

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

555 Walnut Street, 5th Floor, Forum Place
Harrisburg, Pennsylvania 17101-1923
(717) 783-5048
800-684-6560

 @pa_oa

 /pennoca

FAX (717) 783-7152
consumer@paoca.org

July 27, 2020

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

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

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Brief in Support of the Petition of TURN et al. for Interlocutory Review and Answer to Material Question in the above-referenced proceeding.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

/s/ Laura J. Antinucci
Laura J. Antinucci
Assistant Consumer Advocate
PA Attorney I.D. # 327217
E-Mail: LAntinucci@paoca.org

Enclosures:

cc: The Honorable Darlene Heep (**email only**)
The Honorable Marta Guhl (**email only**)
Certificate of Service

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CERTIFICATE OF SERVICE

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

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Brief in Support of the Petition of Turn et al. for Interlocutory Review and Answer to Material Question, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below.

Dated this 27th day of July 2020.

SERVICE BY E-MAIL ONLY

Carrie B. Wright, Esquire
Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

Daniel Clearfield, Esquire
Sarah Stoner, Esquire
Kristine E. Marsilio, Esquire
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101

Gregory J. Stunder, VP
Graciela Christlieb, Esquire
Craig Berry, Esquire
Philadelphia Gas Works
800 West Montgomery Avenue
Philadelphia, PA 19122

Charis Mincavage, Esquire
Adeolu A. Bakare, Esquire
Jo-Anne Thompson, Esquire
McNees Wallace & Nurick LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166

Sharon E. Webb, Esquire
Daniel G. Asmus, Esquire
Office of Small Business Advocate
555 Walnut Street
1st Floor, Forum Place
Harrisburg, PA 17101-1923

John W. Sweet, Esquire
Elizabeth R. Marx, Esquire
Ria M. Pereira, Esquire
Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101

Todd S. Stewart, Esquire
Hawke McKeon & Sniscak LLP
100 North 10th Street
Harrisburg, PA 17101

Josie B. H. Pickens, Esquire
Joline R. Price, Esquire
Robert W. Ballenger, Esquire
Community Legal Services, Inc.
1410 West Erie Avenue
Philadelphia, PA 19140

Joseph Otis Minott, Esquire
Ernest Logan Welde, Esquire
Clean Air Council
135 South 19th Street, Suite 300
Philadelphia, PA 19103

Devin McDougall, Esquire
Cassandra R. McCrae, Esquire
Clean Air Council & Sierra Club
1617 John F. Kennedy Blvd., Suite 1130
Philadelphia, PA 19103

Lauren M. Burge, Esquire
Eckert Seamans Cherin & Mellott, LLC
600 Grant Street
44th Floor
Pittsburgh, PA 15219

Kinteshia Scott, Esquire
Community Legal Services
1424 Chestnut Street
Philadelphia, PA 19102

/s/ Laura J. Antinucci

Laura J. Antinucci
Assistant Consumer Advocate
PA Attorney I.D. # 327217
E-Mail: LAntinucci@paoca.org

Christy M. Appleby
Assistant Consumer Advocate
PA Attorney I.D. # 85824
E-Mail: CAAppleby@paoca.org

Darryl A. Lawrence
Senior Assistant Consumer Advocate
PA Attorney I.D. # 93682
E-Mail: DLawrence@paoca.org

Santo G. Spataro
Assistant Consumer Advocate
PA Attorney I.D. # 327494
E-Mail: SSpataro@paoca.org

Counsel for:
Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152
Dated: July 27, 2020
*293070

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**BRIEF OF THE OFFICE OF CONSUMER
ADVOCATE IN SUPPORT OF THE PETITION OF
TURN ET AL. FOR INTERLOCUTORY REVIEW
AND ANSWER TO MATERIAL QUESTION**

Laura J. Antinucci
Assistant Consumer Advocate
PA Attorney I.D. # 327217
E-Mail: LAntinucci@paoca.org

Darryl Lawrence
Senior Assistant Consumer Advocate
PA Attorney I.D. # 93682
E-Mail: DLawrence@paoca.org

Christy M. Appleby
Assistant Consumer Advocate
PA Attorney I.D. # 85824
E-Mail: CAAppleby@paoca.org

Office of Consumer Advocate
555 Walnut Street
5th Floor Forum Place
Harrisburg, PA 17101-1923
(717) 783-5048

Santo G. Spataro
Assistant Consumer Advocate
PA Attorney I.D. # 327494
E-Mail: SSpataro@paoca.org

Dated: July 27, 2020

Counsel for:
Tanya J. McCloskey
Acting Consumer Advocate

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I. INTRODUCTION.

AND NOW COMES the Office of Consumer Advocate (OCA), by and through its attorneys, pursuant to Section 5.302 of the Pennsylvania Public Utility Commission's (Commission) regulations, 52 Pa. Code Section 5.302, hereby files this Brief in Support of the Petition for Interlocutory Review and Answer to Material Question (Petition) filed by Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (TURN or Petitioner) on July 15, 2020. Petitioner avers that the Administrative Law Judges (ALJs) Darlene Heep and Marta Guhl erred in the Order on PGW's Motions In Limine Regarding Testimony on Behalf of OCA and TURN, dated July 8, 2020, which excluded the Direct Testimony of Harry Geller regarding the quality of PGW's customer service to its customers of Limited English Proficiency (LEP) in the context of a general base rate proceeding.¹

The July 8, 2020 Order on PGW's Motions In Limine Regarding Testimony on Behalf of OCA and TURN (July 8th Order)² determined that more than 6 pages of Mr. Geller's Direct Testimony relating to language access needs would be stricken from the testimony in this matter. This testimony evaluates language access needs in PGW's service territory, PGW's lack of policies and practices that meet those needs, and recommendations on how PGW should improve this area of customer service in the future; however, the July 8 Order stated that the Commission lacks requisite authority to act regarding Title VI of the Civil Rights Act of 1964 the Philadelphia Home

¹ In addition to striking Mr. Geller's direct testimony, the ALJs similarly struck portions of the direct testimony of OCA witness Roger Colton regarding language access issues.

² See Order on PGW's Motions In Limine Regarding Testimony on Behalf of OCA and TURN, Docket No. R-2020-3017206 (Order entered July 8, 2020) (July 8th Order).

Rule Charter compliance issues with respect to CRP language access program design,³ and therefore, portions of Petitioner's witness Geller's testimony regarding language access issues were ordered to be excluded.

The testimony regarding language access issues is relevant to Philadelphia Gas Works' (PGW) quality of service which is within the Commission's jurisdiction under 66 Pa C.S. Section 1501 and Section 69.2703(a)(7) of the Commission's Policy Statement regarding PGW ratemaking, and a significant factor that the Presiding Officers and the Commission must address in disposing of this case and arriving at a just and reasonable level of rates. In support of TURN's Petition, the OCA submits as follows:

³ Id. at 6.

II. STATEMENT OF QUESTION PRESENTED.

Does the Order on PGW's Motions In Limine Regarding Testimony on Behalf of OCA and TURN, dated July 8, 2020, err in excluding the Direct Testimony of Harry Geller regarding the quality of PGW's customer service to its customers of Limited English Proficiency in the context of a general base rate proceeding?

Suggested answer in the affirmative.

III. DISCUSSION.

The OCA submits that the testimony of Petitioner's witness Harry Geller regarding how PGW serves LEP customers is both relevant to the PGW's quality of service component of its base rate increase request and, is therefore, under the Commission's jurisdiction. Striking the aforementioned testimony of Petitioner's witness will prevent the Commission from considering relevant testimony related to PGW's customer service which ultimately effects the Commission's final decision on PGW's base rate increase request. This, in turn, would substantially and irreparably prejudice the Petitioner in this base rate proceeding if its Witness' testimony, pertaining to relevant quality of service issues, is stricken from the record in this proceeding.

A. Petitioner's Testimony at Issue Is Relevant to This Base Rate Proceeding and Discusses a Relevant Customer Service Matter Under the Commission's Jurisdiction.

Mr. Geller's direct testimony regarding the local ordinance language access plans and Title VI fall squarely within the rubric of customer service that is within the Commission's jurisdiction and should be assessed in this proceeding. The testimony of Mr. Geller related to PGW's service to LEP customers is directly responsive to PGW's claim of improved customer service satisfaction and improved operations at its customer call centers. Testimony describing customer service to LEP customers is a part of quality of service considerations and falls under the Commission's jurisdiction in a base rate proceeding. The mention of Title VI of the Civil Rights Act of 1964 and the Philadelphia Home Rule Charter in regard to PGW's language access compliance obligations does not remove the relevant LEP customer service issues described in Mr. Geller's direct testimony—including the current language needs of PGW's customers, an examination of PGW's current quality of service provided to LEP customers, and recommendations for PGW's customer service improvements in the future—from the Commission's jurisdiction.

Under 66 Pa C.S. Section 1501,⁴ every public utility shall provide adequate and reasonable service and make all changes and improvements to such service as necessary or proper for the accommodation and convenience of its patrons and the public. Section 69.2703(a)(7) of the Commission’s Policy Statement regarding PGW ratemaking, identifies the importance of quality of service issues in assessing PGW’s rate request. Quality of service is always reviewed in a base rate case and ultimately has some bearing on the amount of the rate increase eventually granted.⁵ Further, in the context of a base rate case, the development of a language needs assessment and a written policy statement regarding LEP customers were considered to enable a utility “to ensure that the quality of service to LEP households across its service territory is adequate.”⁶

In the PECO – Electric 2018 Base Rate Proceeding Settlement, the Commission recognized the development of a written policy regarding service to customers with LEP was one of several significant resolutions for residential and low-income customers.⁷ The Recommended Decision adopted by the Commission in the PECO – Electric proceeding stated, “[b]y conducting a language needs assessment and drafting a written policy statement regarding LEP [Limited English Proficiency] customers, PECO will be able to ensure that the quality of service to LEP households across its service territory is adequate.”⁸

⁴ “Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public...” 66 Pa C.S. Section 1501.

⁵ See PA P.U.C. et al. v. Pennsylvania Gas and Water Company, Docket No. R-00922482 et al., 1993 Pa. PUC LEXIS 61 at *23 (Opinion and Order entered. June 23, 1993).

⁶ See PA P.U.C. v. PECO – Electric, Docket No. R-2020-3000164 (Recommended Decision entered Oct. 18, 2018) at 57-58.

⁷ Id. (Opinion and Order) at 29-30.

⁸ Id. (Recommended Decision) at 57-58.

TURN witness Mr. Geller's testimony goes directly to quality of service and to the importance of the local ordinance given to the local citizenry, and the need to assure that all customers can receive necessary information in their language. PGW's quality of service to all of its customers, including the LEP customers, is a component of a general base rate proceeding that is well under the Commission's jurisdiction and the OCA submits that Mr. Geller's testimony examining such quality of service should not have been struck from the recording this proceeding.

B. Granting TURN's Petition for Interlocutory Review and Answer to Material Question Will Prevent Substantial Prejudice.

The OCA submits that there will be substantial and irreparable prejudice if Mr. Geller's relevant testimony remains erroneously stricken from record in this proceeding and, thus, prevented from being presented before the Commission to be considered in its final decision on the justness and reasonableness of PGW's base rate increase request.

The standard for interlocutory review of a material question, as set forth in the Commission's regulations at 52 Pa. Code Section 5.302(a), requires that the petitioning party "state ... the compelling reasons why interlocutory review will prevent substantial prejudice or expedite the conduct of the proceeding." To determine if substantial prejudice would be prevented, the Commission shall consider whether the alleged error, and resulting prejudice, could not be cured during the normal Commission review process.⁹

The need to have understandable information conveyed to consumers is an important issue when considering the quality of service provided by PGW. As stated in TURN's Petition, Mr.

⁹ See Petitions of Interlocutory Review and Answer to Material Question of Citizen's Power, Inc. and Energy Cooperation Association of Pennsylvania, Docket No. P-00021980, 2003 Pa. PUC LEXIS 43 at *4 (Opinion and Order entered Aug. 7, 2003).

Geller’s testimony is responsive to PGW’s assertions in its base rate increase filing of improved customer service.¹⁰ TURN further asserts that, in his direct testimony, Mr. Geller testifies that, “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.”¹¹ If PGW is not providing information about critical programs to a significant portion of its consumers in an understandable manner, this goes to PGW’s quality of service. If Mr. Geller’s testimony is struck from the record, there will be irreparable prejudice as this material and relevant testimony regarding quality of service will not go before the Commission for its final determination of just and reasonable rates in this proceeding. Therefore, TURN witness Geller’s testimony, as filed, is material, relevant, and needs to be included to guarantee the Commission has a full and complete record upon which to render its decision.

¹⁰ See Petition at 2-3.

¹¹ Id.

IV. CONCLUSION.

For the reasons discussed herein, Mr. Geller's testimony is material, relevant, and needs to be included so the Commission has a full and complete record upon which to render its decision in this matter. Accordingly, the Office of Consumer Advocate respectfully requests that the Commission grant the Petition of TURN for Interlocutory Review of a Material Question regarding the testimony of Mr. Geller stricken in the July 8th Order.

Respectfully submitted,

/s/ Laura J. Antinucci

Laura J. Antinucci
Assistant Consumer Advocate
PA Attorney I.D. # 327217
E-Mail: LAntinucci@paoca.org

Darryl Lawrence
Senior Assistant Consumer Advocate
PA Attorney I.D. # 93682
E-Mail: DLawrence@paoca.org

Christy M. Appleby
Assistant Consumer Advocate
PA Attorney I.D. # 85824
E-Mail: CAAppleby@paoca.org

Santo G. Spataro
Assistant Consumer Advocate
PA Attorney I.D. # 327494
E-Mail: SSpataro@paoca.org

Counsel for:
Tanya J. McCloskey
Acting Consumer Advocate

Office of Consumer Advocate
555 Walnut Street
5th Floor Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
DATED: July 27, 2020
#292678