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Via Electronic Filing

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

Re: PA Pennsylvania Public Utility Commission et al., v. Philadelphia Gas Works –
Docket No. R-2020-3017206

Dear Secretary Chiavetta:

Enclosed for electronic filing please find Philadelphia Gas Works' ("PGW") Brief In Opposition to the Petition of the Tenant Union Representative Network and Action Alliance of Senior Citizen of Greater Philadelphia For Interlocutory Review and Answer to Material Question in the above referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,

Lauren M. Burge

Lauren M. Burge

LMB/lww

cc: Hon. Marta Guhl w/enc. (via email only)
Hon. Darlene Heep w/enc. (via email only)
Cert. of Service w/enc. (via email only)
Graciela Christlieb w/enc. (via email only)

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of the PGW's Brief In Opposition to TURN, et al's Petition For Interlocutory Review and Answer to Material Question upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

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Dated: July 27, 2020

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Lauren M. Burge, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PENNSYLVANIA PUBLIC UTILITY :
COMMISSION :
 : Docket No. R-2020-3017206
 v. :
 :
 PHILADELPHIA GAS WORKS :

**BRIEF OF PHILADELPHIA GAS WORKS IN OPPOSITION TO
THE PETITION OF THE TENANT UNION REPRESENTATIVE NETWORK AND
ACTION ALLIANCE OF SENIOR CITIZEN OF GREATER PHILADELPHIA FOR
INTERLOCUTORY REVIEW AND ANSWER TO MATERIAL QUESTION**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Pursuant to 52 Pa. Code § 5.302(b), Philadelphia Gas Works (“PGW” or “Company”) files this Brief in opposition to the Petition for Interlocutory Review and Answer to Material Question (“Petition”) filed by the Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (“TURN *et al.*”) on July 15, 2020. Through the Petition, TURN *et al.* seeks interlocutory review of and answer to material question regarding the Order on PGW’s Motions *In Limine* Regarding Testimony on behalf of OCA and TURN issued by Administrative Law Judges (“ALJs”) Marta Guhl and Darlene Heep on July 8, 2020. The Order excluded portions of the direct testimony of TURN *et al.* witness Harry Geller and Office of Consumer Advocate (“OCA”) witness Roger Colton recommending that the Pennsylvania Public Utility Commission (“Commission” or “PUC”) require PGW to comply with federal and local laws regarding customers with Limited English Proficiency (“LEP”).

PGW respectfully requests that the TURN *et al.* Petition be denied and the material question be answered in the negative. The ALJs properly excluded the testimony on requiring

compliance with laws associated with LEP customers given that the issues raised are outside the Commission's jurisdiction and not appropriately considered as part of this base rate proceeding. Additionally, the Petition does not meet the requirements for Interlocutory Review. Therefore, the Commission should deny the Petition and the July 8, 2020 Order should remain intact.

I. BACKGROUND

On February 28, 2020, PGW filed Supplement No. 128 to PGW's Gas Service Tariff – PA. P.U.C. No. 2 (Supplement No. 128) 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.

By Order entered April 16, 2020 ("Suspension Order"), the Commission instituted an investigation into the lawfulness, justness, and reasonableness of the proposed rate increase. Pursuant to Section 1308(d) of the Public Utility Code, 66 Pa. C.S. § 1308(d), Supplement No. 128 and Supplement No. 85 were suspended by operation of law until November 28, 2020, unless permitted by Commission Order to become effective at an earlier date.¹ The matter was assigned to the Office of Administrative Law Judge for the prompt scheduling of hearings culminating in the issuance of a Recommended Decision.

A telephonic prehearing conference was held on May 5, 2020, which resulted in the issuance of a Corrected Prehearing Order dated May 15, 2020. Pursuant to the May 15, 2020 Corrected Prehearing Order, other parties' direct testimony was served on June 15, 2020. Rebuttal testimony was served on July 13, 2020, and surrebuttal testimony was served on July 24, 2020. Hearings are currently scheduled for July 29-30, 2020.

¹ PGW later agreed to voluntarily extend the end of the suspension period to December 4, 2020. *See Corrected Prehearing Order*, at 2 (May 15, 2020).

On June 15, 2020, TURN *et al.* served the Direct Testimony of Harry Geller, TURN *et al.* Statement No. 1. Also on June 15, 2020, OCA served the Direct Testimony of Roger Colton, OCA Statement No. 5. Each of these testimonies proposed changes related to PGW’s practices for working with LEP customers, claiming that the PUC should direct PGW to comply with the requirements established in the Philadelphia Home Rule Charter and Title VI of the Civil Rights Act of 1964 (“Title VI”).²

On June 25, 2020, PGW filed Motions *in Limine* seeking, in part, to exclude the LEP sections of the TURN *et al.* and OCA testimonies. On June 30, 2020, Answers to PGW’s Motions *in Limine* were filed by TURN *et al.*, OCA, and the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”). On July 8, 2020, the ALJs issued an Order on PGW’s Motions *in Limine*. The Order excluded portions of the direct testimony of TURN *et al.* witness Geller and OCA witness Colton regarding LEP customers. On July 15, 2020, TURN *et al.* filed its Petition seeking interlocutory review of the July 8, 2020 Order and answer to a material question regarding the exclusion of Mr. Geller’s testimony on LEP customers. As part of its Petition, TURN *et al.* seeks an answer to the following material question:

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?³

PGW now files this brief in opposition to the TURN *et al.* Petition. For the reasons discussed below, the testimony was properly excluded due to a lack of Commission jurisdiction to decide the issues raised and because LEP issues are outside the scope of this base rate

² 46 U.S.C. § 2000d.

³ Petition at 1.

proceeding. Further, the Petition does not meet the requirements for interlocutory review. Therefore, the Petition must be denied and the material question must be answered in the negative.

II. ARGUMENT

A. Applicable Legal Standards

The standards for interlocutory review are well established and stringent. “The pertinent consideration is whether interlocutory review is necessary in order to prevent substantial prejudice – that is the, the error and any prejudice flowing therefrom could not be satisfactorily cured during the normal Commission review process.” *Evans v. FirstEnergy Solutions Corporation*, Docket No. P-2014-2421556 (Order entered January 26, 2015), at 6; *Joint Application of Bell Atlantic Corp. and GTE Corp.*, Docket No. A-310200F0002 (Order entered June 14, 1999). The correctness of the ALJs’ ruling is not a determinative issue when the Commission sets out to examine whether a petitioner has fulfilled the regulatory requirements for interlocutory review and answer to a material question. *See Saucon Creek Assoc., Inc. v Borough of Hellertown*, 69 Pa. P.U.C. 467 (1989).

B. The July 8, 2020 Order Properly Excluded Testimony

The portions of TURN *et al.*’s testimony that were excluded by the July 8, 2020 Order raised issues with PGW’s accommodations for LEP customers. It did not simply argue that PGW’s rate request was unreasonable because of its accommodations for LEP customers. It argued that the PUC should require PGW to comply with Title VI of the Civil Rights Act of 1964⁴ as an entity that receives federal grants, and due to recent changes in the Philadelphia Home Rule Charter requiring “City agencies” to meet these and other requirements. This

⁴ 46 U.S.C. § 2000d.

testimony asking the PUC to require PGW to comply with language access issues claimed to be imposed by federal and local law are plainly outside the Commission's jurisdiction and thus were properly excluded from consideration in this proceeding.

As a creation of the General Assembly, the Commission has only the powers and authority granted to it by the General Assembly and contained in the Public Utility Code.⁵ The Commission must act within, and cannot exceed, its jurisdiction.⁶ Jurisdiction may not be conferred by the parties where none exists.⁷ Subject matter jurisdiction is a prerequisite to the exercise of power to decide a controversy.⁸

Obviously, the Commission does not have jurisdiction to enforce the Civil Rights Act of 1964 or Philadelphia Home Rule Charter. Certainly, the Commission does not have jurisdiction to evaluate PGW's compliance with the Philadelphia Home Rule Charter or Title VI. The Commission also lacks jurisdiction to order PGW to make a filing with the Philadelphia Office of Immigrant Affairs, as the excluded TURN *et al.* testimony would have required. Further, Title VI or other requirements included in the amendment to the Philadelphia Home Rule Charter do not even apply to PGW since it is not a City agency.

⁵ See *City of Phila. v. Phila. Elec. Co.*, 473 A.2d 997, 999-1000 (Pa. 1984) ("We begin our inquiry by recognizing that the authority of the Commission must arise from the express words of the pertinent statutes or by strong and necessary implication therefrom...It is axiomatic that the Commission's power is statutory; and the legislative grant of power in any particular case must be clear."); see also *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).

⁶ *City of Pittsburgh v. PUC*, 43 A.2d 348 (Pa.Super. 1945).

⁷ *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967).

⁸ *Hughes v. Pennsylvania State Police*, 619 A.2d 390 (Pa.Cmwlth. 1992), appeal denied, 637 A.2d 293 (Pa. 1993).

In the July 8, 2020 Order, the ALJs correctly found that “a base rate matter is not the appropriate proceeding to consider language access considerations. . . 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.”⁹ Since the Commission lacks jurisdiction over these issues, the TURN *et al.* testimony regarding language access was properly excluded from admission to this proceeding and disregarded in the disposition of this proceeding.

In support of its Petition, TURN *et al.* argues that Mr. Geller’s testimony only makes one statement regarding Title VI and the Philadelphia Home Rule Charter and that it was inappropriate for a section of the testimony to be excluded based on that statement.¹⁰ However, the recommendations made throughout the excluded portion of the TURN *et al.* testimony is based on the assumption that PGW must comply with Title VI and the Philadelphia Home Rule Charter. This testimony was correctly excluded because it is outside the Commission’s jurisdiction to apply these laws and, further, these issues are outside the scope of this base rate proceeding and are not appropriately addressed here. Therefore, the material question should be answered in the negative since the ALJs did not err in excluding this testimony, and the July 8, 2020 Order should remain intact.

C. The Petition Does Not Meet the Requirements for Interlocutory Review

When the Commission considers a Petition for Interlocutory Review, the relevant question is “whether interlocutory review is necessary in order to prevent substantial prejudice – that is the, the error and any prejudice flowing therefrom could not be satisfactorily cured during

⁹ Order at 6.

¹⁰ Petition at 2.

the normal Commission review process.”¹¹ The TURN *et al.* Petition does not meet this standard. As established above, the Commission does not have jurisdiction to determine PGW’s compliance with or to enforce Title VI or the Philadelphia Home Rule Charter. The parties, the ALJs and the Commission should not be required to waste resources addressing an issue that the Commission ultimately lacks jurisdiction to decide.

Additionally, PGW’s current practices for accommodating LEP customers already go above and beyond the regulatory requirements that do apply to PGW (unlike Title VI and the Home Rule Charter) and meet the needs of the overwhelming majority of LEP customers. The Commission’s regulations require that termination notices include information in Spanish providing phone numbers to call for information and translation assistance, and that similar information be provided in other languages when census data shows that 5% or more of the residents in the utility’s service territory are using a particular language.¹² PGW’s termination notices are provided in English and Spanish to comply with this requirement, as Spanish is the only other language spoken by more than 5% of people in PGW’s service territory. PGW also complies with the requirement that utilities with a substantial number of Spanish-speaking customers provide billing information in both English and Spanish.¹³ PGW has gone above these requirements by providing a variety of other documents in Spanish, including LIHEAP and Crisis outreach letters, Customer Responsibility Program (“CRP”) Recertification letters, and collection agency referral notices. Additionally, PGW provides CRP brochures, UESF flyers, and LIHEAP and Crisis flyers in Spanish as well as Chinese and French. PGW also offers

¹¹ *Evans v. FirstEnergy Solutions Corporation*, Docket No. P-2014-2421556 (Order entered January 26, 2015), at 6; *Joint Application of Bell Atlantic Corp. and GTE Corp.*, Docket No. A-310200F0002 (Order entered June 14, 1999).

¹² 52 Pa. Code §§ 56.91(b)(17), 56.331(b)(13).

¹³ 52 Pa. Code § 56.201(b).

Language Line services which provide translation services for callers and visitors to its District Offices. PGW's efforts in this regard plainly satisfy PUC requirements; if they did not, *TURN et al.* undoubtedly would have pointed that out. *TURN et al.* is not satisfied with PUC requirements in this regard, but, rather than petition the Commission to consider enhancements that factor in these other mandates, it has decided to inject this issue into the middle of a base rate case.

Therefore, *TURN et al.* will not be substantially prejudiced if interlocutory review is not granted at this time. It has already been appropriately determined that the Commission lacks jurisdiction over the issues raised by *TURN et al.* in witness Geller's testimony, and that a base rate proceeding is not the correct forum to address these issues. Further, PGW's already provides language access services that are above and beyond the relevant requirements. As such, *TURN et al.* will not be substantially prejudiced and the Petition must be denied.

III. CONCLUSION

For the foregoing reasons, the ALJs properly excluded the testimony on LEP customers, and the Petition does not meet the requirements for Interlocutory Review. Therefore, PGW respectfully requests that the Commission deny the Petition for Interlocutory Review filed by TURN *et al.* and leave the July 8, 2020 Order intact, and answer the Material Question in the negative.

Respectfully submitted,

/s/ Lauren M. Burge

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