



June 30, 2020

VIA E-File

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

Re: Pa. PUC v. Philadelphia Gas Works, Docket No. R-2020-3017206

Answer of CAUSE-PA in Opposition to PGW's Motion in Limine Regarding Certain Portions of Testimony Submitted by TURN, et al.

Dear Secretary Chiavetta,

Enclosed for electronic filing, please find the **Answer of CAUSE-PA in Opposition to PGW's Motion in Limine Regarding Certain Portions of Testimony Submitted by TURN, et al.**

Pursuant to the Commission's Emergency Order issued on March 20, 2020, and as indicated on the attached Certificate of Service, service on the parties was accomplished by email only.

Respectfully Submitted,

A handwritten signature in blue ink that reads "Elizabeth R. Marx".

Elizabeth R. Marx, Esq.
Counsel for CAUSE-PA

CC: Certificate of Service

however, the scope of PGW's Motion is much broader, and seeks to bar a range of recommendations proposed by TURN *et al.*'s expert witness, Harry Geller, pertaining to rate affordability, universal service programs, LIHEAP acceptance policies, and policies and procedures regarding access to service for Limited English Proficient (LEP) households.¹

PGW asserts in its Motion that the contested portions of Mr. Geller's testimony which pertain to these broad issues should be barred as irrelevant, and argues that universal service program issues and related policies should be relegated exclusively to the Commission's periodic Universal Service and Energy Conservation Proceedings (USECP).² PGW further asserts that the Commission does not have jurisdiction over language access issues raised in the contested portions.³ CAUSE-PA submits that PGW's Motion is without merit and must be denied because the contested portions of TURN *et al.*'s testimony are directly relevant to this proceeding and are in fact critically important to a proper evaluation of PGW's proposed rate increase in accordance with applicable laws, regulations, and formal Commission policy.

CAUSE-PA intervened in this proceeding to ensure that PGW's proposed rate increase does not result in unjust and/or unreasonable rates that would impose economic hardship on low and moderate income residential customers. This fact was made clear from the start of this proceeding, and was explicitly identified as an issue of concern in CAUSE-PA's Petition to Intervene and Answer⁴, as well as its Prehearing Memorandum⁵ - neither of which raised any

¹ Motion at 2.

² Motion at 2-3.

³ Motion at 3.

⁴ In its Petition to Intervene and Answer, CAUSE-PA was explicit that it intended to address whether PGW's universal service programs are "universally available at an affordable rate" and "developed, maintained, and appropriately funded to ensure such affordability." CAUSE-PA Petition to Intervene and Answer at 4-5, citing 66 Pa. C.S. § 2203(3)(8).

⁵ In its Prehearing Memorandum, CAUSE-PA indicated that it intended to investigate the adequacy of PGW's universal service programming in light of its proposed increase:

CAUSE-PA identifies the following specific issues of concern, which must be addressed in this proceeding...

objection from PGW. Although CAUSE-PA did not submit direct testimony, we are actively engaged in this proceeding, have reviewed the testimony and discovery exchanged to date, and if necessary we are prepared to submit responsive testimony and/or brief issues which may arise as the proceeding unfolds.

CAUSE-PA shares the concerns raised by Mr. Geller in his Direct Testimony regarding the potential impact that PGW's proposed rate increase may have on its low-income customers, including customers enrolled in PGW's universal service programs, and the critical need for universal service program improvements and reforms.⁶ CAUSE-PA further shares Mr. Geller's concerns about PGW's LIHEAP Crisis acceptance policy and the potential detrimental impact of PGW's language access policies on vulnerable communities within the city of Philadelphia.⁷ Indeed, these issues bear a critical relevance to the Commission's determination of whether PGW's proposed rates and associated terms and conditions of service are just and reasonable, and consistent with all applicable laws and policies of the Commission.

CAUSE-PA has been or is currently a party to over two dozen rate cases since 2012, where the affordability of rates, the adequacy of a utilities' universal service programs, and/or the appropriateness of a utilities' policies and practices that impact the accessibility of service or affordability of rates has been or is currently being examined and addressed.⁸ This includes PGW's

...
iii. The effect of PGW's rate filing and proposed rate increase on low-income households enrolled in or eligible for its Universal Service Programs, and the continued adequacy of those programs in delivering universally accessible natural gas service.

(CAUSE-PA Prehearing Memo at 2-3).

⁶ See TURN et. al. St. 1 at 7.

⁷ Id. at 54-61.

⁸ See PUC v. Peoples Natural Gas Co., R-2012-2285985; PUC v. Columbia Gas of Pa. Inc., R-2012-2321748; PUC v. Duquesne Light Co., R-2013-2372129; Columbia Gas of Pa. Inc., R-2014-2406274; PUC v. West Penn Power Co., R-2014-2428742; PUC v. Penelec, R-2014-2428743; PUC v. Penn Power, R-2014-2428744; PUC v. Metropolitan Edison Co., R-2014-2428745; PUC v. Columbia Gas of Pa. Inc., R-2015-2468056; PUC v. PECO Energy Co. - Electric, R-2015-2468981; PUC v. PPL Electric Utilities Corp., R-2015-2469275; PUC v. UGI Utilities, Inc. (Gas Division), R-2015-2518438; PUC v. Columbia Gas of Pa. Inc., R-2016-2529660; PUC v. Metropolitan Edison Co., R-2016-2537349; PUC v. Penelec Co., R-2016-2537352; PUC v. Penn Power Co., R-

2017 rate case, in which substantial testimony regarding various aspects of PGW's universal service programming was admitted to the record without sustained objection.⁹ In fact, one of the approved settlement provisions in the 2017 PGW rate case, which required PGW to perform a cost benefit analysis of its LIHEAP Crisis acceptance policy, informed Mr. Geller's recommendations in this 2020 rate case that PGW now seeks to strike.¹⁰ Notably, PGW's 2017-2020 USECP was pending approval in an open Commission docket during the pendency of PGW's 2017 rate case.¹¹

While PGW correctly notes in its Motion that there is a pending appeal before the Commonwealth Court related to PGW's CRP, the existence of that appeal does not bar all issues that pertain to universal service and rate affordability. As explained more thoroughly below, the issue on appeal is separate and distinct from the issues and proposals raised in Mr. Geller's

2016-2537355; PUC v. West Penn Power Co., R-2016-2537359; PUC v. Philadelphia Gas Works, R-2017-2586783; PUC v. Columbia Gas of Pa. Inc., R-2018-2647577; PUC v. Duquesne Light Co., R-2018-3000124; PUC v. PECO Energy Co. - Electric, R-2018-3000164; PUC v. AQUA Pa. Inc., R-2018-3003558; PUC v. AQUA Pa. Wastewater, R-2018-3003561; PUC v. UGI Utilities, Inc., (Gas Division), R-2018-3006814; PUC v. Peoples Natural Gas Co., Inc. R-2018-3006818; PUC v. UGI Utilities Inc. (Gas Division), R-2019-3015162; PUC v. Philadelphia Gas Works, R-2020-3017206; PUC v. Pa. American Water Co., R-2020-3019369; PUC v. Columbia Gas of Pa. Inc., R-2020-3018835.

⁹ See PUC v. PGW, R-2017-2586783, Joint Pet. for Settlement at ¶¶ 32, 37.

¹⁰ See PUC v. PGW, R-2017-2586783, Recommended Decision at 57-58 (order entered Aug. 8, 2017). The language in the Recommended Decision is particularly illuminating in this context, and speaks to the deep and inherent relevancy of Mr. Geller's recommendations regarding PGW's LIHEAP crisis acceptance policy in this proceeding:

PGW explains that Crisis Assistance is a federal grant that is awarded to income-eligible customers who are either without utility service or have received a 10-day shut-off notice. Customers can apply for both Crisis Assistance and Low Income Home Energy Assistance benefits at the same time. The application deadline for Crisis Assistance is until funds run out. TURN et al. asserted that PGW is not maximizing the receipt of Crisis grants for those PGW customers who may need them the most. To address these concerns, PGW agreed to conduct a cost benefit analysis of the impact of modifying its Crisis acceptance policy.

TURN et al. notes that, while it continues to believe that PGW should modify its LIHEAP Crisis acceptance policy, it finds that a cost benefit analysis is a reasonable first step, which they hope will convince PGW of the economic and moral prudence of adopting such a policy.

Id.

¹¹ See Philadelphia Gas Works Universal Service and Energy Conservation Plan for 2017-2020 Submitted in Compliance with 52 Pa. Code § 62.4, Docket No. M-2016-2542415. A Tentative Order was issued in PGW's 2017-2020 USECP on January 27, 2017; initial, reply, and supplemental comments were filed on March 7, 2017, March 22, 2017, and April 28, 2017, respectively; and a Final Order was issued on August 3, 2017. See id. PGW's 2017 Rate Case was filed in February 2017, and was litigated over the next several months – with direct testimony of the other parties due on May 19, 2017, several months before the Commission issued a final order in PGW's then-pending USECP proceeding.

testimony, as the appeal does not address the impact of PGW's rate proposal and associated policies and procedures on the accessibility and affordability of PGW's natural gas service, or the adequacy of PGW's universal service programs and associated policies to address those future accessibility and affordability concerns. These are threshold issues that must be investigated in the context of any rate increase, and testimony related thereto is therefore relevant and admissible in this proceeding – and is not barred by the legal doctrines of collateral estoppel or res judicata. As explained more thoroughly below, PGW's motion to strike TURN *et al.*'s expert testimony, which directly responds to and answers these critical threshold questions, must be denied.

II. LEGAL STANDARD

A Motion in Limine "may be presented in a pending matter when exclusion is sought in order to ensure the elimination of anticipated prejudicial evidence, to remove extraneous issues from the underlying proceeding, to preclude references to prejudicial matters, or to prevent encumbering the record with immaterial matters."¹² To be admissible, the Public Utility Code and the Commission's rules require only that evidence "be relevant and material to the issues presented and be substantial enough to support the Commission's decision."¹³

"In a base rate case, any part of the Company's tariff may be brought into question."¹⁴ This is consistent with the Commission's Suspension and Investigation Order in this proceeding, in which the Commission ordered a broad investigation "of the lawfulness, justness, and reasonableness" of Philadelphia Gas Works' existing and proposed rates, rules, and regulations."¹⁵

¹² Pa. PUC v. PGW, Docket No. R-00006042, Order #3 Denying PGW's Motion in Limine at 3, (April 13, 2001) (citing Commonwealth of Pa. v. Pikur Enterprises, Inc., 596 A. 2d 1253 (Pa. Commw. 1991)).

¹³ Application of Apollo Gas Co., Docket No. A-120450F003, Fourth Interim Order of ALJ Corbett, 1991 Pa. PUC LEXIS 61, 3 (August 2, 1991); see also 52 Pa. Code § 5.401(a); Joint Application of West Penn Power d/b/a Allegheny Power, et al., Docket No. A-2010-2176520, Order on Motion in Limine at 2 (September 28, 2010).

¹⁴ PUC v. PPL, R-2012-229090597 (Recommended Decision of Administrative Law Judge Susan D. Colwell, October 9, 2012) (PPL R.D.), 2012 Pa. PUC LEXIS 1757, 78.

¹⁵ Suspension and Investigation Order at 2-3 (April 16, 2020).

TURN *et al.*'s direct testimony regarding PGW's universal service programs, LIHEAP acceptance policies, and language access policies are directly relevant and material to the issues presented in this base rate proceeding. Mr. Geller's testimony on these issues is substantial enough to support a Commission decision on these matters and directly brings PGW's proposed rates and tariff provisions into question. In short, Mr. Geller's testimony squarely meets the Commission's established threshold for admissibility. PGW's Motion in Limine to severely restrict TURN *et al.*'s relevant and admissible testimony is therefore without merit and must be denied.

III. ARGUMENT

A. The evaluation of any proposed rate increase by PGW must necessarily include an analysis of its effect on the adequacy, accessibility, and availability of critical rate assistance to vulnerable consumers to determine if PGW's rates are just and reasonable.

TURN *et al.*'s direct testimony regarding the effectiveness of PGW's universal service programs to address current and future rate affordability and service accessibility for economically vulnerable Philadelphians is directly relevant and material to PGW's proposal to raise its rates. The Commission's formal policy guidance regarding PGW's rates specifically require that any evaluation of PGW's rates must consider the effect on universal service.¹⁶ Thus, Mr. Geller's testimony and recommendations regarding PGW's universal service programs and associated policies and procedures must be taken into consideration by the Commission in determining whether PGW's rate increase is just and reasonable, and consistent with all applicable laws and policies of the Commission.

According to the Commission's 2010 Order and Final Policy Statement on the application of PGW's Cash Flow Ratemaking Method (Policy Statement), the Commission explicitly

¹⁶ 52 Pa. Code § 69.2703(8).

determined that any evaluation of PGW's rates must consider the effect of the rates on universal service.¹⁷

§ 69.2703. Ratemaking procedures and considerations.

- (a) **In determining just and reasonable rate levels for PGW, the Commission will consider**, among other relevant factors:
- (1) PGW's test year-end and (as a check) projected future levels of non-borrowed year-end cash.
 - (2) Available short term borrowing capacity and internal generation of funds to fund construction.
 - (3) Debt to equity ratios and financial performance of similarly situated utility enterprises.
 - (4) Level of operating and other expenses in comparison to similarly situated utility enterprises.
 - (5) Level of financial performance needed to maintain or improve PGW's bond rating thereby permitting PGW to access the capital markets at the lowest reasonable costs to customers over time.
 - (6) PGW's management quality, efficiency and effectiveness.
 - (7) Service quality and reliability.
 - (8) **Effect on universal service.**¹⁸

In the contested portions of TURN *et al.*'s expert testimony that PGW seeks to strike, Mr. Geller makes recommendations to address the impact of the proposed rate increase on low-income customers, which necessarily involves undertaking an analysis of PGW's universal service programs and the impact a rate increase will have on the accessibility, affordability, availability, and cost-effectiveness of those programs.¹⁹

Analyzing and recommending improvements to PGW's universal service policies related to CRP enrollment and income verification processes, as well as the ability for low income consumers to access energy efficiency and conservation services through LIURP, fall squarely

¹⁷ Petition of Philadelphia Gas Works for a Statement of Policy on the Application of Philadelphia Gas Works' Cash Flow Ratemaking Method, P-2009-2136508, Order and Final Policy Statement (April 15, 2010).

¹⁸ 52 Pa. Code § 69.2703 (emphasis added).

¹⁹ See TURN *et al.*, St. 1 at 7-8.

within the scope of analysis of the proposed rate increase's effect on universal service. In fact, PGW specifically addressed the issue of access to CRP in its supporting testimony, citing to its voluntary initiative to make CRP applications available online.²⁰ As it must be determined whether that expenditure is just and reasonable, it is completely appropriate to evaluate and provide analysis about whether that money is being spent reasonably.

The Public Utility Code requires that utility services be available at an affordable rate to those in need, and that all universal service programs be developed, maintained, and appropriately funded to ensure such affordability and availability to economically vulnerable consumers.²¹ Thus, a key component of determining whether rates are just and reasonable is whether service remains affordable to all customers and, in turn, a key component of determining whether service is affordable for all customers is whether and to what extent its universal service programs and participants will be impacted by the proposed increase. PGW's attempt to argue that universal service is outside the scope of a base rate proceeding ignores this statutory mandate, and directly contradicts the Commission's formal policy governing PGW's ratemaking procedures. Allowing PGW to move forward with a rate increase without a proper evaluation of its effect on universal service would deny the due process rights of PGW's low-income customers and risk imposing unaffordable, unjust, unreasonable, and unlawful rates upon them.

B. The existence of a separate USECP proceeding does not preclude an independent analysis of the impact PGW's proposed rate increase will have on universal service in the context of this rate proceeding.

The existence of a schedule for periodic USECP review to evaluate universal service program design elements does not preclude examination of the effect of a rate increase on universal service in a rate case proceeding to determine if the rate increase is just and reasonable. Thus,

²⁰ PGW St. 7 at 15.

²¹ See 66 Pa. C.S. § 2203(3), (8).

PGW's attempt to circumvent the requirements of § 69.2703(8) based on the existence of a separate USECP proceeding is not founded.

Universal service programs are routinely reviewed in both USECP plan evaluation proceedings and base rate cases. In fact, that is what happened during PGW's 2017 rate case. As mentioned above, throughout PGW's 2017 rate case, PGW's USECP was also under review by the Commission, and relevant universal service issues pertinent to each proceeding were fully explored without restriction. In USECP proceedings, the Commission evaluates the design elements of the plan.²² Within the context of a base rate case, analysis is conducted to evaluate the effect of the proposed increase on universal service programs and to determine whether adjustments need to be made to mitigate the impact of the increase on low-income customers.²³ As universal service costs are recovered through a rider on PGW's tariff, ratepayer interests must also be protected by ensuring that program funds are used in a cost-effective manner. In short, the analysis of universal service issues in a USECP as opposed to in a base rate case are simultaneously independent and complimentary of each other, and the Commission has regularly approved program changes and improvements in the context of both types of proceeding to ensure that service remains universally accessible to all consumers consistent with the statutory and regulatory requirements of the Public Utility Code and the Commission's regulations.

In its motion, PGW attempts to frame the contested portions of Mr. Geller's testimony as conflicting with the Commission's prior orders approving PGW's USECP.²⁴ PGW asserts that Mr. Geller's testimony is therefore barred by *res judicata*, *collateral estoppel*, and section 316 of the Public Utility Code.²⁵ However, these legal constructs *bar re-litigation of the same issue*.

²² 52 Pa. Code § 69.263.

²³ 52 Pa. Code § 69.2703(8).

²⁴ Motion at 9-10.

²⁵ Id.

Although there are similarities in the issues currently on appeal and the issues Mr. Geller raises in his direct testimony – in that both broadly address affordability concerns related to PGW’s universal service programs – the specific issues raised in each proceeding are separate and distinct, and require separate and distinct facts and analyses. Indeed, evaluation of the effect of PGW’s proposed rate increase on the availability, accessibility, affordability, and cost-effectiveness of PGW’s universal service programs involves an analysis of whether PGW’s proposed rates, once implemented, will exacerbate current levels of unaffordability. This is a forward-looking analysis, based on proposed rates and associated policies, procedures, and terms and conditions of service. On the other hand, the issue currently on appeal required an analysis based on PGW’s current rates and associated policies, procedures, and terms and conditions of service – irrespective of its pending proposal to increase rates. As such, PGW’s attempts to apply res judicata and estoppel must be rejected, as the issues at bar are fundamentally different in scope and frame.

C. Language access fall squarely within the type of issues necessary to evaluate customer service performance and lawfulness of rates, and information related to PGW’s language access policies and procedures and associated recommendations is therefore relevant and admissible in this case.

Language access is directly tied to PGW’s customer service performance. Customer service is not just or reasonable if a substantial percentage of customers cannot access PGW’s customers service or understand its correspondence.

In the Suspension Order in this proceeding the Commission stated:

Investigation and analysis of this proposed tariff filing and the supporting data indicate that the proposed changes in rates, rules, and regulations may be unlawful, unjust, unreasonable, and contrary to the public interest. It also appears that consideration should be given to the reasonableness of PGW’s existing rates, rules, and regulations.²⁶

²⁶ Suspension Order at 2; see also 66 Pa. CS § 1308.

In its filing, PGW asserts that its rate increase is necessary, *inter alia*, to continue to enhance its customer service.²⁷ PGW also touts its recent efforts to improve customer service.²⁸ It is therefore puzzling that PGW refuses to acknowledge the direct relevance of its language access procedures to this proceeding, considering the substantial percentage of Philadelphia residents who lack English language proficiency and are thus unable to effectively contact PGW's customer service - or to understand critical correspondence from PGW.²⁹ Notably, CAUSE-PA has previously raised similar issues through expert testimony in in other Pennsylvania utility rate proceedings – and the testimony related thereto has not been excluded from the record.³⁰

Importantly, PGW's claim that the Commission does not have jurisdiction over language access requirements under Title VI of the Civil Rights Act of 1964 or the Philadelphia Home Rule Charter is not dispositive of whether factual information about PGW's compliance thereto is relevant to this proceeding. Regardless of the jurisdiction of the Commission over these laws, which is a legal question that is properly reserved for briefing in this proceeding, whether PGW is compliant with laws designed to ensure equitable access to services regardless of National origin or ancestry is without question a relevant factor in assessing whether PGW's proposed rates – and its associated policies, practices, and procedures – are just and reasonable, consistent with applicable laws and policies of the Commission, and in the public interest.

Beyond the requirements of Title IV and the Philadelphia Home Rule Charter, PGW is required by Commission regulation to provide translation service in certain proscribed

²⁷ See PGW St. 1 at 3, 6, 11; PGW St. 2 at 3, 4, 5.

²⁸ PGW St. 7 at 13-16.

²⁹ See TURN *et al.* St. 1 at 54-56.

³⁰ See PUC v. UGI Utilities, Inc., Gas Division, CAUSE-PA St. 2, Direct Testimony of Marielle Macher, Docket No. R-2015-2518438. Similarly, TURN *et al.* introduced testimony concerning language access issues in PECO's most recent base rate case. See PUC v. PECO, TURN *et al.* St. 1, Direct Testimony of Harry S. Geller, Docket No. R-2018-3000164.

circumstances.³¹ Whether PGW can effectively communicate critical information to its customers – in a language they understand – is essential to the provision of utility services – and in fact speaks to whether PGW’s services; its applicable billing, credit, and collections policies; and its universal service programs are provided in an equitable and nondiscriminatory manner, regardless of a consumer’s National origin or ancestry.³² In evaluating PGW’s proposed rate increase, the Commission must determine whether the changes proposed by PGW – as well as its existing policies and procedures that will remain unchanged after a rate increase takes effect – are consistent with or contravene any and all applicable laws, regulations, or policies – as well as the public interest.³³ Enhancing customer service spending to the levels proposed by PGW in this proceeding without providing language access as required by and consistent with applicable law will potentially leave behind a substantial portion of PGW’s most vulnerable customers. This would, thus, be contrary to applicable law *and* public interest. Evaluation of PGW’s customer service policies and procedures, including its language access policy, is clearly within the scope of this proceeding, and PGW’s attempts to exclude this critical information from the record in this proceeding must be denied.

³¹ 52 Pa. Code § 56.91 (b) (17).

³² 52 Pa. Code § 56.31.

³³ Suspension Order at 2.

WHEREFORE, CAUSE-PA respectfully requests – for the reasons more fully explained above – that the Honorable Darlene Heep and the Honorable Marta Guhl, Administrative Law Judges, issue an Order denying PGW’s Motion in Limine to strike substantial portions of TURN et al. Statement 1. PGW’s arguments are without merit, and would undermine the ability of the Commission to fully investigate the impact of PGW’s proposed rates and associated terms and conditions for service will have on economically vulnerable consumers.

Respectfully submitted,

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June 30, 2020

Verification

I, Elizabeth R. Marx, on behalf of and as counsel for the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), hereby state that the facts contained in the foregoing Answer of CAUSE-PA are true and correct to the best of my knowledge, information and belief, that I am duly authorized to make this Verification, 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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Date: June 30, 2020

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