**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 ADMITTING**

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

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.

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). Both motions concerned testimony regarding language access issues and the Philadelphia Home Rule Charter (PHRC) and Title VI of the Civil Rights Act of 1964 (Title VI).

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.

On July 8, 2020, an order was issued granting PGW’s Motions *in Limine* with respect to the OCA and TURN testimony regarding language access issues and the Philadelphia Home Rule Charter (PHRC) and Title VI of the Civil Rights Act of 1964 (Title VI).

On July 15, 2020, and July 21, 2020, TURN *et al*., and the OCA, respectively, filed their Petitions for Interlocutory Review and Answer to Material Questions for consideration by the Commission. The material question presented by TURN and OCA was as follows:

Whether the ALJs’ evidentiary ruling, dated July 8, 2020, erred as a matter of law, by granting PGW’s Motions *In Limine* to exclude portions of the Direct Testimony of TURN *et al*. witness Harry Geller and OCA Witness Roger Colton, on the basis that language access considerations are not within the scope of the Commission’s jurisdiction and therefore not relevant to PGW’s quality of service in the context of PGW’s general base rate proceeding?

Petitioners and CAUSE-PA filed Briefs in Support of the Petitions of the OCA and TURN, *et al.*, on July 27, 2020. On that same date, PGW filed a Brief in Opposition to the Petitions.

On August 6, 2020, the Commission granted the Petitions for Interlocutory Review filed by TURN and OCA and issued an Opinion and Order, stating as follows:

Accordingly, we find the direct testimony at issue, offered by the witnesses of the OCA and TURN *et al*, to be relevant evidence, and its exclusion to be reversable legal error. We note that our determination is limited to the finding that the evidence is relevant and must be admitted. We make no determination as to the weight the ALJs are to ascribe to the evidence.

Further, we expressly agree with the ALJs and PGW to the extent that we concur that the Commission has *no jurisdiction* to decide whether the service provided by PGW would be in violation of the PHRC or Title VI, and the ALJs are not to decide that question on the remand.

The matter was returned to the presiding Administrative Law Judges for further proceedings consistent with the Opinion and Order.

THEREFORE

IT IS ORDERED:

1. That the following testimony in OCA Statement No. 5, the Direct Testimony of Rodger D. Colton, is admitted into the record:
   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.
2. That the following testimony in TURN, et al. Statement No. 1, the Direct Testimony of Harry Gellar, is admitted into the record:
   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.
3. That the testimony will be considered for the purposes expressly stated in the Commission’s Opinion and Order dated August 6, 2020.
4. That TURN, *et al.* file their amended Statement No. 1, the Direct Testimony of Harry Gellar, to the Secretary’s Bureau by August 17, 2020.
5. That OCA file their amended Statement No. 5, the Direct Testimony of Rodger D. Colton, to the Secretary’s Bureau by August 17, 2020.

Date: August 10, 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**

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