



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE  
REFER TO OUR FILE

November 19, 2015

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

Re: Petition of Philadelphia Gas Works for Approval of Demand-Side  
Management Plan for FY 2016-2020, and Philadelphia Gas Works  
Universal and Energy Conservation Plan for 2014-2016  
52 Pa. Code § 62.4 – Request for Waivers  
Docket No. P-2014-2459362

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Dear Secretary Chiavetta:

Enclosed please find the Bureau of Investigation and Enforcement's (I&E) **Main Brief** in the above-captioned proceeding.

Copies are being served on parties as identified in the attached certificate of service. If you have any questions, please contact me at (717) 783-6156.

Sincerely,

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CBW/GLL/sea  
Enclosure

cc: Certificate of Service  
ALJ Christopher P. Pell  
ALJ Marta Guhl

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Petition of Philadelphia Gas Works for :  
Approval of Demand-Side Management :  
Plan for FY 2016-2020, and Philadelphia : Docket No. P-2014-2459362  
Gas Works Universal Service and :  
Energy Conservation Plan for 2014- :  
2016, 52 Pa. Code § 62.4 – Request for :  
Waivers :**

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**MAIN BRIEF  
OF THE  
BUREAU OF INVESTIGATION AND ENFORCEMENT**

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Dated: November 19, 2015

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## **I. INTRODUCTION AND STATEMENT OF THE CASE**

I&E respectfully maintains that the *Petition of Philadelphia Gas Works for Approval of Demand-Side Management Plan (“DSM”) for FY 2016-2020, and Philadelphia Gas Works Universal Service and Energy Conservation Plan for 2014-2016, 52 Pa. Code §62.4 – Request for Waivers (“Petition”)* should not be approved as filed. Philadelphia Gas Works’ (“PGW”) request for a Conservation Adjustment Mechanism (“CAM”) and Performance Incentive (“PI”) is inappropriate and not supported by law in this case. Further, the Low-Income Multifamily Efficiency (“LIME”) Program PGW has proposed should not be approved as there are issues with both how it identifies and targets low-income housing and with how the costs of this program are recovered.

## **II. PROCEDURAL HISTORY**

On December 23, 2014, PGW filed a Petition for Approval of Phase II of its Demand-Side Management Plan (“Petition”). The Petition, filed at Docket No. P-2014-2459362, serves as a request to institute Phase II of PGW’s initial five-year DSM Plan, which was originally approved by the Pennsylvania Public Utility Commission (“Commission”) in conjunction with a base rate proceeding settlement on July 29, 2010 at Docket Nos. P-2009-2097639 and R-2009-2139884. Because Phase I of the PGW’s DSM Plan expired on August 31, 2015, on April 10, 2015, PGW filed a Petition to extend its DSM I Plan to prevent the Plan’s programs from ending before the completion of the current litigation related to its DSM II Plan. By Order of the Commission, entered on

May 7, 2015, PGW's Petition was granted, and its DSM Phase I Plan was extended until the earlier of either (1) August 31, 2016; or, (2) the effective date of a Phase II compliance plan filed in response to a final Commission Order at Docket Number P-2014-2459362. The Company's current Petition seeks approval to implement Phase II of the DSM program for five years beginning September 1, 2015 and ending August 21, 2020.

On January 12, 2015, Answers to PGW's Petition were filed by the Bureau of Investigation and Enforcement ("I&E"), the Office of Consumer Advocate ("OCA") and the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania ("CAUSE-PA"). On January 13, 2015, Petitions to Intervene were filed by the Office of Small Business Advocate ("OSBA"), Tenant Union Representative Network ("TURN") and Alliance of Senior Citizens of Greater Philadelphia ("Action Alliance") (collectively "TURN et al."), and the Philadelphia Industrial and Commercial Gas Users Group ("PICGUG"). The Clean Air Council ("CAC") also petitioned for intervention on January 16, 2015.

This proceeding was assigned to the Office of Administrative Law Judge ("OALJ") and on February 17, 2015, a Prehearing Conference was held and the following procedural schedule was adopted:

May 4, 2015	Service of the prepared, Direct Testimony of the Company
June 23, 2015	Direct Testimony of all other Parties
July 21, 2015	Service of Rebuttal Testimony by all Parties

August 5, 2015	Service of Surrebuttal Testimony by all Parties
August 11-14, 2015	Evidentiary Hearings in Philadelphia, PA
September 4, 2015	Filing and service of Main Briefs by all Parties
September 14, 2015	Filing and service of Reply Briefs by all Parties

At the request of the parties, this schedule was later altered to change the hearing dates to October 27 through October 30, 2015. The Main Brief due date was changed to November 19, 2015 and the Reply Brief due date was changed to November 30, 2015. All parties agreed to waive cross examination and a telephonic Hearing was held on October 28, 2015, at which testimony and exhibits were entered into the record.

Act 129 of 2008, 66 Pa.C.S. § 308.2, authorized the Commission to establish bureaus, offices and positions to, *inter alia*, take appropriate enforcement actions that are necessary to ensure compliance with the Public Utility Code and Commission regulations and orders. 66 Pa.C.S. § 308.2(a)(11). In accordance with Act 129, the Commission established the Bureau of Investigation and Enforcement (“I&E”) to serve as the prosecutory bureau for the purposes of representing the public interest in ratemaking and service matters, and enforcing compliance with the Public Utility Code, 66 Pa.C.S. §§ 101 *et seq.*, and Commission regulations, 52 Pa. Code §§ 1.1 *et seq.* See *Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Order entered August 11, 2011). Pursuant to the procedural schedule and in

accordance with Sections 5.501- 5.502<sup>1</sup> of the Public Utility Code, and in support of its role, as outlined above, I&E submits this Main Brief.

### III. LEGAL STANDARDS

As a general proposition, the proponent of a rule or order has the burden of proof<sup>2</sup> in advocating its position in a proceeding before the Commission. Any facts utilized to support this burden must be established by a preponderance of the evidence; that is, evidence presented by the proponent must be more convincing, by even the smallest degree, than that proposed by the opponent.<sup>3</sup> In this case, PGW may only recover “all prudent and reasonable costs associated with the development, management, financing, and operation” of its DSM II program.<sup>4</sup> Accordingly, as the petitioner, PGW has the burden of proof in this proceeding to establish that the costs associated with DSM II program, as set forth in its Petition, are prudent and reasonable.<sup>5</sup> In a case pending before an administrative tribunal such as this one, Courts have held that a “litigant's burden of proof is satisfied by establishing a preponderance of evidence which is substantial and legally credible.”<sup>6</sup> Therefore, to meet its burden of proof in this proceeding, PGW must “present evidence more convincing, by even the smallest amount, than that presented by any opposing party.”<sup>7</sup> Moreover, it is well established that the

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<sup>1</sup> 52 Pa. Code §§ 5.501- 5.502.

<sup>2</sup> 66 Pa. C.S. § 332(a).

<sup>3</sup> 66 Pa. C.S. § 332(a); *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950).

<sup>4</sup> 66 Pa.C.S.A. § 1319; *Petition of Ugi Utilities, Inc. - Elec. Div. for Approval of Its Energy Efficiency & Conservation Plan*, M-2010-2210316, 2011 WL 5115092, at \*12 (Oct. 14, 2011).

<sup>5</sup> 66 Pa. C.S. § 332(a); 66 Pa.C.S.A. § 1319.

<sup>6</sup> *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

<sup>7</sup> *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

ultimate decision of the Commission must be supported by reliable, probative and substantial evidence.<sup>8</sup>

The instant Petition, as filed, must be rejected as PGW has failed to satisfy its burden. More specifically, PGW has failed to show that the costs associated with its CAM and PI proposals, as well as its LIME program, are prudent and reasonable. Accordingly these proposals should be rejected as they are not supported by a preponderance of the evidence.

#### **IV. CONTINUATION OF DSM PLAN**

##### **A. Summary of Briefing Party's Position**

After being afforded the opportunity to conduct an investigation, I&E does not object to the continuation of the DSM Plan, absent its objection to the CAM and PI provisions and the LIME program.

##### **B. PGW Proposal To Continue DSM**

As noted above, I&E took no position on the continuation of the DSM.

##### **C. Cost Benefit Analysis**

I&E took no position regarding the cost benefit analysis in this proceeding.

##### **D. Proposed Program Term**

I&E took no position on the term of the proposed program.

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<sup>8</sup> See *Pocono Water Company v. Pennsylvania Public Utility Commission*, 630 A.2d 971 (Pa. Cmwlth. 1993).

**V. PROPOSED NON-LIURP PROGRAMS**

**A. Summary of Briefing Party's Position**

I&E did not take a position on any of the programs listed below.

**B. Proposed Non-LIURP Programs**

I&E took no position on the proposed non-LIURP programs listed below.

1. Residential Equipment Rebates
2. Efficient Construction Grants
3. Efficient Building Grants
4. Commercial Equipment Rebates
5. Home Rebates Program

**C. Proposed New Pilot Program – Efficient-Fuel Switching**

I&E took no position on the Efficient-Fuel Switching program.

**D. PGW On-Bill Repayment Program Proposal**

I&E took no position on the On-Bill Repayment Program proposal.

**E. OCA Confirmed Low-Income Outreach Proposal**

I&E took no position on the OCA confirmed Low-Income Outreach proposal.

**VI. DSM COST RECOVERY MECHANISMS**

**A. Summary of Briefing Party's Position**

I&E recommends that the CAM proposed by PGW, which would initially be recovered through the Efficiency Cost Recovery Surcharge ("ECRS"), be rejected. I&E also recommends the PI, which would be recovered through the

ECRS, be rejected. Further, I&E recommended that the LIME program, which that would be recovered through the Universal Service Charge (“USC”), be rejected. Apart from recommending the rejection of these programs, which is discussed in detail below, I&E took no further position on recovery through the USC or ECRS.

**B. Recovery through Universal Service Charge and Efficiency Cost Recovery Surcharge**

Apart from the recommendations noted above, I&E took no position on cost recovery through the USC and ECRS.

**VII. PGW PROPOSED TWO NEW COST ELEMENTS FOR ECRS**

**A. Summary of Briefing Party’s Position**

I&E recommends rejection of both the proposed CAM and the proposed PI award. These proposals by PGW both ignore the simple fact that the Commission already has in place a mechanism to address revenue deficiencies. Both proposals serve as a vehicle for PGW to circumvent the base rate case process.

**B. Conservation Adjustment Mechanism**

PGW has proposed to recover its lost distribution revenue associated with Phase II of the DSM through the CAM. PGW states that the CAM would be used to recover the cost of reduced contributions to fixed costs that result from the energy efficiency measures taken under the DSM, which result in a reduction of natural gas usage.<sup>9</sup> PGW states that the proposed DSM plan was, in fact,

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<sup>9</sup> Petition ¶34.

“...designed under the assumption that the CAM cost element may not be approved....”<sup>10</sup>

I&E recommends that the CAM be rejected, as this Commission has already addressed the issue of recovery of lost revenue as it relates to DSM programs by stating that lost revenue should be addressed in a base rate proceeding. In its *Investigation into Demand Side Management by Electric Utilities*, the Commission states:

[i]n considering this issue, we concur with the ALJ's recommendation to not permit the recovery of lost revenues through the DSM surcharge mechanism, but rather in base rate proceedings. We are sympathetic to the arguments of the utilities that prompt recovery through a surcharge mechanism would serve to promote more extensive DSM implementation. However, lost revenues are, by their nature, much more difficult to measure than DSM program costs. Therefore, we feel it necessary to require that these costs be recovered through a base rate proceeding so that they are based on actual program results, as verified through the ratemaking process.<sup>11</sup>

Although PGW is a gas utility, and not an electric utility, the same issues would apply here, namely that lost revenues are much more difficult to measure than DSM costs. While PGW lays out a host of issues that differ between gas and electric utility such as sales growth and the speed at which equipment deteriorates,<sup>12</sup> it is clear that those distinctions were not what the Commission was looking at when it made the statement above. The fact of the matter is that

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<sup>10</sup> Petition ¶36.

<sup>11</sup> Investigation into Demand Side Mgt. by Electric Utilities Unif. Cost Recovery Mechanism, I-900005, 1993 WL 855893, at page 37 (Pa. PUC Dec. 13, 1993).

<sup>12</sup> Petition ¶ 35.d.

whether the utility in question is gas or electric, DSM costs are much more easily calculated than lost revenues. Therefore, it seems clear that the Commission has already determined that a base rate proceeding is the proper forum to recover lost revenues. PGW claims it would be “unfair and illogical” to not recognize the negative effects of the program on the Company.<sup>13</sup> The argument presented by PGW is nothing more than a diversion allowing the Company to attempt to circumvent the base rate process despite the fact that the Commission has already stated that the proper forum in which to recover lost revenues for companies that are required to implement a DSM is a base rate proceeding. The voluntary nature of PGW’s DSM program does not distinguish it in such a way that it should be exempt from the Commission’s stated resolution of this issue.

Further, although PGW believes one of the most compelling reasons to justify the CAM is that it would allow PGW to expand its conservation efforts,<sup>14</sup> it is clear that the Commission has already considered this when disallowing the recovery of lost revenues for electric utilities. As noted above, while the Commission was sympathetic to this view, it does not change the fact that the difficulty in measuring lost revenues necessitates that they be identified through a thorough evaluation that a base rate proceeding provides.

The argument that PGW should be exempt from this program because its DSM program is voluntary<sup>15</sup> is meaningless. PGW’s choice to implement a DSM

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<sup>13</sup> PGW St. No. 2-R, p. 12.

<sup>14</sup> Petition ¶ 36.

<sup>15</sup> PGW St. No. 2, p. 13.

program when it did not have to in no way exempts it from bearing the risk related to the fact that the entire purpose of these programs is to encourage customers to reduce their usage. The Commission has specifically said that utilities who are required to implement DSM programs must recover lost revenues through base rate cases. To assert that because a DSM program was implemented voluntarily exempts it from this requirement is absurd.

Once again, I&E recommends that PGW not be allowed to implement the CAM as the Commission has already made its determination on the issue of recovery of lost revenue. Specifically, if PGW wishes to recover lost revenue resulting from this DSM program, it should be required to do so through a base rate proceeding.

### **C. Performance Incentives**

I&E recommends that the PI be rejected. PGW proposes to charge ratepayers, through the ECRS, a performance incentive of up to \$2.27 million over the five years of Phase II of the DSM if it meets performance targets.<sup>16</sup> PGW states that it should be granted a PI "...in order to maximize its incentive to produce the greatest amount of energy efficiency possible."<sup>17</sup>

I&E recommends the PI be rejected. PGW should not be allowed to recover a performance incentive from customers who benefit from energy efficiency and low-income assistance programs that, other than maintaining a

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<sup>16</sup> PGW St. 3, page 22.

<sup>17</sup> Petition ¶ 38.

LIURP program, PGW is under no obligation to implement. It is clear to see that additional revenue in the form of incentive compensation would be beneficial to PGW; however, the corresponding benefit the customers could expect to receive has not been articulated by PGW. Further, it is troubling that PGW itself will set the criteria for whether it is granted the PI, and even more troublesome is PGW's statement that it needs this incentive to produce the greatest amount of energy efficiency possible.

For the first time in this proceeding in rebuttal testimony, PGW claimed that "every dollar recovered through PGW's CAM or from performance incentives will go back to fund PGW's continued provision of safe and adequate service."<sup>18</sup> Further, PGW states that "100% of any performance incentive would contribute to its cost of service. These dollars therefore are not going to increased profits but straight back to customers."<sup>19</sup> However, PGW contradicts itself in this statement by later saying that although "some of the benefits would be transferred to PGW through the design of the performance incentive, customers would still retain the vast majority of benefits if the company is successful in meeting or exceeding its goals."<sup>20</sup> Therefore, it is still unclear to I&E what portion of the PI will be going back to customers. It is also troublesome that there is no specificity regarding how the PI would be spent. It is concerning to I&E that PGW's testimony on the issue of PI seems to indicate that PGW will be unable to meet its specified goals, unless

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<sup>18</sup> PGW Statement 1-R, page 6, lines 11-13.

<sup>19</sup> PGW Statement 2-R, page 24, lines 10-11.

<sup>20</sup> PGW Statement 2-R, page 23, lines 19-20.

it is granted the PI. This is disconcerting because PGW was never required to implement a DSM in the first place. In doing so, PGW should not have set performance targets that it was unable to reach, or did not intend to reach unless it was given an incentive to do so.

Furthermore, a performance incentive to meet and achieve energy efficiency goals or to produce the most amount of energy efficiency possible is unnecessary. The argument that lost revenues serve as a disincentive to produce more energy efficiency and, therefore, PGW should be awarded for its efforts amounts to, as with the CAM, is an attempt to circumvent the Commission's base rate case process. As noted above, PGW has the ability to recover lost revenues in a base rate proceeding. Therefore, there is no disincentive to PGW to maximize its energy efficiency because the Commission has already addressed the issue of recovery of lost margin. Because PGW has already been provided with a way to address its lost revenue, no actual disincentive to promoting energy efficiency actually exists. As can clearly be seen, the PI benefits only PGW and not its ratepayers. PGW is simply requesting one more way to avoid the prescribed Commission process.

Lastly, it has been established that Section 523 of the Public Utility Code<sup>21</sup> does not permit recovery of incentives of this nature outside of a base rate proceeding.<sup>22</sup> While Section 523 of the Code does permit the establishment of

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<sup>21</sup> 66 Pa. C.S. § 523.

<sup>22</sup> *Pennsylvania Indus. Energy Coal. v. Pennsylvania Pub. Util. Comm'n*, 653 A.2d 1336, 1353 (Pa. Commw. Ct. 1995) aff'd, 543 Pa. 307, 670 A.2d 1152 (1996).

both incentive and penalty adjustments for conservation programs it has been established that:

Section 523 only applies to the adjustments being made when rates are determined and based on a utility's claimed costs of service. The section permits incentive adjustments for effective conservation programs and penalty adjustments for the failure to encourage conservation only within a base rate case.<sup>23</sup>

Therefore, it would be improper to implement a performance incentive in the context of this proceeding.

For the reasons noted above, I&E recommends PGW not be granted the requested PI. While Section 4 of the Plan<sup>24</sup> detailed the criteria PGW developed to trigger payments of performance incentives, PGW has not specified how it intends to spend any of the resulting proceeds. This information is also absent from any of the documents that were provided in this proceeding. Further, the PI benefits only PGW and no incentive should be necessary for a gas utility to increase energy efficiency because any revenues lost as a result of these measures can be recovered through a base rate proceeding. Should the Commission determine that a PI is necessary for PGW, the PI must be established in the context of a base rate case.

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<sup>23</sup> *Id.*

<sup>24</sup> PGW Statement 3, Exhibit TML-2.

## **VIII. DSM II BUDGET**

### **A. Summary of Briefing Party's Position**

I&E recommends that the CAM and PI proposals be rejected, along with the LIME proposal. Aside from these matters, I&E took no position on the DSM II budget of \$25,896,467<sup>25</sup> as filed, as it is consistent with the DSM I budget. I&E has reviewed the various DSM programs and, apart from the LIME program, they seem to be consistent with PGW's prior DSM program and offer benefits to ratepayers.

### **B. Proposed Budgets (Non-LIURP Programs)**

I&E took no position on the proposed budgets for non-LIURP programs other than to recommend the CAM and PI be rejected.

### **C. PGW Proposed Budget for CRP Home Comfort Program (LIURP)**

I&E recommends the LIME program, which is part of the CRP Home Comfort Program, be rejected as discussed further below. Aside from this recommendation, I&E took no position on the proposed budget for the CRP Home Comfort Program.

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<sup>25</sup> On page 5 of its Petition PGW estimates that it will spend approximately \$25 million to implement Phase II of its DSM program.

## **IX. CRP HOME COMFORT PROGRAM (LIURP)**

### **A. Continuation of CRP Home Comfort as PGW's LIURP within DSM II Portfolio**

With the exception of the LIME program discussed below, I&E took no position on the continuation of CRP Home Comfort as PGW's LIURP within the DSM II portfolio.

### **B. CRP Home Comfort Program Eligibility Criteria**

I&E took no position on the CRP Home Comfort Program eligibility criteria.

### **C. PGW Proposed New Low-Income Multifamily ("LIME") Program**

As part of the CRP Home Comfort program, PGW proposes to include a new low-income multifamily program. The program would target owners of low-income multifamily housing buildings. The LIME Program, as proposed in PGW's Petition, specifically targets low-income multifamily buildings with at least 50% of the residents at 150% or below the FPL. PGW states that this program will "provide no-cost limited scope energy usage assessments for building owners, and will implement cost-effective direct install energy efficiency measures."<sup>26</sup>

I&E does not recommend approval of the LIME program as it is currently structured. The two key concerns for I&E related to PGW's proposed LIME program are: 1) the manner in which the housing is designated as low-income, and 2) how the costs are to be recovered. Therefore, I&E recommends that until PGW

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<sup>26</sup> PGW St. 2, p. 7.

reevaluates its criteria for inclusion in the LIME program and designs a program that would result in the primary participants being low-income families, the LIME program be rejected.

The Commission's Final Order for PGW's Universal Service and Energy Conservation Plan ("USCP") for 2014-2016 stated that PGW was to "develop a program and designate a portion of the Enhanced Low Income Retrofit Program ("ELIRP") budget to specifically serve low-income multifamily properties."<sup>27</sup> The Public Utility Code defines universal service and energy conservation as:

[p]olicies, practices and services that help residential low-income retail gas customers and other residential retail gas customers experiencing temporary emergencies, as defined by the commission, to maintain natural gas supply and distribution services. The term includes retail gas customer assistance programs, termination of service protections and consumer protection policies and services that help residential low-income customers and other residential customers experiencing temporary emergencies to reduce or manage energy consumption in a cost-effective manner, such as the low-income usage reduction programs and consumer education.<sup>28</sup>

ELIRP replaced PGW's Low-Income Usage Reduction Program ("LIURP").

LIURP defines a low-income customer as "[a] residential utility customer with household income at or below 150% of the Federal poverty guidelines."<sup>29</sup>

The statute and regulation quoted above illustrate the issue with the target audience of PGW's proposed LIME program. First, PGW, in its Petition

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<sup>27</sup> Philadelphia Gas Works Universal Service and Energy Conservation Plan for 2014 -2016 Submitted in Compliance with 52 Pa. Code § 62.4, M-2013-2366301 p. 57, (Order Entered August 22, 2014).

<sup>28</sup> 66 Pa. Code § 2202.

<sup>29</sup> 52. Pa. Code § 58.2.

identified this program as being targeted at building owners,<sup>30</sup> and not residential customers as the universal service definition contemplates. ELIRP costs, of which LIME is a part, are recovered through PGW's USC Surcharge. As noted by Witness Maurer, the USC Surcharge being the funding source for the LIME program magnifies the need for PGW to reevaluate the criteria it uses for inclusion of customers in the LIME Program.<sup>31</sup> Unless this criterion is changed to target residential customers, and not building owner, the LIME program must be rejected. Further, as the LIME program is currently structured, there is the potential that only 50% of the tenants of these multifamily housing units will meet the low-income guideline. The goals of LIURP, which ELIRP replaced, are to reduce low-income bills, reduce payment problems, and reduce uncollectible expense.<sup>32</sup> A criterion that allows half of the audience being targeted to not meet the definition of low-income dilutes these goals. The USC surcharge is intended to assist low-income customers in conserving energy and reducing residential bills. However, the LIME program, in its current form, would cause all customer classes to pay a surcharge to fund energy efficiency measures to be implemented for a potentially large population of non-low-income customers.

The issues discussed above related to the target audience of the LIME program also highlight the concern with cost recovery related to the LIME program. As noted above, all customers would be required to subsidize energy

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<sup>30</sup> PGW Petition ¶ 18.

<sup>31</sup> I&E St. No. 1-SR, p. 13.

<sup>32</sup> 52 Pa. Code § 58.1.

efficiency measures taken for customers who, potentially, are not low-income. This is not what the USC surcharge was designed for. I&E believes that a properly designed LIME program that primarily targets low-income residents of multifamily housing could be properly recovered through the USC surcharge; however, the current structure of the LIME program does not permit this, and thus, the LIME program must be rejected.

**D. Chapter 58 Waiver Request**

I&E took no position on the Chapter 58 waiver request.

**E. De Facto Electric Heating Proposal**

I&E took no position on the De Facto Electric Heating Proposal.

**F. Restore Service Program**

I&E took no position on the Restore Service Program.

**X. OTHER ISSUES**

I&E has not identified any further issues in this proceeding.

## XI. CONCLUSION

For the reasons stated herein, I&E respectfully submits that the PGW has failed to satisfy its burden of proof. Specifically, PGW has failed to demonstrate that the proposed Conservation Adjustment Mechanism and Performance Incentive should be approved. Further, has failed to demonstrate that its Low-Income Multifamily Program should be approved in its current format.

Respectfully submitted,



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## APPENDIX A – Proposed Findings of Fact

1. The voluntary nature of PGW's DSM program does not exempt it from the standard regulatory process of seeking recovery of lost revenues through a base rate proceeding. I&E St. No. 1-SR, p. 3.
2. PGW designed its DSM Plan under the assumption that the CAM may not be approved. Petition ¶36.
3. Lost revenues are difficult to measure and identify. I&E St. No. 1, p. 11.
4. Addressing lost revenues through a base rate proceeding would give the parties a better opportunity to investigate and review the claim for lost revenue. I&E St. No. 1, p. 11.
5. Additional revenue in the form of incentive compensation would be beneficial to PGW, but not necessarily the PGW customers. I&E St. No. 1, pp. 7-8.
6. PGW has stated that it would continue the DSM program even if the PI were not granted. I&E St. No. 1-SR, p. 9.
7. PGW has not proposed a corresponding penalty if it does not meet its stated performance goals. I&E St. No. 1, p. 7, and I&E St. No. 1-SR, p. 9.
8. The Commission has directed PGW to develop and designate a portion of the ELIPR budget to serve low-income multifamily housing. I&E St. No. 1, pp. 8-9.
9. The criteria for PGW's proposed LIME program may result in only 50% of the residents of the multifamily housing meeting the definition of low-income. I&E St. No. 1, pp. 9-10.
10. PGW's criteria that only 50% of the residents meet the low-income threshold does not satisfy the Commission's request. I&E St. No. 1, p. 9.
11. Using universal service funding to weatherize residences that are not low-income dilutes the benefits of PGW's Enhanced Low-Income Retrofit Program. I&E St. No. 1, p. 11.

## APPENDIX B –Proposed Conclusions of Law

1. As the petitioner, PGW has the burden of proof in this proceeding to establish that it is entitled to the relief it is seeking. 66 Pa. C.S. § 332(a).
2. To meet its burden of proof in this proceeding, PGW must “present evidence more convincing, by even the smallest amount, than that presented by any opposing party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).
3. PGW may only recover “all prudent and reasonable costs associated with the development, management, financing, and operation” of its DSM II program. 66 Pa.C.S.A. § 1319; *Petition of UGI Utilities, Inc.- Elec. Div. for Approval of Its Energy Efficiency & Conservation Plan*, M-2010-2210316, (Oct. 14, 2011).
4. PGW’s burden of proof may only be satisfied by establishing a preponderance of evidence which is substantial and legally credible. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).
5. The Commission’s decision must be supported by reliable, probative and substantial evidence. *See Pocono Water Company v. Pennsylvania Public Utility Commission*, 630 A.2d 971 (Pa. Cmwlth. 1993).
6. Recovery of lost revenue as it relates to DSM programs should be addressed in a base rate proceeding. *Investigation into Demand Side Mgt. by Electric Utilities Unif. Cost Recovery Mechanism*, I-900005, 1993 WL 855893 (Pa. PUC Dec. 13, 1993).
7. PGW has failed to demonstrate that it is entitled to a performance incentive in this proceeding.
8. Section 523 of the Code does not permit the recovery of incentives outside of a base rate case. *Pennsylvania Indus. Energy Coal. v. Pennsylvania Pub. Util. Comm’n*, 653 A.2d 1336, 1353 (Pa. Commw. Ct. 1995) aff’d, 543 Pa. 307, 670 A.2d 1152 (1996).
9. LIURP defines a low-income customer as “[a] residential utility customer with household income at or below 150% of the Federal poverty guidelines. 52 Pa. Code § 58.2.

10. The definition of universal service and energy conservation targets residential customers specifically. 66 Pa. Code § 2202.
11. The criteria that only 50% of the residents of a multifamily property meet the definition of low-income does not satisfy the Commission's request that PGW develop a program and designate a portion of ELIRP to serve low-income multifamily housing. *Phila. Gas Works Univ. Service and Energy Conserv. Plan for 2014-2016 Submitted in Compliance with 52 Pa. Code §62.4, M-2013-2366301* (Pa. PUC August 22, 2014).
12. The goals of LIURP, which ELIRP replaced, are to reduce low-income bills, reduce payment problems, and reduce uncollectible expense. 52 Pa. Code § 58.1.
13. PGW has not established that its LIME program targets the correct audience for an energy efficiency program.

## **APPENDIX C – Proposed Ordering Paragraphs**

THEREFORE IT IS RECOMMENDED:

1. That PGW's DSM Petition as filed is rejected.
2. That PGW's Proposed Conservation Adjustment Mechanism is rejected.
3. That PGW's Proposed Performance Incentive is rejected.
4. That PGW's Low-Income Multifamily Efficiency program is rejected.