**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 :

# **ORDER ON PGW’S MOTIONS *IN LIMINE***

# **REGARDING TESTIMONY ON BEHALF OF OCA AND TURN**

HISTORY OF THE PROCEEDING

On February 28, 2020, PGW filed Supplement No. 128 to PGW’s Gas Service Tariff – PA. P.U.C. No. 2 (Supplement No. 128) and Supplement No. 85 to PGW’s Supplier Tariff – Pa. P.U.C. No. 1 (Supplement No. 85) to become effective April 28, 2020, seeking a general rate increase calculated to produce $70 million (10.5%) in additional annual revenues. At that time, PGW also filed a Petition for Waiver seeking waiver of the application of the statutory definition of the fully projected future test year (FPFTY) so as to permit PGW to use a FPFTY beginning on September 1, 2020 (its fiscal year) in this proceeding.

By Order entered April 16, 2020 (“Suspension Order”), the Pennsylvania Public Utility Commission (Commission or PUC) instituted an investigation into the lawfulness, justness, and reasonableness of the proposed rate increase. 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. The Suspension Order did not consider the Petition for Waiver.

The Commission’s Bureau of Investigation and Enforcement (BIE) filed a Notice of Appearance. Three formal complaints have been filed: The Office of Consumer Advocate (OCA); the Office of Small Business Advocate (OSBA); and the Philadelphia Industrial and Commercial Gas Users Group (PICGUG).

The matter was assigned to the Office of Administrative Law Judge (OALJ), Administrative Law Judges Darlene Heep and Marta Guhl, to schedule such hearings as necessary to develop a record in this proceeding.

A Telephonic Prehearing Conference was held on Tuesday, May 5, 2020, at which time multiple issues were address. A Prehearing Order was issued which granted the Petitions to Intervene, and Petition for Waiver.

On May 14, 2020, a Telephonic Public Input Hearings Notice was issued which indicated that telephonic public input hearings were scheduled for June 2 and 3, 2020, at 1:00 p.m. and 6:00 p.m. each day.

On June 2 and 3, 2020, the telephonic public input hearings were held as scheduled. Members of the public and legislators provided testimony regarding the pending PGW filing.

On June 2, 2020, Meenal Ravel offered testimony at the 1:00 p.m. public input hearing and then submitted her statement as an exhibit on the same date. On June 3, 2020, State Senator Sharif Street offered testimony on behalf of his constituents at the 1:00 p.m. public input hearing and submitted his statement as an exhibit on the same date.

Via electronic mail dated June 8, 2020, we provided the exhibits to the parties and indicated that any objections to the exhibits have to be submitted by June 15, 2020. As of this date, no party has submitted an objection to the exhibits. Based on the fact that no party has objected to the public input hearing exhibits and they are relevant to the proceedings, the exhibits were entered into the record.

On June 9, 2020, PGW filed objections to interrogatories of Environmental Stakeholders. On June 12, 2020, Environmental Stakeholders filed a Motion to Dismiss the objections of PGW.

PGW specifically objected to interrogatories seeking information regarding PGW’s EnergySense Program, other energy efficiency programs and environmental concerns, objecting that these matters were addressed in the PGW Demand Side Management implementation Plan and the Universal Service and Energy Conservation Plan proceedings and that the Commission does not have jurisdiction over certain environmental claims. The Environmental Stakeholders responded that the interrogatories and responses are relevant to whether the rate sought in the instant proceeding is just and reasonable.

 Non-company parties submitted direct testimony on June 15, 2020.

A hearing on the Environmental Stakeholders’ Motion to Dismiss PGW objections was held on June 25, 2020. Rulings on the objections and motion were made on the record at the time of the hearing. PGW objections to interrogatories regarding electrification as alternatives to proposed infrastructure work included in rate calculations were sustained. All other objections were overruled.

On June 24, 2020, PGW filed a Motion *in Limine* Regarding the Testimony Submitted by Environmental Stakeholders. On June 25, 2020. PGW filed a Motion *in Limine* Regarding Testimony Submitted by the Office of Consumer Advocate Regarding Universal Service Programs (OCA Motion) and a Motion *in Limine* Regarding Testimony Submitted by TURN, et al. Regarding Universal Service Programs (TURN Motion).

On June 30, 2020, OCA filed an Answer of the OCA Motion; CAUSE-PA filed an Answer of CAUSE-PA in Opposition to PGW’s TURN Motion; TURN filed an Answer of the TURN Motion; and Environmental Stakeholders filed an Answer in Opposition to PGW’s Motion *in Limine[[1]](#footnote-1)*.

The Motions *in Limine* regarding OCA and TURN’s testimony raise like issues, and, therefore, will be addressed in this Order.

DISCUSSION

PGW is seeking to exclude portions of TURN, *et al.* Statement No. 1, the Direct Testimony of Harry Geller, contending that testimony regarding changes to the PGW Customer Responsibility Program are not appropriately raised in this base rate case, that these issues were recently decided in a Universal Service and Energy Conservation Plan (USECP) proceeding before the Commission, that PGW has amended its USECP in accordance with orders of the Commission and that the Order approving the amended USECP is under appeal and therefore consideration of these issues is inappropriate in these proceedings. The Company also seeks to exclude testimony regarding suggestions to change the Customer Responsibility Program[[2]](#footnote-2) (CRP). Finally, the Company seeks to exclude any testimony regarding language access issues as they pertain to the Civil Rights Act of 1964 or the Philadelphia Home Rule Charter. PGW raises similar issues with respect to testimony submitted by OCA Statement No. 5, the Direct Testimony of Roger D. Colton.

Specifically, PGW seeks to have removed from this proceeding the following:

TURN *et al.* Statement No. 1:

Page 8, line 5 through and including page 8, line 9;

Page 8, line 17 through and including page 9, line 3;

Page 12, line 1 through and including page 12, line 4;

Page 19, line 17 through and including page 20, line 5;

Page 25, line 9 through and including page 25, line 12;

Page 25, line 13 through and including page 26, line 2;

Page 26, line 22 through and including page 27, line 9;

Page 29, line 5 through and including page 29, line 17;

Page 32, line 3 through and including page 32, line 4;

Page 35, line 3 through and including page 36, line 7;

Page 35, line 5 through and including page 39, line 8;

Page 43, line 12 through and including page 43, line 14;

Page 44, line 7 through and including page 45, line 18;

Page 54, line 20 through and including page 61, line 6;

Page 64, line 11 through and including page 64, line 20;

Page 66, line 5 through and including page 68, line 19;

Page 69, line 15 through and including page 70, line 2; and

Page 72, line 7 through and including page 72, line 23.

OCA Statement No. 5:

Page 3, line 26 through and including page 3, line 27;

Page 4, line 9 through and including page 4, line 22;

Page 4, line 31 through and including page 5, line 18;

Page 60, line 6 through and including page 60, line 21; and

Page 65, line 16 through and including page 73, line 20.

TURN, *et. al*. contends that 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. OCA contends that testimony recommending changes to the low-income program at PGW is relevant to this matter because it is a quality of service issue that should be considered in a base rate case. CAUSE – PA states that “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.” CAUSE-PA Answer at 5.

TURN, OCA and CAUSE-PA each contend that language access issues under the Civil Rights Act of 1964 and/or the Philadelphia Home Rule Charter are relevant to the quality of service and whether the rates are just and reasonable and therefore should be addressed in this proceeding.

As stated in the Suspension Order of April 16, 2020, these proceedings are to investigate and consider the lawfulness, justness, and reasonableness of the proposed rates, rules, and regulations as well as the lawfulness, justness, and reasonableness of the Philadelphia Gas Works’ existing rates, rules, and regulations. Any evidence that is not irrelevant, immaterial or unduly repetitious should be considered. 66 Pa. C.S. § 332(b); 52 Pa. Code § 5.401(a).

We agree with OCA and TURN, *et al.* that the Company’s USECP and CRP programs are subject to review pursuant to the Commission’s April 16, 2020 Suspension Order. OCA is correct that, in accordance with 52 Pa. Code §69.2703(a)(8), the effect of a rate on universal services is one of many issues to be considered in a rate case. Universal service and customer assistance programs, including outreach to low income customers and providing rate protection from the proposed rate increase, are relevant to determining whether the rates increase sought by PGW for infrastructure work and declining usage is just and reasonable. The weight of any evidence concerning the USECP and CRP programs as well as whether this is the appropriate action in which to order changes to any of the programs, given the concurrent universal service proceedings,[[3]](#footnote-3) would be determined after the hearing.

As previously noted, the Commission instituted an investigation into the lawfulness, justness, and reasonableness of the proposed rate increase through the Suspension Order. More precisely, at ordering paragraph 4, the Commission specifically directed that this investigation “include consideration of the lawfulness, justness, and reasonableness of the Philadelphia Gas Works’ existing rates, rules, and regulations.” The Commission did not place any limitations on that directive in the April 16, 2020 Suspension Order. As the Commission did not impose any limitations, and because the USECP and CRP programs are set out in PGW’s current tariff, consideration of these tariff provisions is appropriate within the context of this proceeding. Accordingly, we will deny PGW’s Motions *in Limine* in part with respect to the USECP and CRP programs.

However, a base rate matter is not the appropriate proceeding to consider language access considerations. The Commission must act within, and cannot exceed, its jurisdiction. *See Feingold v. Bell Tel. Co. of Pa.,*383 A.2d 791, 795 (Pa. 1977); *Tod and Lisa Shedlosky v. Pennsylvania Electric Co.,* Docket No. C-20066937 (Order entered May 28, 2008). This forum and, particularly, this base rate matter, is not the place to address the Civil Rights Act of 1964 or the Philadelphia Home Rule Charter compliance issues with respect to CRP language access program design. As such, this direct testimony from OCA and TURN, *et al.* regarding language access issues will be stricken from the testimony and will not be considered in this proceeding.

ORDER

THEREFORE

IT IS ORDERED

1. That the Philadelphia Gas Works’ Motion *in Limine* regarding Direct Testimony of Rodger D. Colton, OCA Statement No. 5 submitted by the Office of Consumer Advocate with respect to specific language access requirements under the Civil Rights Act of 1964 or the Philadelphia Home Rule Charter, is granted in part.
2. That the following testimony in OCA Statement No. 5, the Direct Testimony of Rodger D. Colton, is excluded:
	1. Page 3, line 26 through and including page 3, line 27;
	2. Page 4, line 31 through and including page 5, line 18; and
	3. Page 65, line 16 through and including page 73, line 20
3. That the Philadelphia Gas Works’ Motion *in Limine* regarding the Direct Testimony of Rodger D. Colton, OCA Statement No. 5 with respect to suggestions of changes to the Customer Responsibility Program is denied.
4. That the Philadelphia Gas Works’ Motion *in Limine* regarding the Direct Testimony of Harry Gellar, TURN, *et al.* Statement No. 1, submitted by TURN, *et al.* regarding specific language access requirements under the Civil Rights Act of 1964 or the Philadelphia Home Rule Charter, is granted.
5. That the following testimony in TURN, et al. Statement No. 1, the Direct Testimony of Harry Gellar, is excluded:
	1. Page 9, line 5—“Language Access for Limited English Proficient customers”
	2. Page 54, line 19 through and including page 61, line 3; and
	3. Page 69, line 11 through 21;
6. That the Philadelphia Gas Works’ Motion *in Limine* regarding Direct Testimony of Harry Gellar submitted by TURN, *et al.* regarding Universal Service and Customer Assistance Programs and suggestions of changes to those programs is denied.

Date: July 8, 2020 \_\_\_\_\_\_\_/s/\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Darlene Heep

 Administrative Law Judge

 \_\_\_\_\_\_/s/\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Marta Guhl

 Administrative Law Judge

**R-2020-3017206 - PA PUBLIC UTILITY COMMISSION, et. al. v. PHILADELPHIA GAS WORKS**

SERVICE LIST

DANIEL CLEARFIELD ESQUIRE

SARAH C STONER ESQUIRE
KRISTINE MARSILIO ESQUIRE

ECKERT SEAMANS

213 MARKET STREET

HARRISBURG PA 17101

**717.237.7173**

*Representing Philadelphia Gas Works*

***ACCEPTS E-SERVICE***

GREGORY J STUNDER ESQUIRE

**\***CRAIG BERRY ESQUIRE

PHILADELPHIA GAS WORKS

800 WEST MONTGOMERY AVENUE

PHILADELPHIA PA 19122
**215.684.6878**

***ACCEPTS E-SERVICE****\*Via e-mail only due to Emergency Order at M-2020-3019262
craig.berry@pgworks.com*

LAUREN M BURGE ESQUIRE
600 GRANT STREET
44TH FLOOR
PITTSBURGH PA 15219
**412.566.2146**

*Representing Philadelphia Gas Works*
***ACCEPTS E-SERVICE***

SHARON E WEBB ESQUIRE

DANIEL ASMUS ESQUIRE

OFFICE OF SMALL BUSINESS ADVOCATE

FORUM PLACE

555 WALNUT STREET 1ST FLOOR

HARRISBURG PA 17101

**717.783.2525***Via e-mail only due to Emergency Order at M-2020-3019262*swebb@pa.gov
dasmus@pa.gov

DARRYL A LAWRENCE ESQUIRE

SANTO G SPARTARO ESQUIRE

LAURA J ANTINUCCI ESQUIRE

OFFICE OF CONSUMER ADVOCATE

5TH FLOOR FORUM PLACE

555 WALNUT STREET

HARRISBURG PA 17101-1923

**717.783.5048**

***ACCEPTS E-SERVICE***

JOHN SWEET ESQUIRE

ELIZABETH R MARX ESQUIRE

RIA PEREIRA ESQUIRE

PA UTILITY LAW PROJECT

118 LOCUST STREET

HARRISBURG PA 17101

**717.701.3837**

*Representing CAUSE-PA*

***ACCEPTS E-SERVICE***

CARRIE B WRIGHT ESQUIRE

PUBLIC UTILITY COMMISSION

BUREAU OF INVESTIGATION AND ENFORCEMENT

SECOND FLOOR WEST

400 NORTH STREET

HARRISBURG PA 17120

**717.783.6156**

***ACCEPTS E-SERVICE***

TODD S STEWART ESQUIRE

HAWKE MCKEON AND SNISCAK LLP

100 NORTH TENTH STREET

HARRISBURG PA 17101

**717.236.1300**

*Representing Direct Energy Services*

***ACCEPTS E-SERVICE***

CHARIS MINCAVAGE ESQUIRE

ADEOLU A BAKARE ESQUIRE

JO-ANNE THOMPSON ESQUIRE

MCNEES WALLACE & NURICK

100 PINE STREET

PO BOX 1166

HARRISBURG PA 17108

**717.237.5437**

*Representing PICGUG*

***ACCEPTS E-SERVICE***

JOSIE B H PICKENS ESQUIRE

ROBERT W BALLENGER ESQUIRE

JOLINE PRICE ESQUIRE
**\***KINTESHIA SCOTT ESQUIRE

COMMUNITY LEGAL SERVICES

1410 WEST ERIE AVENUE

PHILADELPHIA PA 19140

**215.227.4378**

**215.981.3788**

**717.236.9486**

*Representing TURN, et. al.*

***ACCEPTS E-SERVICE
\*****Via e-mail only due to Emergency Order at M-2020-3019262*kscott@clsphila.org

JOSEPH OTIS MINOTT ESQUIRE
LOGAN WELDE ESQUIRE
CLEAN AIR COUNCIL
135 S 19TH STREET
SUITE 300
PHILADELPHIA PA 19103
**215.567.4004***Representing Environmental Stakeholders* ***Accepts e-Service***

CASSANDRA R MCCRAE ESQUIRE
EARTHJUSTICE
1617 JFK BLVD
SUITE 1130
PHILADELPHIA PA 19103
**407.462.1342***Representing Clean Air & Sierra Club****Accepts e-Service***

DEVIN MCDOUGALL ESQUIRE
EARTHJUSTICE
476 CLINTON AVENUE
APARTMENT 6F
BROOKLYN NY 11238
**646.397.8370***Representing Clean Air & Sierra Club****Accepts e-Service***

1. The Motion *in Limine* regarding the Environmental Shakeholders’ testimony will be addressed in a separate order. [↑](#footnote-ref-1)
2. The CRP program is PGW’s customer assistance program for low income customers. [↑](#footnote-ref-2)
3. See *Final Policy Statement and Order*, Docket No. M-2019-3012599; *Philadelphia Gas Works Universal Service and Energy Conservation Plan for 2017-2022; Petition to Amend Philadelphia Gas Works Universal Service and Energy Conservation Plan for 2017-2022*, [2020 Pa. PUC LEXIS 61 (Pa. P.U.C. March 26, 2020)](https://advance.lexis.com/api/document/collection/administrative-materials/id/5YJ8-RMF1-F1P7-B02C-00000-00?cite=2020%20Pa.%20PUC%20LEXIS%2061&context=1000516). [↑](#footnote-ref-3)