr. Colton's testimony is material, relevant, and needs to be included so the Commission has a full and complete record upon which to render their decision. Accordingly, the Office of Consumer Advocate respectfully request that PGW's Motion in Limine be denied.

Respectfully submitted,

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DATED: June 30, 2020
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