

COMMONWEALTH OF PENNSYLVANIA



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March 19, 2010

James J. McNulty
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-2009-2139884

Philadelphia Gas Works' Revised Petition
for Approval of Energy Conservation and
Demand Side Management Plan
Docket No. P-2009-2097639

Dear Secretary McNulty:

Enclosed for filing is the Brief of the Office of Consumer Advocate in Response to the Joint Petition for Interlocutory Review of a Material Question and Approval of a Partial Settlement, in the above-referenced proceeding.

Copies have been served as indicated on the Certificate of Service.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Christy M. Appleby".

Christy M. Appleby
Assistant Consumer Advocate
PA Attorney I.D. # 85824

Enclosures

cc: Honorable Charles E. Rainey, Jr.

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	:		
	:		
v.	:	Docket No.	R-2009-2139884
	:		
Philadelphia Gas Works	:		
	:		
Philadelphia Gas Works' Revised Petition	:		
For Approval of Energy Conservation and	:		P-2009-2097639
Demand Side Management	:		

BRIEF OF THE OFFICE OF CONSUMER ADVOCATE IN RESPONSE
TO THE JOINT PETITION FOR INTERLOCUTORY REVIEW OF A
MATERIAL QUESTION AND APPROVAL OF A PARTIAL
SETTLEMENT OF PHILADELPHIA GAS WORKS AND
THE CLEAN AIR COUNCIL

I. INTRODUCTION

Pursuant to 52 Pa. Code Sections 5.231 and 5.302(a), on March 9, 2010, Philadelphia Gas Works (PGW or Company) and the Clean Air Council (CAC) (collectively, Petitioners) filed a Joint Petition for Interlocutory Review of a Material Question and Approval of a Partial Settlement (Petition) and a Joint Motion for Partial Summary Judgment to Approve Settlement for Expedited Implementation of Residential Demand Side Management (DSM) Programs (Motion). PGW and Clean Air Council request early implementation of PGW's proposed Enhanced Low-Income Retrofit (LI Retrofit) Program and the Comprehensive Residential Heating Retrofit Program (collectively, the Residential DSM Programs). Petition at 1. The material question posed by the Petitioners is:

Should the Commission approve the Settlement to permit PGW to implement the Residential DSM Programs proposed in PGW's Five-Year Gas Demand-Side Management ("DSM") Plan pending further review in the rate case and in the detailed implementation process to enable low-income and other residential customers to begin receiving the benefits of reduced and more efficient energy usage as soon as possible before the next winter heating season, and to maximize the reduction of the CRP subsidy paid by non-low income firm service customers?

Petition at 2. The Office of Consumer Advocate (OCA) submits that the Petitioners' request should be denied. If the question is to be answered, the OCA submits that the question should be answered in the negative in that PGW should not be allowed to implement its residential DSM programs before other parties have had an opportunity to be heard on the merits of the programs and the Commission is able to consider all of the evidence in rendering its decision.

The Petitioners have provided no compelling reasons in support of the Petition for Interlocutory Review. Nor have the Petitioners identified any substantial prejudice that will be prevented by Commission action on the Petition. On the contrary, the proposal to accelerate the Residential DSM Programs before reasonable consideration by the parties and the Administrative Law Judge could work substantial prejudice to all other parties who are reviewing PGW's DSM Plan and preparing testimony regarding the Plan. Such an action could also be wasteful of limited ratepayer resources and funds if the Commission determines later that modifications must be made, thus requiring additional spending to implement needed changes.

At the outset, the OCA would note that it is not opposed to PGW's proposal to implement energy efficiency and conservation programs that are reasonable, prudent and cost-effective. The OCA intends to file testimony on March 26, 2010 regarding PGW's proposal and in its testimony, the OCA will analyze the programs and make specific recommendations regarding the DSM Plan as a whole. The OCA submits that the schedule now provided for will

result in a decision by the Commission on a timely basis, after which PGW can begin to implement any DSM Plan that has been approved. PGW should not be permitted to go forward with a portion of its DSM Plan before the testimony and the positions of the other parties are presented and considered. Additionally, the Commission will be conducting public input hearings in early April where PGW's customers may wish to present their own views on these issues. When this record is developed, and the matter presented to the ALJ, the ALJ and the Commission will be able to consider PGW's DSM Plan. The OCA submits, however, that PGW's request to push forward on an accelerated basis and to spend ratepayer dollars on these programs before the necessary review process is complete must be denied.¹

II. BACKGROUND/PROCEDURAL HISTORY

On December 18, 2009, PGW filed this base rate proceeding in compliance with the Commission's directive in Pa. PUC v. Philadelphia Gas Works, Docket No. R-2008-2073938, PGW's 2008 request for extraordinary rate relief. PGW included with its base rate filing a Motion to Consolidate the Company's Five Year Gas DSM Plan that had been previously filed and docketed at P-2009-2097639. PGW specifically stated in its Motion to Consolidate that this was in order to allow the parties the opportunity to use the nine month base rate procedural schedule to address the issues presented by PGW's DSM Plan. PGW stated:

Consolidating the review DSM Plan proceeding with PGW's base rate filing addresses the concerns expressed by OTS, OCA and OSBA with an expedited litigation process to address the rate and other issues raised by the revised DSM Plan. The nine month deadline for disposition of PGW's base rate case will provide more time, as the statutory advocates requested, to address the DSM Plan issues included in the base rate filing.

¹ The OCA is also filing this day an Answer to the Joint Petitioner's Motion for Partial Summary Judgment that accompanied the Petition for Interlocutory Review. The OCA's Answer includes the Affidavit of its witness, Dr. David Nichols, and sets forth the OCA's reasons why the request for partial summary judgment must be denied. The OCA would request that, given PGW's presentation of the Motion for Partial Summary Judgment with its Petition for Interlocutory Review, that the Commission consider the OCA's Answer and Affidavit.

PGW Motion to Consolidate at ¶ 10. The OCA did not object to PGW's Motion to Consolidate so that the issues regarding the DSM Plan could move to hearings and final resolution. On February 11, 2010, the Motion to Consolidate was granted by the Commission, wherein the Commission stated that it was consolidating the two filings for purposes of hearings before an ALJ and a Recommended Decision. Feb. 11 Order at 2.

Now, despite stating its intent to allow the parties time to address the DSM Plan issues in the base rate filing, PGW has taken the extreme step of entering a partial settlement with a single party to seek expedited implementation and approval of a portion of its DSM Plan. PGW has sought to end review and analysis by other parties of the residential DSM Plan offerings and asked the Commission to review a partial settlement, through a summary judgment motion, without any record support other than the Company's own untested filing. The OCA submits that the Commission should deny PGW's request and allow for the presentation of evidence before the ALJ on all issues regarding PGW's proposed DSM Plan.

III. ARGUMENT

A. Introduction

The Commission's regulations set out the standard for consideration of a Petition for Interlocutory Review. The regulations, in relevant part, provide as follows:

During the course of a proceeding, a participant may file a timely petition directed to the Commission requesting review and answer to a material question which has arisen or is likely to arise. The petition shall be in writing with copies served on all participants and the presiding officer and shall state, in not more than three pages, the question to be answered and the *compelling reasons* why interlocutory review will prevent *substantial prejudice* or expedite the conduct of the proceeding.

52 Pa. Code § 5.302 (emphasis added). In the Wynnewood case, the Commission stated "we do not routinely grant interlocutory review except upon a showing by a petitioner of extraordinary

circumstances or compelling reasons.” Pa.P:UC. v. Wynnewood Sewer Corp., Docket No. R-00963708, Order at 5 (December 6, 1996). As discussed below, the Petitioners have failed to make this necessary showing.

B. The Petition Fails to Provide any Extraordinary Circumstances or Compelling Reasons Why the Commission Should Decide this Issue on Less Than A Complete Record

In the Petition for Interlocutory Review, PGW argues that the residential DSM programs should be approved for expedited implementation because it would be beneficial to begin to offer these programs to customers several months sooner rather than what would occur under the base rate case schedule. The OCA submits that PGW’s argument is not a compelling or extraordinary reason for the Commission to consider a partial settlement between two parties to a proceeding before all other parties, including the representatives of the customers being asked to pay for these programs, have had an opportunity to present testimony and make recommendations.

The OCA does not oppose PGW’s proposal to offer a comprehensive suite of energy efficiency and conservation programs that are reasonable, prudent, and cost-effective. The OCA is in the process of conducting its review and analysis of these programs, and its witness is preparing testimony with recommendations regarding the programs. Issues that are likely to be addressed by the OCA or other parties include, but are not necessarily limited to: how much PGW should be authorized to spend on the programs overall, including in the initial year; how the programs should be deployed and what the appropriate pace of deployment may be; whether programs are available to all customers and customer classes; and, whether any

program modifications are needed.² The OCA's analysis has been on-going and the OCA intends to file its direct testimony on March 26, 2010 in accordance with the procedural schedule established by the Administrative Law Judge for these matters.

While the OCA will be providing testimony on March 26, 2010, in order to respond to PGW's Motion for Partial Summary Judgment, the OCA requested its witness to take time away from his testimony preparation to highlight some concerns with the request for early deployment. The Affidavit of Dr. Nichols, attached to the OCA's Answer to the Motion for Partial Summary Judgment, highlights some of these preliminary concerns. Specifically, Dr. Nichols is concerned that: (1) early implementation may impact the level of anticipated savings due to issues with marketing a program that requires a customer contribution; (2) the market vendor infrastructure in the region has not yet been shown to be adequate to support the early deployment; (3) design issues related to PGW's proposal to target certain customers for the new Comprehensive Residential Heating Retrofit Program (CRHRP) need to be addressed; (4) the proposal to install compact fluorescent lamps (CFLs) in participating homes to save electricity, and not gas, has not been shown to be coordinated with the electric utility in the service territory that is deploying the same measure; and (5) the early implementation of these two programs has not been shown to be the most cost-beneficial deployment strategy. See, Affidavit of Dr. Nichols at pgs. 3-4.

The Company attempts to suggest in its Petition that early approval of the residential DSM programs would not negatively impact the other parties' rights to address certain issues such as changes to program measures, detailed implementation plans, and allocation and cost recovery issues. The Company's arguments, however, ring hollow. Once

² The OCA's Answer to the Motion for Partial Summary Judgment and the accompanying Affidavit of Dr. David Nichols, provide additional discussion of the issues that the OCA is analyzing in its review of the proposed DSM Plan.

the Company begins to implement the programs as they propose, it may be difficult, and perhaps costly, to go back and make necessary modifications to the programs or to the deployment schedules to address issues raised by other parties. Decisions may be made on the programs, or contracts entered, that PGW will not be able to change. Segmenting one aspect of the DSM Plan, which may later need to be changed if the record evidence shows that adjustments are needed, would be wasteful and disruptive of the full DSM deployment plan. Rather than providing benefits sooner to customers as PGW argues, the accelerated deployment without full review could result in additional costs as adjustments may be needed.

PGW's suggestion that cost recovery issues could be addressed at some later time also completely ignores the fact that PGW is a cash flow utility.³ PGW's proposal to spend ratepayer dollars on the early implementation puts ratepayers and PGW at considerable risk. For example, if PGW were to spend money on early implementation now, some of which will be recovered from ratepayers and some deferred, only to have the Commission reach a different conclusion later, it will be too late for this cash flow utility. If a refund is required, or if recovery of deferred amounts is denied, there could be financial consequences on a cash flow utility. PGW continually has argued that it must have certain revenues or be in jeopardy with respect to its bond rating. PGW's statements in this Petition that it will bear the risk of early implementation costs is simply inconsistent with all of its other positions regarding its cash flow needs.

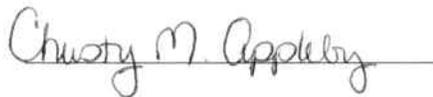
³ PGW's reference to cost recovery refers to its Motion for Partial Summary Judgment at page 7, fn 20, where the Petitioners state that the "lost revenue" recovery issue will be reserved for later in the base rate case. As the OCA discussed in its Answer, however, PGW, through the present Petition and Motion, is seeking authorization now to start charging ratepayers for some of the additional costs it will incur from the proposed early implementation and expansion of its Residential DSM programs, and the ability to defer other costs for collection at a later date. See OCA Answer at 8.

The OCA submits that PGW has not made any demonstration as to why the benefits of expediting the implementation of the residential DSM Program outweigh the potential prejudice to the parties regarding their opportunity to review these programs in the base rate proceeding. Moreover, PGW has made no affirmative showing that any benefits of early implementation outweigh the benefits of having all parties' comments, ideas, and critiques of the proposed plans supplied and considered by the ALJ and by the Commission prior to implementation. PGW's DSM Plan is scheduled to be considered through the base rate process, with a defined end date. The regulatory timeline established for this proceeding provides an orderly process for the consideration of all of the components of the DSM Plan in a timely manner. There is no compelling reason or extraordinary circumstances present that would justify the disruption of this process.

III. CONCLUSION

For the foregoing reasons, the Joint Petition for Interlocutory Review of a Material Question and Approval of a Partial Settlement should be denied. Alternatively, if the Material Question is to be answered, the Office of Consumer Advocate respectfully urges the Commission to return an answer in the negative and to not approve accelerated deployment of a portion of PGW's DSM Plan.

Respectfully Submitted,



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Dated: March 19, 2010
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CERTIFICATE OF SERVICE

Pennsylvania Public Utility Commission	:	
	:	
v.	:	Docket Nos. R-2009-2139884
	:	
Philadelphia Gas Works	:	
	:	
Philadelphia Gas Works' Revised Petition	:	
For Approval of Energy Conservation and	:	P-2009-2097639
Demand Side Management	:	

I hereby certify that I have this day served a true copy of the foregoing document, the Brief of the Office of Consumer Advocate in Opposition to the Joint Petition for Interlocutory Review of a Material Question and Approval of a Partial Settlement, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 19th day of March 2010.

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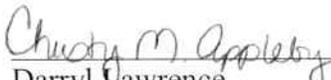
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