



June 30, 2020

*Via Efiling*

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

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

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Answer of the Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia to the Motion in Limine of Philadelphia Gas Works Regarding Certain Portions of Testimony Submitted by TURN et al. Regarding Universal Service Programs in the above referenced proceeding.

Due to the ongoing COVID-19 pandemic, a copy of this Answer is being served upon all parties via email, as indicated on the attached Certificate of Service.

Sincerely,

Joline R. Price, Esquire  
Attorney ID No. 315405

*Enclosures*

Cc: Hon. Marta Guhl  
Hon. Darlene Heep  
Parties of Record

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**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	:	

**ANSWER OF THE TENANT UNION REPRESENTATIVE NETWORK AND ACTION  
ALLIANCE OF SENIOR CITIZENS OF GREATER PHILADELPHIA TO THE  
MOTION IN LIMINE OF PHILADELPHIA GAS WORKS REGARDING CERTAIN  
PORTIONS OF TESTIMONY SUBMITTED BY TURN *ET AL.* REGARDING  
UNIVERSAL SERVICE PROGRAMS**

Pursuant to Section 5.103 of the Pennsylvania Public Utility Commission’s (“PUC”) rules regarding Motions, and the Commission’s Corrected Prehearing Order dated May 15, 2020, the Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (“TURN *et al.*”) provide the following Answer to Philadelphia Gas Works’ (“PGW”) Motion in Limine regarding certain portions of the pre-served direct testimony of Harry S. Geller, submitted on behalf of TURN *et al.* on June 15, 2020. For the reasons set forth below, TURN *et al.* submit that PGW’s Motion in Limine should be denied.

**I. INTRODUCTION AND BACKGROUND**

On June 15, 2020, TURN *et al.* submitted the direct testimony of Harry S. Geller, TURN *et al.* Statement No. 1. In his testimony, Mr. Geller addresses the reasonableness of PGW’s rate request. Mr. Geller opposes PGW’s rate increase request due to the negative impact such an

increase will have on low-income customers. On June 25, 2020, PGW filed a Motion in Limine regarding Certain Portions of Testimony Submitted by TURN *et al.* Regarding Universal Service Programs (PGW Motion). Pursuant to direction from Administrative Law Judges Guhl and Heep, Answers to PGW's Motion are due June 30, 2020. TURN *et al.* file the following Answer in response to PGW's Motion.

PGW's Motion in Limine challenges specific sections of Mr. Geller's direct testimony.<sup>1</sup> PGW refers to these sections throughout its Motion as the "Contested Portions". The various pieces of testimony included in the Contested Portions are:

- Page 8, line 5 through and including page 8, line 9 (introductory testimony regarding reasonableness of rate request)
- Page 8, line 17 through and including page 9, line 3 (introductory testimony that PGW should make certain modifications);
- Page 12, line 1 through and including page 12, line 4 (introductory testimony that PGW must modify policies if any rate increase is approved);
- Page 19, line 17 through and including page 20, line 5 (testimony introducing need to modify CRP policies);
- Page 25, line 9 through and including page 25, line 12 (testimony asserting proposed rates are not just and reasonable due to inadequate CRP enrollment numbers);
- Page 25, line 13 through and including page 26, line 2 (recommendations for improved CRP enrollment);

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<sup>1</sup> PGW Motion at 1-2.

- Page 26, line 22 through and including page 27, line 9 (recommendations for improved CRP enrollment specific to the COVID-19 pandemic);
- Page 29, line 5 through and including page 29, line 17 (recommendations to improve CRP income verification procedures);
- Page 32, line 3 through and including page 32, line 4 (statement that implementation of CRP average bill must be considered in evaluating whether proposed and current rates, rules and regulations are lawful, just and reasonable);
- Page 35, line 3 through and including page 36, line 7 (proposed changes to CRP average bill and their benefit to customers);
- Page 35, line 5 through and including page 39, line 8 (testimony regarding the operation of the Low Income Usage Reduction Program (LIURP) and proposed changes);
- Page 43, line 12 through and including page 43, line 14 (testimony suggesting modification to PGW's Low Income Home Energy Assistance Program (LIHEAP) Crisis acceptance policy);
- Page 44, line 7 through and including page 45, line 18 (proposals for LIHEAP Crisis acceptance policy);
- Page 54, line 20 through and including page 61, line 6 (all testimony related to language access);
- Page 64, line 11 through and including page 64, line 20 (testimony applying CRP and LIHEAP proposals in the context of restoration of service);
- Page 66, line 5 through and including page 68, line 19 (summary of universal service and LIHEAP Crisis recommendations);

- Page 69, line 15 through and including page 70, line 2 (summary of language access recommendations); and
- Page 72, line 7 through and including page 72, line 23 (testimony addressing the reasonableness of PGW’s proposed rate increase given a need to improve programs, policies and customer service).

Contrary to PGW’s assertions, Mr. Geller’s testimony on behalf of TURN *et al.* appropriately raises these programs and policies in the context of a base rate case. As such, PGW’s Motion in Limine must be denied.

All of the issues raised in the Contested Portions are directly relevant to the quality of service provided to PGW’s low-income customers, and therefore whether PGW’s proposed and current rates, rules, and regulations are just, reasonable, and lawful.<sup>2</sup> Mr. Geller makes several suggestions to improve programs and policies for PGW’s low-income customers that could mitigate the impact of the proposed rate increase, as an alternative to a full denial of PGW’s request.

Further, TURN *et al.* is not precluded from raising these issues in the context of this base rate case – a different context and posture than PGW’s Universal Service and Energy Conservation Plan proceedings.<sup>3</sup> As discussed further in this Answer, the Commission’s approval of PGW’s recent Petition to Amend Philadelphia Gas Works Universal Service and Energy Conservation

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<sup>2</sup> See Suspension Order at 2-3. See also Application of PGW Cash Flow Ratemaking Method – Final Statement of Policy, 52 Pa. Code §69.2703(8) (including effect on universal service as a factor for the Commission to consider when determining just and reasonable rate levels for PGW).

<sup>3</sup> See Philadelphia Gas Works Second Amended Universal Service and Energy Conservation Plan for 2017-2020, Docket No. M-2016-2542415, available at <http://www.puc.state.pa.us/pcdocs/1535412.pdf>. As PGW notes, PGW filed a petition at docket number P-2020-3018867 for approval of an extended plan timeframe and a pilot program to lower energy burdens. In compliance with the Commission’s March 26, 2020 Order approving that pilot program, PGW submitted an updated Universal Service Plan, available at <http://www.puc.state.pa.us/pcdocs/1655581.pdf>. While the Commission continues to link to the previous plan on its Energy Assistance page, citations in this Answer will be to the updated Universal Service Plan.

Plan for 2017-2022 (“Petition”) was narrow in scope<sup>4</sup> – the Commission Order did not address the specific universal service issues raised in Mr. Geller’s testimony.

Although PGW’s Motion purports to take issue with universal service issues addressed in Mr. Geller’s testimony, PGW also challenges two of the non-universal service issues raised in Mr. Geller’s testimony. First, portions of Mr. Geller’s testimony related to acceptance of LIHEAP Crisis grants are included in the list of challenged testimony. PGW provides no justification for excluding those sections of testimony. LIHEAP Crisis acceptance is not a part of PGW’s USECP, and rather is raised to express concern that PGW is not evaluating other sources of revenue while requesting a rate increase. Second, the language access issues raised in the Contested Portions relate to the standard of service PGW provides to its limited English Proficient customers and is directly relevant to a base rate proceeding. Finally, PGW’s Motion in Limine should be denied because it is unverified and fails to satisfy the requirements of 52 Pa. Code § 1.36(a). For these reasons, PGW’s Motion in Limine should be denied in its entirety.

## **II. ANSWER<sup>5</sup>**

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. It is admitted that Mr. Geller’s testimony was served on June 15, 2020. Mr. Geller raises concerns regarding PGW’s implementation of universal service programs in the context of

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<sup>4</sup> Order, Petition to Amend Philadelphia Gas Works Universal Service and Energy Conservation Plan for 2017-2022, Docket No. P-2020-3018867 at 22 (approving a proposed Pilot Program to lower energy burdens for CRP customers receiving Percentage of Income rates, implementation of a consumption limit, and a consumer education and outreach plan).

<sup>5</sup> This section specifically responds to the section of PGW’s Motion that was submitted as factual assertions. As discussed further throughout this Answer, several sections labeled argument in PGW’s Motion include factual assertions.

evaluating PGW's proposed rate increase, and proposes changes to address concerns with PGW's CRP program, including enrollment processes, income verification requirements, implementation of CRP Average Bill, as well as concerns with PGW's Low Income Usage Reduction Program (LIURP). In addition, Mr. Geller raises concerns about the level of service received by customers who are limited English proficient and proposes changes to and creation of PGW policies to address those concerns. As discussed more fully below, Mr. Geller's references to Title VI and the Philadelphia Home Rule Charter were to serve as a comparison and guide.

6. Admitted.
7. It is admitted that PGW filed an addendum to its USECP and later requested expedited review of the filing. By way of further answer, PGW's Petition requested expedited approval of a pilot program implementing lower energy burdens for CRP Percentage of Income customers and establishing consumption limits for those customers.<sup>6</sup> TURN *et al.*, in coordination with the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), filed a letter Answer specifically supporting the pilot proposal to reduce energy burdens for Percentage of Income CRP Participants.<sup>7</sup> That letter also indicated support for a consumption limit pilot, as reasonable within the context of the

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<sup>6</sup> Philadelphia Gas Works' Petition for Expedited Approval of PGW's Letter Request to Amend its Universal Service and Energy Conservation Plan Pursuant to 2019 Amendments to Policy Statement at Docket No. M-2019-3012599, Docket No. P-2020-3018867 (Feb. 21, 2020). PGW spends the bulk of its Petition explaining its request to lower energy burdens as a pilot, and requesting expedited review due to a planned customer information system replacement project. To the extent that PGW requests in its petition general approval of its amended USECP, the Commission Order limited its approval to PGW's Pilot Program and a few other limited matters. *See* Order, Petition to Amend Philadelphia Gas Works Universal Service and Energy Conservation Plan for 2017-2022, Docket No. P-2020-3018867 at 15, 22.

<sup>7</sup> *See* TURN *et al.* and CAUSE-PA, Letter in Lieu of Answer to PGW's Petition, Docket No. P-2020-3018867 (March 2, 2020) at 3 ("the Low Income Advocates enthusiastically support PGW's proposal to implement the Commission's energy burden reductions, which will result in substantially improved affordability for CRP participants.").

pilot program.<sup>8</sup> The Low Income Advocates (TURN *et al.* and CAUSE-PA) did not address any other aspects of PGW's USECP in the letter. The Commission's March 26, 2020 Order was limited in scope to PGW's proposed pilot.<sup>9</sup> The Commission ordered PGW to implement the following changes to CRP:

- Charge Customer Assistance Program (CAP) customers with incomes at or below 50% of the Federal Poverty Income Guidelines (FPIG) a maximum of 4% of income or their average bill, whichever is less, and charge CAP customers with incomes above 50% and below 150% of the FPIG a maximum of 6% of income or their average bill, whichever is less.
- Continue the consumption limit pilot as a pilot to run concurrently with the Pilot Program approved herein. Place CAP customers that exceed 2,290 CCF on the average bill program for the remainder of the credit limit period.
- Discontinue the Conservation Incentive Credit pilot program after the current usage period credits are awarded in 2020 and provide notice of the discontinuance of the Conservation Incentive Credit program consistent with its prior notice of the program.<sup>10</sup>

The Commission also approved PGW's Consumer Outreach and Education Plan and directed PGW to continue to work with stakeholders to improve that plan.<sup>11</sup>

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<sup>8</sup> *Id.* at 4.

<sup>9</sup> *See* Order, Petition to Amend Philadelphia Gas Works Universal Service and Energy Conservation Plan for 2017-2022, Docket No. P-2020-3018867 at 22. The Order specified that

Because there is no binding mandate for a utility to conform to the recent CAP Policy Statement amendments at this time, **we will not address PGW's decision to not implement some of the recommended policy amendments at this time.** We also will not separately address a PGW proposal that is based on the recently amended CAP Policy Statement if stakeholders have not filed specific objections to the proposal. We will address the consumption limit proposal and the conservation credit proposal that are not specifically predicated on the recent CAP Policy Statement amendments. We will also address the Customer Education and Outreach Plan.

*Id.* at 15 (emphasis added).

<sup>10</sup> *Id.* at 22

<sup>11</sup> *Id.* at 22-23. A review of that plan shows that none of the issues discussed in the Contested Portions of Mr. Geller's testimony are included in that plan.



8. Admitted. By way of further answer, OCA and OSBA's Petitions for Review seek a reversal of the Commission's March 26, 2020 Order.

### III. ARGUMENT

#### A. Legal Standard

Upon the filing of a request to raise rates, the Commission can suspend the operation of those new rates, and, following a hearing, can find that proposed rates are unjust or unreasonable.<sup>12</sup>

The Commission's Suspension Order in this case stated that

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.<sup>13</sup>

TURN *et al.* filed a Petition to Intervene, and intervention was granted at the prehearing conference on May 5, 2020. Among the issues TURN *et al.* sought to address in this case was “[w]hether PGW's universal service program rules, policies and practices have been successful in mitigating the impact of PGW's high rates on low-income customers.” The Commission's regulations provide, in relevant part, that a party has the right of presentation of evidence<sup>14</sup> and that evidence is admissible if it is relevant and material.<sup>15</sup> The regulations further state that the taking of evidence shall proceed with reasonable diligence and with the least practicable delay.<sup>16</sup> Contrary to PGW's assertion, the Contested Portions of Mr. Geller's testimony are within the scope of a base rate proceeding and relevant to the proceeding.

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<sup>12</sup> 66 Pa. C.S. §1308.

<sup>13</sup> Suspension Order at 2.

<sup>14</sup> 52 Pa. Code § 5.243(a).

<sup>15</sup> 52. Pa. Code § 5.401(a)

<sup>16</sup> 52 Pa. Code § 5.243(a).

**B. Proposed Changes to Universal Service Programs are relevant to PGW's Request to Increase Rates**

PGW falsely asserts that its base rate filing does not raise any issues with respect to any universal service programs.<sup>17</sup> While PGW has not proposed specific changes to its CRP and LIURP, PGW's witnesses have maintained that since its last rate case the utility has led various efforts to improve overall customer satisfaction, including efforts related to its CRP application process.<sup>18</sup> PGW also maintains that customer service is improving in the view of its customers.<sup>19</sup> It is unreasonable for PGW to object to testimony related to customer service and aspects of its customer assistance programs when PGW's witnesses have "opened the door" to consideration of these issues. By introducing this testimony, PGW has acknowledged that issues related to customer service and access to CRP are relevant to this proceeding.<sup>20</sup>

Even if PGW had not opened the door to consideration of these issues, universal service issues, including proposals to change aspects of those programs, would still be relevant in the context of a base rate proceeding.<sup>21</sup> As Mr. Geller notes in his testimony, an increase in rates will have a disproportionate impact on low-income customers, and the ability of programs to help shield those customers from that rate increase is directly relevant to whether the proposed rates are just and reasonable. The improvements recommended by Mr. Geller to PGW's universal

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<sup>17</sup> *Id.* at 3.

<sup>18</sup> PGW St. 1 at 6; PGW St. 7 at 13-15.

<sup>19</sup> PGW St. 7 at 16-18.

<sup>20</sup> TURN *et al.* introduced similar testimony in PGW's 2017 base rate case. In that case, Mr. Geller testified for TURN *et al.* and submitted direct testimony which contained numerous specific recommendations aimed at improving PGW's universal service programs, LIHEAP Crisis acceptance policy, and other aspects of PGW's customer service. PGW did not contest the relevance of markedly similar testimony introduced by TURN *et al.* in the 2017 base rate case. See PUC v. PGW, Docket No. R-2017-2586783.

<sup>21</sup> This is particularly true in the context of PGW and the Commission's Policy Statement on Cash Flow Ratemaking. 52 Pa. Code § 2701 - 2703.

service programs are specific to mitigating the impact of the rate increase on low-income customers – a necessary component of just and reasonable rates.<sup>22</sup>

Mr. Geller’s testimony regarding CRP Average Bill also examines whether PGW’s operation of that rate is lawful under PGW’s tariff and the Public Utility Code. As noted by the Commission in its suspension order, the examination of PGW’s proposed rate increase must include whether PGW’s *current* rates, rules and regulations are just, reasonable and lawful.

Because the universal service issues raised in the Contested Portions are relevant to PGW’s rate increase request, PGW’s Motion in Limine regarding those portions must be denied.

**C. Mr. Geller’s proposals to improve access to PGW’s Universal Service Programs have not been fully and comprehensively addressed**

PGW incorrectly contends that issues related to PGW’s customer assistance programs were “fully and comprehensively addressed” in a recent PGW petition to implement provisions of the Commission’s revised CAP Policy Statement.<sup>23</sup> PGW’s contention is plainly untrue. PGW’s Petition requested expedited approval of a pilot program implementing lower energy burdens for CRP Percentage of Income customers and establishing consumption limits.<sup>24</sup> PGW’s Petition for Expedited Approval was limited in scope to the establishment of that pilot program, as is the Commission Order granting PGW’s Petition.<sup>25</sup> The proceeding did not address whether PGW’s customer assistance programs are available and capable of mitigating the harm to low

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<sup>22</sup> 52 Pa. Code § 2703(8).

<sup>23</sup> PGW Motion at ¶¶15-17. While these paragraphs purport to be legal argument, they are in fact factual assertions that TURN *et al.* would deny. *See also* Philadelphia Gas Works’ Petition for Expedited Approval of PGW’s Letter Request to Amend its Universal Services and Energy Conservation Plan Pursuant to 2019 Amendments to Policy Statement at Docket M-2019-3012599, Docket No. P-2020-3018867 (“PGW Petition for Expedited Approval”).

<sup>24</sup> *Id.* at 5.

<sup>25</sup> *See* Order, Petition to Amend Philadelphia Gas Works Universal Service and Energy Conservation Plan for 2017-2022, Docket No. P-2020-3018867 at 22. The Order also discontinues a Conservation Incentive Credit pilot program.

income consumers that could result if PGW’s 2020 base rate request is approved, nor did it address the specific access and Average Bill issues raised by Mr. Geller.

### 1. PGW’s Petition for Expedited Approval was limited in scope

PGW argues that TURN *et al.* is seeking to “relitigate” universal service issues in the rate proceeding.<sup>26</sup> PGW further argues in its motion that because the Commission’s Order approving the pilot program was appealed by the OCA and the Office of Small Business Advocate (“OSBA”) to Commonwealth Court, the Commission is without legal authority to make any changes to PGW’s CRP and LIURP programs.<sup>27</sup> However, contrary to PGW’s assertion, the Commission Order approved only a pilot program as an addendum to PGW’s USECP and did not address any other issues in the USECP.<sup>28</sup> The Commission wrote in its Order:

Because there is no binding mandate for a utility to conform to the recent CAP Policy Statement amendments at this time, **we will not address PGW’s decision to not implement some of the recommended policy amendments at this time.** We also will not separately address a PGW proposal that is based on the recently amended CAP Policy Statement if stakeholders have not filed specific objections to the proposal. We will address the consumption limit proposal and the conservation credit proposal that are not specifically predicated on the recent CAP Policy Statement amendments. We will also address the Customer Education and Outreach Plan.<sup>29</sup>

Similarly, the Petitions for Review to Commonwealth Court were limited in scope. The Petition for Review filed by OCA asserts due process concerns regarding the procedure that was used to approve PGW’s pilot program, and alleges that the Commission “abused its discretion by approving **PGW’s Pilot Program** . . . which will have a significant impact on PGW’s rates and

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<sup>26</sup> PGW Motion at ¶18.

<sup>27</sup> *Id.* at ¶19.

<sup>28</sup> See Order, Petition to Amend Philadelphia Gas Works Universal Service and Energy Conservation Plan for 2017-2022, Docket No. P-2020-3018867 at 22.

<sup>29</sup> *Id.* at 15 (emphasis added).

ratepayers.”<sup>30</sup> By contrast, Mr. Geller’s testimony on behalf of TURN *et al.* is concerned with the financial burden that a rate increase would have on PGW’s low income customers, and whether PGW’s customer assistance programs are available to those customers to mitigate that burden. Mr. Geller’s testimony does not address the specifics of the pilot program – the lower energy burdens for Percentage of Income customers or the consumption limits, nor does it address the details of the approved Consumer Education and Outreach Plan.<sup>31</sup>

**2. Collateral Estoppel and Res Judicata do not apply as USECP review proceedings are not fully litigated, and the issues raised are distinct**

The universal service issues raised in Mr. Geller’s testimony are appropriately raised in the context of PGW’s rate increase request. PGW trots out the concepts of Res Judicata and Collateral Estoppel to argue that TURN *et al.* is “re-litigating” issues.<sup>32</sup> PGW also cites to section 316 of the Public Utility Code, which, in PGW’s words, “precludes a collateral attack upon a Commission Order.”<sup>33</sup> This is patently untrue.

The Commission most often addresses these concepts in formal complaints, where a Complainant asserts the same issues and facts that had been asserted and adjudicated in a previous complaint by the same Complainant. In that context, the Commission has explained,

[R]es judicata is appropriately raised as a defense if all of the issues between the parties in the current proceeding have been previously decided in a prior proceeding, where the parties had an opportunity to appear and be heard. If some but not all of the issues in the current proceeding have been previously decided, then the doctrine of collateral estoppel prevents a question of law or an issue of fact that has been once litigated and adjudicated from being relitigated in a subsequent suit. The four (4) requirements for a plea of collateral estoppel to prevail are: (1) the issue decided in the prior adjudication is identical with the one presented in the later action; (2) there was a final judgment on the merits; (3) the party against whom the plea is asserted was a party or in privity with the

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<sup>30</sup> See Petition for Review, McCloskey v. Pa PUC, 422 CD 2020 at 8-9 (emphasis added). The Petition for Review of the Office of Small Business Advocate (“OSBA”) similarly raises due process concerns. See Petition for Review, Evans v. Pa. PUC, 421 CD 2020 at 7.

<sup>31</sup> While not relevant to this Answer, TURN *et al.* would argue that issues related to the Consumer Education and Outreach Plan could be addressed in the context of this rate case.

<sup>32</sup> PGW Motion at ¶18.

<sup>33</sup> PGW Motion at ¶18.

party to the prior adjudication; and (4) the party against whom the plea is asserted has had a full and fair opportunity to litigate the issues in the prior action.<sup>34</sup>

Res judicata and collateral estoppel do not preclude the introduction of the Contested Portions of Mr. Geller’s testimony. In Mr. Geller’s testimony, universal service issues first and foremost go to the reasonableness of the rate increase itself.<sup>35</sup> Any proposals made are in the context of mitigating a rate increase – and therefore present distinct issues and claims from a universal services proceeding. Importantly, collateral estoppel and res judicata only apply if issues were fully litigated. To the contrary, in recent USECP proceedings – including PGW’s recent Petition – TURN *et al.* did not have a “full and fair opportunity to litigate the issue in question in a prior action.”<sup>36</sup> While TURN *et al.* is not seeking to revisit the pilot program proposed in PGW’s Petition for Expedited Approval, it is worth noting that that Petition was subject to a non-adjudicatory review process.<sup>37</sup> Similarly, PGW’s most recent USECP review in 2017 was also not a fully litigated proceeding – TURN *et al.* had no opportunity to conduct discovery, present expert testimony, or cross-examine PGW witnesses.<sup>38</sup> Rather, TURN *et al.* was limited to comments and reply comments, with no opportunity to introduce evidence.

To further argue that TURN *et al.* is precluded from raising the Contested Portions of Mr. Geller’s Testimony, PGW relies on the ALJ’s Sixth Prehearing Order in a PPL Rate Case. In that

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<sup>34</sup> Carlette T. Cuff v. PECO Energy Company, Docket No. C-2013-2370894, 2013 WL 4717038, at \*5 (Aug. 23, 2013) (internal citations omitted).

<sup>35</sup> Further, the issues presented by Mr. Geller are entirely distinct from the issues addressed in PGW’s recent USECP proceeding, which focused on PGW’s proposed pilot program.

<sup>36</sup> PGW Motion at ¶18.

<sup>37</sup> TURN *et al.* supported the shortened review process in the specific context of the pilot, given PGW’s claims in that Petition regarding the need for expedited review and the extensive review of energy affordability completed by the Commission. TURN *et al.* and CAUSE-PA, Letter in Lieu of Answer to PGW’s Petition, Docket No. P-2020-3018867 (March 2, 2020) at 5-6.

<sup>38</sup> See generally Philadelphia Gas Works Universal Service and Energy Conservation Plan for 2017-2020, Docket No. M-2016-2542415.

case, the ALJ struck written testimony on the grounds that the testimony raised issues that were pending before the Commission in another proceeding and related to statewide regulations.<sup>39</sup> Specifically, EDF had raised issues related to the functions of PPL Electric's proposed metering system, which had been specifically addressed and fully litigated in PPL's Smart Meter Plan, which at the time was before the Commission on Exceptions.<sup>40</sup> Similarly, EDF had raised issues with performance metrics that were set according to regulation and not specific to PPL. Mr. Geller's testimony is easily distinguishable. First, each of the universal service issues raised by Mr. Geller is specific to PGW. In addition, PGW's recent USECP Petition was limited in scope and the issues raised in Mr. Geller's testimony are not pending before the Commission nor have they been fully litigated.<sup>41</sup>

As such, PGW's claim that TURN *et al.* is estopped from introducing the Contested Portions of Mr. Geller's testimony is incorrect as a matter of law.

**D. The majority of the contested portions of Mr. Geller's testimony are proposals that implicate internal PGW policies, and not the terms of the USECP.**

While TURN *et al.* maintains that it would not be precluded from examining issues delineated in PGW's USECP, the specific recommendations contained in Mr. Geller's testimony involve implementation of the USECP and not modification of the USECP. The one exception, discussed below, is Mr. Geller's recommendation that PGW accept phone enrollment for CRP. Importantly, this recommendation is specific to the COVID-19 pandemic. Mr. Geller covers two main CRP topics – access to CRP and PGW's implementation of CRP Average Bill.

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<sup>39</sup> Pa PUC v. PPL, Docket No. R-2015-2469275, Sixth Prehearing Order (July 14, 2015) (PPL 2015).

<sup>40</sup> PPL 2015 at 10.

<sup>41</sup> It is arguable that even if these issues were pending before the Commission, they would still be relevant and admissible. This was the case with PGW's 2017 Rate Case, where several issues related to universal service were introduced in testimony and approved by the Commission while the Commission was also considering PGW's Universal Service Plan. See PUC v. PGW, Docket No. R-2017-2586783.

## 1. Access to CRP

The thrust of Mr. Geller’s testimony regarding the availability of CRP is that access to CRP is critical for low-income customers<sup>42</sup> – low-income programs are only able to help low-income customers mitigate the impact of PGW’s proposed rate increase if those customers can actually enroll in the program – which requires accessible enrollment pathways and flexible documentation requirements.

### *i. Enrollment*

As noted above, PGW itself raises universal service issues in its initial filing.<sup>43</sup> PGW’s testimony in support of its rate increase request cites to an increasing quality of customer service, including the development of an online application for CRP.<sup>44</sup> Likewise, the Contested Portions of Mr. Geller’s testimony include two recommendations for improving enrollment pathways for CRP: first, that PGW should work with Community Based Organizations to facilitate in-person enrollment, and second that due to the COVID-19 Pandemic, PGW should implement phone enrollment.

PGW’s USECP states that enrollment is allowed by mail, electronically and in person.<sup>45</sup> Mr. Geller’s recommendation that PGW work with Community Based Organizations for in person enrollment does not conflict with the language of PGW’s USECP. In addition, while PGW’s USECP does not allow for phone enrollment, Mr. Geller makes this recommendation in the context of an unprecedented situation. Safety precautions required that PGW close all of its customer service centers – effectively closing off the ability of PGW customers to enroll in CRP

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<sup>42</sup> At the Public Input hearings held for this case, PGW’s Counsel cited to the availability of CRP to assist low-income customers in anticipation of concerns from the public that PGW’s rate increase would be unaffordable.

<sup>43</sup> PGW St. 1 at 6; PGW St. 7 at 13-15.

<sup>44</sup> *Id.*

<sup>45</sup> Amended Universal Service and Energy Conservation Plan 2017-2022 Philadelphia Gas Works, Docket No. M-2016-2542415 (submitted April 10, 2020) at 3-4, <http://www.puc.state.pa.us/pcdocs/1660096.pdf>. (hereinafter “USECP”).



in-person. Public health officials continue to advise against unnecessary indoor, in-person activity. A temporary change to enrollment procedures is necessary,<sup>46</sup> and failure to implement or even consider any other changes to CRP enrollment reflects PGW's failure to appropriately serve customers during the pandemic. Such failure and recommendations to improve enrollment are directly relevant to whether PGW should be granted a rate increase during the ongoing pandemic.

*ii. Income Verification*

Mr. Geller further recommends changes to PGW's income verification procedures, all of which could be implemented without change to PGW's USECP. The USECP states as follows:

PGW customers can apply or re-certify for CRP by mail, online or in person at any of PGW's five customer service centers. When a customer applies for CRP, he/she must provide proof of income for the prior 30 days for all household members. For customers that are self-employed, PGW will accept annual federal or state tax returns filed within the last 12 months as proof of self-employment income.<sup>47</sup>

Importantly, "proof of income" is not specifically defined in the USECP, other than the allowance for federal or state tax returns. Rather, as Mr. Geller notes in his testimony, PGW has internal policies that cover acceptable proof of income. Mr. Geller makes two recommendations – first that PGW accept self-verification as proof of income, particularly during the COVID-19 pandemic when staying home is encouraged, and in the alternative that PGW adopt a more flexible standard for what types of proof PGW will accept.

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<sup>46</sup> Indeed, PGW did not request a waiver of its USECP when it closed its customer service centers, limiting the ability of customers to apply for CRP in person. Moreover, PGW has already modified elements of its USECP in response to Covid-19. For example, at present, PGW is not removing customers from CRP for failure to recertify and PGW is not requiring acceptance of LIURP weatherization as a condition of CRP participation. In addition, PGW has adjusted its requirements for CRP documentation for customers unable to obtain unemployment documentation due to the pandemic. PGW has made these changes to its CRP without formally modifying its USECP and notwithstanding the appeal of the Commission's order on PGW's pilot plan. *See* COVID 19 Customer Service, Billing and Public Outreach Provisions Request for Utility Information – Docket No. M-2020-3020055, Philadelphia Gas Works' ("PGW") Responses to the Secretarial Letter dated May 29, 2020 (June 8, 2020).

<sup>47</sup> USECP at 13.

## 2. CRP Average Bill or Budget Bill

The second set of recommendations Mr. Geller makes in the Contested Portions is related to PGW's implementation of its CRP average bill.<sup>48</sup> In addition to addressing whether PGW's proposed and current rates are just and reasonable, Mr. Geller's testimony also addresses whether PGW's implementation of CRP average bill is lawful.

By way of background, PGW was ordered in its last USECP to implement a CRP budget billing option.<sup>49</sup> As part of this Order, the Commission noted that

many CRP customers are currently paying more than the actual cost of their gas usage over the course of the program year. Low-income customers enroll in CRP to receive the most affordable gas payment and achieve debt forgiveness. PGW should periodically review CRP accounts to ensure customers are paying the most affordable rate.<sup>50</sup>

PGW's USECP only states that PGW will implement an average bill. According to the current USECP, the CRP discounted bill includes a monthly "asked-to-pay" amount that is based either on a percentage of income calculation or "the customer's budget bill amount" whichever is lower.<sup>51</sup>

PGW's current Tariff describes budget billing as a "plan . . . averaging the cost of Gas Service over a 12-month period."<sup>52</sup> Mr. Geller's testimony specifically addresses the ways in which PGW's implementation of the CRP average bill violates PGW's Tariff, and has enabled PGW to charge rates higher than permitted. Mr. Geller's assessment and recommendations regarding the CRP average bill are central to the lawfulness of PGW's current rates, rules and

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<sup>48</sup> The Contested Portions that specifically address the CRP average bill are: 32:3 - 32:4; 35:3 - 36:7.

<sup>49</sup> See Order, 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 (August 3, 2017) at 19.

<sup>50</sup> *Id.*

<sup>51</sup> USECP at 5. See also USECP at 4, 14.

<sup>52</sup> See Philadelphia Gas Works Gas Service Tariff at 26.

regulations - specifically whether PGW is operating CRP in violation of its Tariff and the Public Utility Code.<sup>53</sup>

### **3. Low Income Usage Reduction Program (LIURP)**

Mr. Geller focuses his testimony regarding LIURP on tenant access – access to LIURP for tenants is necessary to ensure that the rate increase does not have a disproportionate impact on tenants. Mr. Geller’s LIURP recommendations focus on how PGW could work with tenants to obtain landlord authorization for LIURP services. Again, PGW’s USECP does not specifically address how PGW gets this authorization – only that it is required before services can begin.<sup>54</sup> Similarly, PGW’s USECP does not address rollover of unspent LIURP funds.

### **4. LIHEAP Crisis Acceptance**

PGW includes Mr. Geller’s recommendations regarding how and when PGW will accept LIHEAP grants in its list of contested portions of Mr. Geller’s testimony,<sup>55</sup> but does not make any specific arguments about why Mr. Geller’s recommendations should be excluded.<sup>56</sup> LIHEAP Crisis Acceptance policies are not delineated in any way in PGW’s USECP, and therefore, cannot be excluded even if PGW were to prevail in its argument that universal service issues are precluded or irrelevant in this base rate case. Indeed, these recommendations are directly relevant to whether PGW is providing adequate service to its low-income customers and whether PGW is properly evaluating the economic benefit expanded LIHEAP Crisis Acceptance policies could bring, perhaps mitigating the need for a rate increase.

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<sup>53</sup> See, e.g., 66 Pa. C.S. §1303.

<sup>54</sup> See USECP at 8, 25.

<sup>55</sup> The Contested Portions that specifically discuss LIHEAP are 43:12-14; 44:7-45:18.

<sup>56</sup> TURN et al. submitted similar testimony regarding PGW’s LIHEAP Crisis acceptance policy in PGW’s 2017 base rate case. As a condition of settlement of that case, PGW was required to conduct a cost/benefit analysis of its Crisis acceptance policy. See PUC v. PGW, R-2017-2586783.

### **E. Mr. Geller’s Testimony on Language Access is Relevant and Within the PUC’s Jurisdiction**

In addition to universal service and LIHEAP issues, PGW requests that the entirety of Mr. Geller’s testimony regarding language access be removed.<sup>57</sup> This testimony addresses the customer service that PGW provides to its Limited English Proficient (“LEP”) customers. Customer service issues are relevant to a request to increase rates – indeed, the law cannot impose an obligation on customers to pay for the cost of service without a reciprocal obligation of the utility to satisfy standards of reasonable service.<sup>58</sup> PGW recognizes this in its testimony supporting its rate request, which includes several mentions of improvements to customer service.

As described in Mr. Geller’s testimony, nearly a quarter of Philadelphia’s population speaks a language other than English at home, and more than half of those households speak a language other than Spanish. How PGW serves its customers with limited English proficiency is relevant to the quality of customer service PGW provides, and whether the Commission should grant PGW’s rate request.

The PUC has recognized the importance of language access.<sup>59</sup> It is within the PUC’s jurisdiction to make a rate increase contingent on PGW improving its service to those customers. While Mr. Geller’s testimony references potential obligations under Title VI, he is not asserting that the PUC can – or should – be deciding whether PGW is in compliance with Title VI in this case. Similarly, Mr. Geller references the Office of Immigrant Affairs and the Philadelphia

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<sup>57</sup> PGW asks in its motion that all of Mr. Geller’s language access testimony (found at 54:20 - 61:6) – not just recommendations – be removed.

<sup>58</sup> See Nat’l Utilities, Inc. v. Pa. PUC, 709 A.2d 972, 979 (Pa. Commw. Ct. 1998), following D.C. Transit Sys., Inc. v. Washington Metro. Area Transit Com’n, 466 F.2d 394, 411 (D.C. Cir. 1972), *cert denied*.

<sup>59</sup> See, e.g., 52 Pa. Code § 56.91 (b) (17), 52 Pa. Code § 56.201 (requiring utilities to provide information in other languages in certain circumstances).

Home Rule Charter as standards and examples that PGW can look to when developing policies to serve LEP customers. Mr. Geller’s recommendations are specific to how PGW can improve its customer service to LEP customers. For these reasons, Mr. Geller’s testimony is relevant, and his recommendations concerning language access are within the PUC’s jurisdiction.

**F. PGW’s Motion Violates Commission Regulations (52 Pa. Code § 1.36)**

PGW’s Motion should also be rejected because it is unverified and thus fails to satisfy the requirements of 52 Pa. Code § 1.36(a). Section 1.36(a) requires all “applications, petitions, formal complaints, motions, and answers thereto containing an averment of fact not appearing of record in the action or containing denial of fact” to be personally verified by a party or authorized officer or other authorized employee of the party if a corporation or association. 52 Pa. Code § 1.36(a). In this context, a verification is a written statement of fact supported by a signed oath or affirmation, made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities). PGW’s Motion includes multiple averments of fact, some of which are set forth in the numbered paragraphs purporting to constitute “argument.”<sup>60</sup> For example, in addition to the facts specifically answered above, PGW makes the following factual assertions:

- The Contested Portions of Mr. Geller’s testimony propose changes ... that are already addressed in PGW’s recently approved USECP.<sup>61</sup>
- Other changes proposed by Mr. Geller would affect PGW policies and procedures implementing the USECP, which the Commission and the Bureau of Consumer Services (“BCS”) have reviewed and were aware of when approving PGW’s Amended USECP in March of this year.<sup>62</sup>
- Issues related to PGW’s customer service programs have recently been fully and comprehensively addressed in a separate USECP proceeding, and in the granting of a separate PGW Petition to implement specific policy changes as articulated by the Commission in its CAP Policy Statement.<sup>63</sup>

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<sup>60</sup> See PGW Motion at ¶¶ 1-8, 15-17.

<sup>61</sup> PGW Motion at ¶15.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.* at ¶17.

What the Commission was or was not aware of in making recent decisions, and whether a customer service program was fully and comprehensively addressed, are factual assertions.<sup>64</sup> Accordingly, PGW's Motion was required to be verified by an authorized officer of PGW. Absent verification, TURN *et al.* are unable to determine who at PGW purports to stand behind and attest to the truthfulness of the factual statements in PGW's Motion. The Commission may reject a filing if it does not comply with any applicable statute, regulation or order of the Commission.<sup>65</sup> This lack of verification is further grounds to deny PGW's motion in its entirety.

### III. CONCLUSION

WHEREFORE, for the reasons set forth above, the Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia respectfully request that Philadelphia Gas Works' Motion in Limine regarding certain portions of the pre-served direct testimony of Harry S. Geller be denied.

Respectfully Submitted,



DATE: June 30, 2020

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<sup>64</sup> Indeed, as discussed above, TURN *et al.* asserts that issues related to PGW's customer service programs have not been recently fully or comprehensively addressed in separate USECP proceedings.

<sup>65</sup> 52 Pa. Code § 1.38.

## VERIFICATION

I, **Joline R. Price**, attorney for the Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (“TURN *et al.*”) hereby state that the facts contained in the foregoing pleading 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).



Date: June 30, 2020

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Joline R. Price

*Counsel for TURN et al.*

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	R-2020- 3017206
	:	
	:	
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	:	

**Certificate of Service**

I hereby certify that I have this day served copies of the Answer of the Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia to the Motion in Limine of Philadelphia Gas Works Regarding Certain Portions of Testimony Submitted by TURN et al. Regarding Universal Service Programs upon the parties of record in the above captioned proceeding in accordance with the requirements of 52 Pa. Code §1.54 in the manner and upon the persons listed below.

**VIA EMAIL**

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June 30, 2020