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March 19, 2010

VIA ELECTRONIC FILING

James McNulty, Secretary
PA Public Utility Commission
400 North Street, 2nd Fl.
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Pennsylvania Public Utility Commission v. Philadelphia Gas Works,
Docket Nos. R-2009-2139884; P-2009-2097639

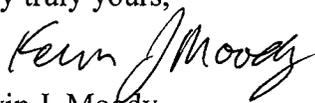
**Joint Petition For Interlocutory Review Of A Material Question And Approval
Of Partial Settlement**

Dear Secretary McNulty:

On behalf of Philadelphia Gas Works, enclosed is its Brief in Support of Interlocutory Review and Affirmative Answer to Material Question and Approval of Partial Settlement for filing in the above-referenced matter.

Copies of the brief have been served upon the parties in accordance with the attached Certificate of Service.

Very truly yours,



Kevin J. Moody

KJM/jls
Enclosure

cc: Chairman, James H. Cawley (w/enc)
Vice Chairman, Tyrone J. Christy (w/enc)
Hon. Robert F. Powelson (w/enc)
Hon. Wayne E. Gardner (w/enc)
Bohdan R. Pankiw (w/enc)
Cheryl Walker Davis, Esq. (w/enc)
Hon. Charles E. Rainey, Jr. (w/enc)
Certificate of Service (w/enc)

CERTIFICATE OF SERVICE

I hereby certify that I have this day served two true and correct copies of PGW's Brief in Support of Interlocutory Review and Affirmative Answer to Material Question and Approval of Partial Settlement upon the participants listed below in accordance with the requirements of § 1.54 (relating to service by a participant):

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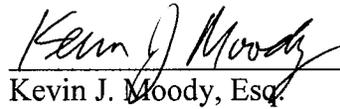
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Dated: March 19, 2010

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PENNSYLVANIA PUBLIC UTILITY COMMISSION	:	
	:	
	:	
v.	:	Docket No. P-2009-2097639
	:	
PHILADELPHIA GAS WORKS	:	
	:	
PENNSYLVANIA PUBLIC UTILITY COMMISSION	:	
	:	
	:	
v.	:	Docket No. R-2009-2139884
	:	
PHILADELPHIA GAS WORKS	:	

**PHILADELPHIA GAS WORKS'
BRIEF IN SUPPORT OF INTERLOCUTORY REVIEW
AND AFFIRMATIVE ANSWER TO MATERIAL QUESTION
AND APPROVAL OF PARTIAL SETTLEMENT**

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Petition of PECO Energy Company for Approval of its Act 129 Energy Efficiency and Conservation Plan and Expedited Approval of its Compact Fluorescent Lamp Program (“PECO CFL Program”), M-2009-2093215, Order entered August 18, 2009 13

I. MATERIAL QUESTION AND SUGGESTED ANSWER

Philadelphia Gas Works (“PGW” or “Company”) and the Clean Air Council (“CAC”) entered into a Stipulation and Partial Settlement (“Settlement”) for expedited implementation of two energy efficiency and conservation programs directed to residential customers proposed by PGW. Pursuant to 52 Pa. Code § 5.302(b), PGW submits this brief in support of the Joint Petition For Interlocutory Review Of A Material Question And Approval Of Partial Settlement (“Joint Petition”) filed and served March 9, 2010. The Joint Petition of PGW and CAC asks the Commission to answer the following material question:

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?

PGW suggests that the only reasonable answer to the question is: Yes.

II. INTRODUCTION

The material question should be answered in the affirmative because there can be no reasonable dispute that these two DSM programs – the Enhanced Low-Income Retrofit (“LI Retrofit”) Program and the Comprehensive Residential Heating Retrofit Program (“CRHRP”) (collectively, “Residential DSM Programs”), which both target “high usage” residential customers – are cost-effective and will save all firm service customers money. The proposed residential conservation programs would provide a free energy audit and then a comprehensive set of proven energy efficiency measures to each participant, including comprehensive weatherization (door sweeps, weather stripping, etc.), added insulation, heating and water

heating system improvements or replacement, and conservation education. These measures would be provided free of charge to low income customers presently enrolled in PGW's Customer Responsibility Program ("CRP") (the Company's "CAP" program) and on a subsidized "2 year payback" basis for non-low income residential customers. Both programs include giving out up to ten compact fluorescent bulbs ("CFLs") to participants to permit them reduced electric usage. PGW is working to coordinate implementation with other utilities and is continuing to try to obtain local, state or federal grants, and any such funding or support will be used to supplement these efforts.

The programs were designed by leading conservation and energy efficiency experts¹ and essentially expand PGW's present Conservation Works Program ("CWP") – with similar results. The Residential DSM Programs are calculated to have benefit/cost ratios ("B/C Ratios") of 1.69 (LI Retrofit) and 1.74 (CRHRP). Individually, low-income residential customers who are on CRP (and who pay a percentage of their income rather than their full bill) will save money directly through lower electricity usage from replacing inefficient incandescent light bulbs with CFLs. All other firm service customers will save money by reducing CRP customer usage, and,

¹ PGW's DSM experts are John J. Plunkett and Paul Chernick. Mr. Plunkett is an economist with 28 years of experience in energy utility planning, specializing in energy efficiency as a resource and as an investment strategy for energy service providers. He has played key advisory and negotiating roles on all aspects of electric and gas utility DSM, including residential, industrial, and commercial program design, implementation, oversight, performance incentives, and monitoring and evaluation planning. Mr. Plunkett is also a seasoned expert witness providing testimony to regulators in Vermont, Florida, Maine, Indiana, Maryland, New Jersey, New York, Pennsylvania, British Columbia, and Quebec. *See*, <http://www.greenenergyeconomics.com/company/partners.html>. Mr. Chernick has 29 years of experience in utility planning and regulation. He has advised clients on a wide range of issues, including: restructuring policy; market price forecasts; market valuation; stranded cost and divestiture of generation assets; planning and ratemaking for central supply; energy efficiency and distributed resources; cost allocation and rate design; and environmental externalities. Mr. Chernick has testified in more than 225 regulatory and court proceedings and has performed a wide variety of studies for public agencies, nonprofit organizations and corporations. *See*, <http://resourceinsight.com/> (select "Our Staff").

in turn, the subsidy borne by all other customers through the CRP.² The economic benefits of the CRHRP (*i.e.*, for non-low income customers), which extends the LI Retrofit Program efficiency measures to residential customers who are not enrolled in CRP, will accrue directly to participating customers, while all customers will benefit from the lower incremental cost of gas resulting from the reduced usage. In sum, the Residential DSM Programs will save PGW ratepayers millions of dollars in reduced energy costs and there is no reason to wait to implement them.

Expedited implementation of these programs prior to final resolution of PGW's base rate case as provided in the Settlement is reasonable and in the public interest and will not prejudice any party's right to address any other DSM program issue or the details of program implementation. The sooner residential customers are able to begin reducing their natural gas usage, the greater is the benefit to non-low income firm service customers through reduction of the CRP subsidy provided by these firm customers to low-income customers and the greater is the direct economic benefit to CRHRP participants. There is simply no legitimate reason not to – and every reason to – permit these Residential DSM Programs to be implemented as soon as possible, especially before the beginning of the next winter heating season, to maximize the benefits to all firm service customers. Accordingly, the Commission should consider the material question, answer it in the affirmative, grant the Joint Motion for Partial Summary Judgment and approve the Settlement.

² The Settlement reserves all cost allocation and recovery issues for litigation in the base rate case.

III. BACKGROUND

The Joint Petition requests expedited review by the full Commission of PGW's and CAC's Joint Motion for Partial Summary Judgment ("Motion") which requests approval of the Settlement for expedited implementation of the Residential DSM Programs. Attached to the Motion are five exhibits:

- Exhibit 1 is the Settlement.
- Exhibit 2 is the Affidavit of Steven P. Hershey, and the PGW prepared written testimony and discovery response referenced in the Settlement are attached to Mr. Hershey's affidavit as: Tab A [PGW St. No. 7 (Coltro) at 8-9]; Tab B [PGW St. No. 10 (Plunkett) at 8-12, 14, 24-27; PGW Exh. JJP-4; PGW Exh. JJP-6, pp. 1-3, 11-18, 21, 31-39, 49, 51]; and Tab C [PGW response to OTS-RE-152, with attached "Impact Evaluation of Philadelphia Gas Works' Conservation Works Program Calendar Year 2006 and Comprehensive Treatment Pilot," M. Blasnik & Associates, Final Report – November 19, 2008 ("Blasnik Final Report")].
- Exhibit 3 is the affidavit of PGW witness Cristina Coltro to support the portion of her testimony referenced in the Settlement and attached to Mr. Hershey's affidavit.
- Exhibit 4 is the affidavit of PGW witness John J. Plunkett to support the portions of his testimony and exhibits referenced in the Settlement and attached to Mr. Hershey's affidavit.
- Exhibit 5 is the Affidavit of Joseph O. Minott, Executive Director of Clean Air Council, in support of the Settlement and the Motion.

PGW's general rate increase request filed on December 18, 2009 included a proposal to implement PGW's Five-Year DSM Plan,³ which the Company committed to file as a condition of PGW's \$60 million emergency/extraordinary rate relief approved by the Commission in December 2008.⁴ The Residential DSM Programs are built upon PGW's existing CWP,⁵ which PGW has been conducting since 1990, and which has been acknowledged to be a successful and

³ Exhibit 2, ¶ 2.

⁴ Exhibit 1, ¶ 1; Exhibit 2, ¶ 7.

⁵ Exhibit 2: ¶ 9; Tab B, PGW St. 10, p. 11, and PGW Exh. JJP-6, pp. 2, 11, 13, 17, 38.

efficient cost reduction program.⁶ Both Residential DSM Programs would expand existing CWP cost-effective efficiency measures, with the LI Retrofit Program targeting “high use” low-income customer participants in the Company’s CRP and the CRHRP first targeting non-low income “high use” residential customers.⁷

PGW’s standard CWP has been found to have an actual benefit/cost ratio (“B/C Ratio”) of 1.90, while PGW’s recent “pilot” CWP program, which closely reflects the programs proposed to be implemented in the LI Retrofit Program and the CRHRP, has been found to have an actual B/C Ratio of 1.87.⁸ The estimated B/C Ratio of the LI Retrofit Program is 1.69, while the estimated B/C Ratio for the CRHRP is 1.74.⁹

As noted above, the LI Retrofit Program and the CRHRP start with no-cost energy audits and identify cost-effective measures available, such as: comprehensive weatherization efforts (*e.g.*, door sweeps, weather stripping, caulking, duct sealing); added insulation; heating system improvement or replacement; water heating system improvements (*e.g.*, water heater wrapping, low-flow showerheads, faucet aerators); and replacement of incandescent light-bulbs with up to ten (10) more efficient CFLs per customer. These measures are subsequently installed by certified contractors at no cost to low-income customers and at deeply discounted cost to non-low income customers.¹⁰ As education is particularly important for programs directed to low-income customers, the energy auditors will have a “kitchen table” discussion with the customer

⁶ Exhibit 2: Tab A, PGW St. 7, p. 9; Tab C, Blasnik Final Report.

⁷ Exhibit 1, ¶ 6.c), ¶ 8.b); Exhibit 2: Tab B, PGW St. 10, pp. 12, 14, and PGW Exh. JJP-6, pp. 31, 38.

⁸ Exhibit 2, ¶ 9.

⁹ Exhibit 2, Tab B, PGW Exh. JJP-6, Table 1 (p. 3).

¹⁰ Exhibit 2, Tab B, PGW Exh. JJP-6, pp. 32, 38, 39.

concerning energy saving tips, proper care and maintenance, health and safety information, and the benefits from reduced consumption generally and the various measures in particular.¹¹

In an effort to deliver the benefits of at least a portion of PGW's proposed DSM Plan as quickly as possible, PGW initiated discussions with all parties to the base rate case for the early implementation of the Residential DSM Programs.¹² CAC, a key party that promotes the need for clean air measures, energy conservation and more efficient use of cleaner burning fuels such as natural gas, had previously intervened in the DSM proceeding which was consolidated with the base rate case. CAC agreed with PGW that distribution of conservation benefits to residential customers should be expedited and not delayed until the resolution of PGW's base rate case, in view of the advantageous environmental, energy efficiency, and green-collar jobs impacts that are projected to accrue from implementation of the Residential DSM Programs and PGW's proven track record of delivering benefits through its existing CWP.¹³ Accordingly, CAC entered into the Settlement with PGW in this proceeding.

IV. ARGUMENT

A. Interlocutory Review of the Material Question is Appropriate.

The Commission's regulations permit interlocutory review and answer to a material question to prevent substantial prejudice or expedite the conduct of the proceeding.¹⁴ There are compelling reasons why interlocutory review will prevent substantial prejudice and expedite one limited aspect of this proceeding – partial implementation of its DSM Plan. PGW expanded its efforts to reduce customers' natural gas usage by filing its comprehensive DSM Plan in April

¹¹ *Id.*, p. 39.

¹² Exhibit 1, ¶ 14; Exhibit 2, ¶ 5.

¹³ Exhibit 1, ¶ 15; Exhibit 2, ¶ 6; Exhibit 5, ¶s 5, 6(a), (d).

¹⁴ 52 Pa. Code § 5.302(a).

2009. The DSM Plan generated discussions among the interested parties which resulted in several modifications reflected in the Residential DSM Programs, but also delayed Commission consideration of the Plan. Because PGW's proposal remained pending at the time that it filed its base rate case (which the PUC required be filed by the end of December 2009), PGW requested that the DSM petition be consolidated with the base rate proceeding. While consolidation served to save resources and assure an ultimate decision on PGW's DSM Plan as part of the overall rate decision, it also meant that PGW would not be able to begin to implement any of its Plan – even the portions which are clearly beneficial and in the public interest – until the end of 2010, or even later. Such a delay would be unreasonable and not in the public interest.¹⁵

The issue presented by the material question is whether the Residential DSM Programs may begin to be implemented before the Commission renders its decision on PGW's general rate increase request and DSM Plan. PGW's expanded efforts to help residential customers reduce their natural gas usage through proven cost-effective efficiency measures – initiated in April 2009 – should be delayed no longer. Commission consideration of the material question and approval of the Settlement should be noncontroversial for several reasons: (1) these programs simply expand to more low-income customers and to non-low income residential customers PGW's CWP which has been acknowledged in Commission audits and reports as well as by independent analysis as successful and efficient; (2) the low-income and high usage residential customers targeted by the Residential DSM Programs are most in need of assistance in implementing energy efficiency measures; (3) the sooner low-income customers are able to begin reducing their natural gas usage, the greater is the benefit to all other firm service

¹⁵ While PGW could move forward with the rest of the DSM programs if the Commission were to order it to do so, PGW limited its early implementation request to the Residential DSM Programs to limit the issues and controversy over early implementation and to focus on the programs with which PGW has previous experience and expertise.

customers through reduction of the CRP subsidy provided by these firm customers to low-income customers; and (4) the parties' rights are expressly reserved to address all other issues, such as: (i) changes to program measures; (ii) detailed implementation plans; and (iii) cost allocation and recovery issues. In addition, changes to these programs can be made as a result of discussions during the implementation phase through the Detailed Work Plans required by the Settlement.

B. Expedited Implementation the Residential DSM Programs is Reasonable and in the Public Interest.

There can be no reasonable dispute that cost-effective programs likely to reduce natural gas usage by PGW's customers are in the public interest and consistent with the law and Commission policy. As noted, the Residential DSM Programs are based upon proven successful cost-effective efficiency measures in PGW's existing CWP. Since the Residential DSM programs closely follow the existing CWP, the Commission can be reasonably assured that these programs are also cost-effective and will reduce natural gas and electricity usage by PGW's residential customers and save all PGW customers money through lower overall natural gas rates.¹⁶

The Commission can also be assured that PGW has the resources and experience to both implement the programs (through the use of contractors who will be selected via competitive bids) and to verify and measure savings, since it has been doing so since 1990.¹⁷ Indeed, CAC's willingness to join with PGW in requesting early implementation is still more proof that these programs will work and save customers money.

¹⁶ Exhibit 2, ¶s 9, 12.

¹⁷ *Id.*, ¶ 14; Tab A, PGW St. 7, p. 8-9.

As explained in the affidavit of CAC’s Executive Director, Mr. Minott, the public interest is advanced and not harmed by permitting PGW to implement the Residential DSM Programs¹⁸ subject to the ability of parties to collaborate on changes to the programs prior to expedited implementation through the Detailed Work Plans and subject to further investigation of the specific DSM Plan programs and cost recovery/allocation issues, as provided in the Settlement.¹⁹ Notably, among the issues reserved is the issue associated with whether PGW’s USC – which presently recovers the cost of PGW’s CWP program from all non-low income firm ratepayers, including commercial and industrial firm customers, should be paid by all firm customers or residential customers only.²⁰ Again, PGW is not proposing that this issue be decided by the Commission’s review of the material question and approval of the Settlement. Also, the issue of “lost revenue” recovery (which only affects the non-low income program)²¹ is reserved for resolution in the rate case.

The Commission should enable utility customers to benefit from DSM programs as soon as possible when it reasonably appears – as here – that the programs are cost-effective and will save customers money. The cost-effectiveness of the LI Retrofit Program compares favorably with the benefit/cost ratios, or Total Resource Costs (“TRCs”), of the low-income customer programs in the electric distribution company (“EDC”) Act 129 and Energy Efficiency

¹⁸ Exhibit 5, ¶ 5.

¹⁹ Exhibit 1, ¶s 19-23.

²⁰ With respect to cost recovery of DSM programs, Section 1319(b) of the Public Utility Code provides that “[t]he commission may consider allowing the recovery of those costs permitted to be recovered by subsection (a) through charges to those persons who are participants in the financing program.” 66 Pa. C.S. § 1319(b).

²¹ For costs associated with the CRHRP, PGW is proposing an automatic adjustment mechanism companion to the USC: the Efficiency-Cost Recovery Mechanism (“ECRM”). The ECRM would also recover the costs (including lost revenues specifically associated with the installed natural gas program measures) of the other programs in PGW’s DSM Plan from the class of customer receiving the benefit. Exhibit 1, ¶ 13.

Conservation (“EE&C”) Plans approved by the Commission,²² while the cost-effectiveness of the CRHRP compares favorably to the TRCs for similar non-low income residential customer programs in the EDC Act 129 EE&C Plans approved by the Commission.²³

Approval of the Settlement is reasonable because it will resolve only one limited legal and policy issue – whether expedited and expanded implementation of successful cost-effective efficiency measures for residential customers most in need of energy efficiency assistance is reasonable and consistent with PUC policy and authorized by the Public Utility Code.²⁴ As noted, approving the Settlement will not prejudice any party’s right to address cost allocation and recovery issues with respect to the DSM Plan or the Residential DSM Programs.²⁵ Parties will also continue to have the right to review and comment upon PGW’s specific implementation plan, which PGW commits to filing thirty days after the PUC order approving early implementation.²⁶

C. Approval of the Settlement for Expedited Implementation of the Residential DSM Programs is Consistent with Applicable Law and Commission Policy and Precedent.

The Settlement is presented for Commission approval through the partial summary judgment Motion of PGW and CAC. Partial summary judgment may be granted “if the pleadings, depositions, answers to interrogatories and admissions, together with affidavits, if any,

²² Exhibit 2, ¶ 16.

²³ *Id.*, ¶ 17.

²⁴ Exhibit 1, ¶ 23.

²⁵ *Id.*, ¶s 21-23.

²⁶ *Id.*, ¶s 19-20.

show that there is no genuine issue as to a material fact and that the moving party is entitled to a judgment as a matter of law on one or more but not all outstanding issues.”²⁷

The Motion and attached exhibits show that there is no genuine issue as to any fact material to the limited legal and policy issue presented by the Settlement, the Motion and the material question, and that the Settlement should be approved. The standards for granting summary judgment are well settled. The decision maker’s function is to determine whether there exists a genuine issue of material fact.²⁸ A fact is material if it directly affects the disposition or outcome of a case.²⁹ Facts that directly affect the outcome of the case are gleaned from the substantive law underlying the case³⁰ which, for purposes of the relief requested here, is Section 1319 of the Public Utility Code. Accordingly, facts irrelevant to the determination to be made on partial summary judgment motion are not material facts.³¹ Finally, summary judgment is proper where, as here, only one conclusion may reasonably be drawn from the undisputed facts.³²

²⁷ 52 Pa. Code § 5.102(d)(2) (relating to standard for grant or denial in part).

²⁸ *Swartley v. Hoffner*, 734 A.2d 915, 918 (Pa.Super. 1999).

²⁹ *Beach v. Burns Intern. Sec. Services*, 593 A.2d 1285, 1286 (Pa.Super. 1991) (Whether employee was informed when he began work that executing waiver from was a condition of employment was not a fact that would affect the outcome of the case in view of employee’s action to the contrary.); *Windber Area Authority v. Rullo*, 387 A.2d 967, 970 (Pa.Cmwlt. 1978) (non-moving party’s assertion that authority’s resolution was clarification of existing rules was neither material fact nor subject to dispute where express language of resolution presented question of law for court to decide).

³⁰ *Anderson v. Liberty Lobby Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505 (1986).

³¹ *Manzetti v. Mercy Hosp. of Pittsburgh*, 776 A.2d 938, 950-51 (Pa. 2001) (Facts intended to show that peer review participants acted in bad faith are not material facts where the applicable statute does not require that participants act in good faith.).

³² *Washington v. Baxter*, 719 A.2d 733, 741 (Pa. 1998) (summary judgment properly entered where reasonable minds could not differ on factual conclusion necessary to preclude summary judgment, i.e., that non-moving party’s injury was not serious); *Swartley v. Hoffner*, 734 A.2d 915, 920-21 (Pa.Super. 1999) (no genuine issue of material fact existed where no reasonable jury could determine fact as asserted by non-moving party); *McDonald v. Marriott Corp.*, 564 A.2d 1296, 1298 (Pa.Super. 1989) (non-moving party’s deposition failed to raise genuine issue of

The undisputed facts material to approval of the Settlement are set forth in the Motion and exhibits to the Motion³³ and may be summarized as:

- Implementation of energy efficiency and conservation measures is consistent with Commission, City of Philadelphia, Pennsylvania and national energy, economic and environmental policies of improving energy efficiency in end uses of energy resources reducing greenhouse gas emissions and creating “green jobs.”³⁴
- The Residential DSM Programs are built upon beneficial and cost-effective measures in PGW’s existing CWP which has been authorized and approved by the PUC, and there can be no reasonable dispute that the Residential DSM Programs will be similarly cost-effective and reduce residential customers’ natural gas and electricity use (through the CFL distribution measure).³⁵
- Implementation of the Residential DSM Programs prior to next winter’s heating season will maximize the reduction of the CRP subsidy to low-income customers paid by non-low income firm service customers (under PGW’s current USC) by reducing natural gas usage by low-income customers.³⁶

As only prudent and cost-effective energy conservation and efficiency programs may be implemented by public utilities under Section 1319 of the Public Utility Code,³⁷ the material facts for purposes of the Motion and approval of the Settlement are whether PGW’s LI Retrofit Program and CRHRP are cost-effective and it is prudent to begin to implement them as soon as possible. PGW’s proposed Residential DSM Programs are built upon, and merely an expansion of, its existing CWP, a program that has been found to be prudent and cost-effective on numerous occasions. There can be only one reasonable conclusion from these undisputed facts:

material fact concerning visible intoxication); *Askew By Askew v. Zeller*, 521 A.2d 459, 463 (Pa.Super. 1987) (summary judgment proper where only one conclusion can be drawn from undisputed facts).

³³ It is axiomatic that on summary judgment the decision maker considers affidavits to the extent that they, as here, set forth matter which would be admissible in evidence. *Heller, Inc. v. United Parcel Service*, 754 A.2d 689, 698 (Pa.Super. 2000).

³⁴ Exhibit 2: ¶s 19-20; Tab B, PGW St. 10, pp. 8, 10, 26-27.

³⁵ Exhibit 2: ¶s 9, 12; Tab A, PGW St. 7, p. 9; Tab B, PGW St. 10, p. 11, and PGW Exh. JJP-6, pp. 2, 11, 13, 17, 38.

³⁶ Exhibit 2: ¶ 12.

³⁷ 66 Pa. C.S. § 1319.

Expedited implementation of an expansion of CWP's cost-effective measures through the LI Retrofit Program and CRHRP is consistent with Section 1319 and reasonable, and consistent with the public interest. Accordingly, PGW and CAC are entitled to approval of the Settlement as a matter of law.³⁸

There also can be no reasonable dispute that the Commission has the authority to grant the relief requested. The Commission recently permitted expedited implementation of a portion of an energy efficiency and conservation program of an electric EDC (distribution of CFLs) pending final resolution of the EDC's Act 129 EE&C Plan.³⁹ The Commission's rationale for approving expedited implementation of PECO's CFL distribution program supports approval of the Settlement permitting expedited implementation of PGW's Residential DSM Programs.

The Commission approved expedited implementation of PECO's CFL distribution program because:

- PECO's CFL program was projected to produce the largest share of the energy consumption reductions under PECO's EE&C Plan and projected to result in a positive benefit/cost ratio (or "TRC"), with issues concerning these estimated energy consumption reduction and benefit/cost ratio estimates reserved for litigation.
- Additional energy savings would be realized as a result of early implementation of the CFL program and the synergy to be realized from leveraging CFL program expenditures with a federal CFL distribution program.
- Issues concerning the cost recovery mechanism and the actual cost recovery from ratepayers, along with any prospective recommendations concerning the CFL program, were also reserved for litigation.

³⁸ The rule that any doubts as to the existence of a genuine issue of material fact are resolved against the moving party, *Schreck v. Com., Dept. of Transp.*, 749 A.2d 1041, 1043-45 (Pa.Cmwlth. 2000) (ambiguity of statement concerning movement of vehicle precluded entry of summary judgment), does not apply here because there is no such doubt or any ambiguity that the LI Retrofit Program and the CRHRP are prudent, cost-effective and will save customers money, and that these benefits will be maximized by permitting these programs to begin to be implemented as soon as possible.

³⁹ *Petition of PECO Energy Company for Approval of its Act 129 Energy Efficiency and Conservation Plan and Expedited Approval of its Compact Fluorescent Lamp Program* ("PECO CFL Program"), M-2009-2093215, Order entered August 18, 2009.

- Approval of expedited implementation of PECO’s CFL program “does not preclude the parties and the Commission from addressing any prospective recommendations through the remainder of this proceeding.”⁴⁰

PGW’s Residential DSM Programs should be approved for the same reasons:

- Nearly two-thirds (\$74.7 million) of PGW’s DSM Plan total savings (\$113.1) are projected to result from the Residential DSM Programs.⁴¹
- The LI Retrofit Program has a positive projected benefit/cost ratio of 1.69, while the CRHRP has a positive projected benefit/cost ratio of 1.74.⁴²
- Expedited implementation of the LI Retrofit Program will permit to PGW to leverage expedited implementation of the CRHRP.⁴³
- Changes to these programs may be made prior to expedited implementation through the Detailed Work Plan process provided in the Settlement.⁴⁴
- Issues concerning cost allocation and recovery are reserved for litigation.⁴⁵

The Commission’s order suspending the base rate tariff filing does not prevent expedited implementation of the Residential DSM Programs. The suspended tariff implicates only the cost allocation and cost recovery of PGW’s DSM programs, issues that are reserved by the Settlement for litigation in the rate case.

Accordingly, the Settlement providing for expedited implementation of PGW’s Residential DSM Programs ultimately presents legal and policy questions committed to the Commission’s sound discretion. The Settlement merely permits PGW to begin expansion of existing CWP cost-effective efficiency measures in time to begin providing benefits in 2010 rather than 2011, and without prejudice to any party’s right to address other DSM Plan issues.

⁴⁰ *PECO CFL Program*, Order entered August 18, 2009, at 9.

⁴¹ Exhibit 2: ¶ 10; Tab B, PGW St. 10, p. 25 and PGW Exh. JJP-6, Table 1.

⁴² Exhibit 2, Tab B, PGW Exh. JJP-6, Table 1.

⁴³ Exhibit 1, ¶ 33; Exhibit 2, ¶ 13.

⁴⁴ Exhibit 1, ¶s 19-20.

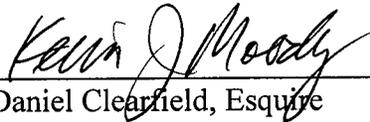
⁴⁵ *Id.*, ¶s 20-23.

The Commission should exercise its discretion to permit PGW's customers to begin enjoying the benefits of reduced and more efficient energy use, as well as environmental benefits, as soon as possible when, as here, the Commission is reasonably assured that these programs are prudent and cost-effective as required by Section 1319 of the Public Utility Code. Finally, approving the Settlement advances the Commission's policy of encouraging settlement of issues to the extent possible.⁴⁶

V. CONCLUSION

For the reasons set forth herein, PGW respectfully requests that the Commission grant interlocutory review, answer the material question in the affirmative, grant the Joint Motion for Partial Summary Judgment and approve the Settlement.

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⁴⁶ 52 Pa. Code §§ 5.231 and 69.401.