



COMMONWEALTH OF PENNSYLVANIA

December 8, 2015

E-FILED

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

**Re: Petition of Philadelphia Gas Works for Approval of Demand Side
Management Plan for FY 2016-2010 AND
Philadelphia Gas Works Universal Service and Energy
Conservation Plan for 2014-2016 52 Pa. Code §62.4 -
Request for Waivers
Docket No. P-2014-2459362**

Dear Secretary Chiavetta:

I am delivering for filing today the **Reply Brief on Behalf of the Office of Small Business Advocate**, in the above-captioned proceeding.

Two copies have been served today on all known parties in this proceeding. A Certificate of Service to that effect is enclosed.

If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Sharon E. Webb".

Sharon E. Webb
Assistant Small Business Advocate
Attorney ID No. 73995

Enclosures

cc: The Honorable Christopher P. Pell
The Honorable Marta Guhl
Parties of Record
Robert D. Knecht

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**REPLY BRIEF
ON BEHALF OF THE
OFFICE OF SMALL BUSINESS ADVOCATE**

**Sharon E. Webb
Assistant Small Business Advocate
Attorney ID No. 73995**

**For: John R. Evans
Small Business Advocate**

**Office of Small Business Advocate
Suite 202, Commerce Building
300 North Second Street
Harrisburg, PA 17101**

Dated: December 9, 2015

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I. INTRODUCTION AND STATEMENT OF THE CASE

On December 23, 2014, Philadelphia Gas Works (“PGW” or “Company”) filed a “Petition of Philadelphia Gas Works for Approval of Demand Side Management Plan 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” with the Pennsylvania Public Utility Commission (“Commission”). The OSBA intervened in this case to evaluate reasonableness and cost of PGW’s Demand Side Management Plan (“DSM”) and its impact on small business customers.

Regarding this petition, the OSBA submits the following:

- In its surrebuttal testimony, the OCA presents credible evidence that a significant portion of the costs associated with PGW’s proposed “CRP Home Comfort Program” provide benefits to residential customers who are not participants in the Company’s Customer Responsibility Program (“CRP”) and therefore have not qualified as low-income customers. As such, this program is substantially different from the Company’s low-income customer assistance program, and its costs should not be recovered in the Company’s Universal Service and Energy Conservation Charge (“USC”).¹ The OSBA therefore submits that the costs for the CRP Home Comfort Program should be recovered solely from the residential class.
- If the Commission rejects OCA’s argument and concludes that the CRP Home Comfort Program does focus its efforts only on CRP customers, the OSBA regretfully concludes that these programs have been ineffective. The simple

¹ The OSBA notes that I&E makes this exact same argument at pages 16-18 of its Main Brief in this proceeding with respect to the recovery of costs related to multi-family energy conservation programs.

facts are that CRP residential heating customer usage far exceeds that of other residential heating customer usage and has exhibited virtually no decline over the past 15 years. Meanwhile, non-CRP residential customer use has, in fact, materially declined, in large part *without* any utility-sponsored energy efficiency and conservation (“EE&C”) programs. Thus, if the Commission concludes that CRP customers are the target beneficiaries of this program, spending on the CRP Home Comfort Program should be minimized until such time as the Company can develop a demonstrably effective program.

- The Company’s proposal to adopt a partial rate decoupling mechanism for alleged lost margin associated with energy conservation, denoted the Conservation Adjustment Mechanism (“CAM”), is not consistent with Pennsylvania public policy as stated in Act 129, it is not consistent with established Commission policy, it constitutes improper single-issue ratemaking, and it would likely impose charges on ratepayers for “lost” margin that is not, in fact, demonstrably lost. Moreover, the Company’s continuing claims of poverty are not supported by any credible financial analysis presented by the Company. This proposal should be rejected.
- The Company’s proposal to require ratepayers to give PGW an incentive to perform competently is unnecessary and inconsistent with Commission policy. The Company’s proposal should be rejected. To the extent that PGW feels it needs an economic incentive to perform competently, the OSBA recommends that the Commission adopt a penalty mechanism, consistent with Pennsylvania public policy for EE&C programs as laid out in Act 129.

- The Company proposes to make certain methodological changes to the calculation of economic benefits associated with its EE&C programs under the Total Resource Cost (“TRC”) Test. These modifications are also inconsistent with Pennsylvania public policy as stated in Act 129, and they are not consistent with Commission policy as carefully developed in a number of generic proceedings involving the TRC Test for Pennsylvania electric distribution companies (“EDCs”). Moreover, the Company improperly proposes to count as “benefits” certain economic transfers which will likely cause more harm than benefit to the Pennsylvania economy. To the extent any such modifications to the TRC Test are appropriate, the OSBA submits that they would be better addressed in a generic proceeding. The Commission should therefore direct PGW to resubmit its DSM based on the currently approved TRC Test methodology.

II. PROCEDURAL HISTORY

PGW filed the above referenced Petition on or about December 23, 2014. The OSBA filed a Notice of Intervention on January 13, 2015. On January 12, 2015, Answers to PGW's Petition were filed by the Office of Consumer Advocate ("OCA"), the Commission's Bureau of Investigation and Enforcement ("I&E), and the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania ("CAUSE-PA"). The Philadelphia Industrial and Commercial Gas Users Group ("PICGUG"), and the Tenant Union Representative Network ("TURN") and Alliance of Senior Citizens of Greater Philadelphia ("Action Alliance") (collectively "TURN *et al.*") filed Petitions to Intervene on January 13, 2015. The Clean Air Council ("CAC") filed a Petition to Intervene on January 16, 2015.

The filing was assigned to the Office of Administrative Law Judge ("OALJ") with Administrative Law Judges ("ALJs") Marta Guhl and Christopher P. Pell. The ALJs issued Prehearing Notice scheduling a pre-hearing conference for February 17, 2015. In accordance with the Prehearing Order, the OSBA, and other parties filed prehearing memoranda.

On April 10, 2015, the Company filed its Petition for Philadelphia Gas Works to Extend Demand Side Management Plan ("Bridge Plan") and requested an extension of its Phase I Plan until August 31, 2016, or the effective date of the Phase II compliance plan filed in response to a Commission Order in the Phase II proceeding, whichever was earlier. The Commission subsequently approved the Bridge Plan in an Order entered May 7, 2015.²

In accordance with the procedural schedule established at the prehearing conference, the OSBA filed the Direct Testimony of OSBA witness Robert D. Knecht on June 23, 2015.

On July 21, 2015, the OSBA filed the Rebuttal Testimony of Mr. Knecht.

² Pennsylvania Public Utility Commission v. Philadelphia Gas Works, Docket Nos. P-2009-2097639 and R-2009-2139884, Order entered May 7, 2015 ("Bridge Plan Order").

Subsequently, on August 5, 2015, the OSBA filed the Surrebuttal Testimony of Mr. Knecht.

On August 11, 2015, ALJs Guhl and Pell issued a Prehearing Order indicating that, due to settlement negotiations, the hearings, originally scheduled for August 18-20, 2015 and August 25, 2015, would be rescheduled to October 27-30, 2015.

Subsequently the Company filed rejoinder testimony on October 22, 2015. After reviewing the rejoinder testimony all parties agreed to waive cross examination and as such, a telephonic hearing was held on October 28, 2015 to enter the testimony and exhibits of the OSBA and other parties into the record via stipulation.

On November 20, 2015, the OSBA and other parties submitted Main Briefs.

The OSBA submits this Reply Brief in accordance with the litigation schedule established by ALJs Guhl and Pell.

III. OSBA'S GENERAL REPLY

In its Main Brief, the OSBA addressed most of the arguments set forth by the various parties in which the OSBA has an interest. Those arguments are incorporated by reference and will not be repeated here. This Reply Brief responds selectively to other specific arguments raised by PGW on issues in which the OSBA has an interest.

IV. CONTINUATION OF DSM PLAN

A. Summary of Briefing Party's Position

The OSBA set forth a detailed summary in its Main Brief. That discussion, while not restated in this Reply Brief, is one on which the OSBA continues to rely and incorporates by reference.³

B. PGW Proposal to Continue DSM

In its Main Brief, PGW cites to the OSBA's acknowledgement of the Commission's preliminary determination relative to the success of PGW's EE&C programs in the May 7, 2015 Bridge Plan Order, and seems to suggest that the OSBA is in agreement.⁴ However, the OSBA continues to respectfully disagree with the Commission's apparent finding that any such success has manifested itself in observable aggregate load reductions.⁵ Further, the OSBA's objections to specific provisions or elements of the DSM are highlighted in relevant sections throughout its main and reply briefs and are incorporated here by reference.

³ OSBA Main Brief, p. 10.

⁴ PGW Main Brief, p.20.

⁵ OSBA Main Brief, p. 10.

C. Cost Benefit Analysis

1. Summary of Argument

PGW proposes several technical modifications to the TRC Test, which it uses to evaluate the net economic value of EE&C programs. In general, these proposed modifications would serve to increase the value of energy conservation measures, as a result of recognizing theoretical market and hypothetical tax benefits. The Company's proposed modifications should be rejected because they are:

- i. Inconsistent with Act 129 and established Commission policy and precedent;
- ii. Unnecessary to justify the Company's proposed EE&C programs in this proceeding; and,
- iii. Inconsistent with sound public policy and regulatory policy in Pennsylvania.

The Company should therefore be directed to re-file its DSM to reflect continued use of the TRC Test based on the established methodology, consistent with Commission policy.

2. Review of the Proposed Changes

PGW proposes to include two new categories of economic benefits in its TRC Test, namely the demand reduction induced price effect ("DRIPE") and the environmental costs of carbon associated with avoided natural gas and electric consumption.⁶ The methodology for deriving the DRIPE and carbon benefits is detailed in the Company's Petition.⁷

The OSBA notes that the PGW's petition also includes values for avoided costs associated with SO₂ and NO_x emissions associated with both avoided natural gas and electricity

⁶ PGW Main Brief, p. 25-26.

⁷ PGW Petition, Appendix B, pp. 138-147.

consumption.⁸ However, as PGW's brief makes no mention of these effects, OSBA assumes that PGW does not propose to modify its TRC Test calculations for these environmental impacts.

The implication of these proposed changes is that the economic benefits associated with energy conservation are increased, relative to the existing methodology. In effect, the TRC Test becomes easier to pass.

3. Commission Policy

Pursuant to Act 129, utility EE&C programs must, in aggregate, pass an economic TRC Test. Act 129 defines the TRC Test as follows:

A standard test that is met if, over the effective life of each plan not to exceed 15 years, the net present value of the avoided monetary cost of supplying electricity is greater than the net present value of the monetary cost of energy efficiency conservation measures.⁹

The OSBA notes that Act 129 is very specific in limiting the values to be included in the TRC Test to "*monetary*" values (*emphasis added*). The OSBA respectfully submits that neither DRIPE, which reflects a theoretical reduction in market prices associated with reduced demand, nor an un-enacted and hypothetical carbon tax should reasonably qualify as *monetary* costs. As such, the Company's proposal is inconsistent with current Pennsylvania law, at least at it applies to EDC EE&C programs.

Moreover, the Commission has expended significant resources in developing the specifics of the TRC Test for EDCs, which has resulted in detailed orders regarding the TRC Test at Docket No. M-2015-2468992 (Order entered June 22, 2015) and at Docket No. M-2009-2108601 (Orders entered June 23, 2009 and August 2, 2011).

⁸ PGW Petition, Appendix B, pp. 147-151.

⁹ 66 Pa. C.S.A. §2806.1(m)

Interestingly, PGW's Main Brief provides no references to these decisions which might provide support its proposals with respect to DRIPE and carbon pricing. In contrast, OSBA reviewed these decisions and was unable to locate any Commission supporting language for including DRIPE or carbon costs in the TRC Test, but did find various contrary views. With respect to environmental costs, the Commission specifically stated:

We shall not include societal costs, environmental costs, NEIs or other non-electric elements into the 2016 TRC Test except to the extent discussed above relative to quantifiable benefits from fossil fuels and water avoided costs.¹⁰

Further, the Commission provided:

Any carbon-related reduction expense not currently included will continue to be excluded until such time as legislation is passed that dictates otherwise.¹¹

Regarding price suppression benefits, the Commission has only considered them for electricity "demand response" programs, focused on reducing peak electrical demand. The OSBA was unable to locate any Commission language supporting the recognition of price effects related to overall reduction in energy consumption, which is what PGW has proposed in this proceeding. Moreover, even for demand response programs, the Commission has not adopted any price suppression benefits in the TRC. For example:

However, due to the lack of quantifiable information regarding such suppression in prices, we will *not* prescribe a specific PA TRC calculation method at this time. Such benefits may be included in the PA TRC calculations for any proposed residential demand response programs. We strongly encourage the EDCs and stakeholders to review the potential for wholesale market price suppression due to residential demand response measures.¹²
(*Emphasis added*)

¹⁰ 2016 Total Resource Cost (TRC) Test, Docket No. M-2015-2468992, Order, p. 14 (June 22, 2015).

¹¹ *Id.*, p 29.

¹² Implementation of Act 129 of 2008 – Total Resource Cost (TRC) Test -2012 Phase II of Act 129, Docket Nos. M-2012-2300653/M-2009-2108601, Order p. 60 (August 30, 2012).

The OSBA has not been able to locate any subsequent Commission rulings on this subject, nor has PGW made any reference to Commission decisions supporting its position.

In short, it is the OSBA's view that the Commission has quite appropriately excluded the non-market, difficult-to-quantify, benefits that PGW alleges in this proceeding in its rules governing TRC Tests for EE&C programs. The OSBA respectfully submits that the care and effort taken by the Commission to develop a set of detailed policies for the economic evaluation of EE&C programs for electric distribution companies should extend to PGW.

4. Relevance to Current Petition

In its filing, PGW reports that, “[u]nder a ‘Low AC’ TRC, using similar avoided cost assumptions as Phase I, the Phase II Proposed Program will provide a present value of net benefits of \$4.96 million, with a BCR of 1.19.”¹³

Thus, under the Company's calculations, the proposed program would appear to pass a TRC Test based on the current methodology. As such, there is no need to wander far afield from established Commission policy regarding the TRC Test in order to justify the Company's proposed Phase II EE&C programs.

5. Public and Regulatory Policy

a. DRIPE

In its Main Brief, PGW asserts that DRIPE is a societal benefit, citing PGW Witness Mr. Chernick's rebuttal testimony in support of this assertion.¹⁴ However, a careful reading of Mr. Chernick's rebuttal testimony reveals that it is his view that Commission policy should be based solely on the impact of a particular policy on utility ratepayers, and that the Commission should

¹³ Petition, p. 32, fn. 45.

¹⁴ PGW Statement 4-R, p. 19

ignore any negative impacts on other segments of the Pennsylvania economy.¹⁵ Mr. Chernick also concludes that the Commission does not, as a policy matter, consider negative impacts on other Pennsylvania economic sectors.

With respect to natural gas prices, the OSBA respectfully disagrees. As OSBA witness Mr. Knecht observes, the economic effect of reduced natural gas prices is essentially a benefit transfer from natural gas producers to natural gas consumers.¹⁶ Mr. Knecht also notes that Pennsylvania is a much larger producer of natural gas than it is a consumer.¹⁷ As such, a reduction in gas prices, with the concomitant reduction in employment, royalties, taxes and other economic activity in the Pennsylvania natural gas production industry, could easily outweigh the benefits to Pennsylvania natural gas consumers.

PGW's proposal, if adopted, would implicitly ignore the implications of reduced economic activity in the Pennsylvania oil and gas sector. In effect, by including the benefits of natural gas prices suppression, the Company may adopt EE&C policies that would otherwise *not* be economic. The OSBA respectfully submits that it would be problematic for the Commission to approve uneconomic conservation measures at PGW based on the price suppression benefits for gas consumers, while completely ignoring the costs of price suppression on an important sector of the Pennsylvania economy.

The OSBA would acknowledge that price suppression benefits for certain type of energy conservation measures may possibly, in some specific cases, provide net overall economic benefits to Pennsylvania. However, because gas production in Pennsylvania far exceeds gas consumption, the OSBA respectfully submits that the net effects on Pennsylvanians of suppressing natural gas prices are unlikely to be a net benefit. Moreover, an evaluation of the net

¹⁵ *Id.*

¹⁶ OSBA Statement No. 1, pp. 14-15.

¹⁷ OSBA Statement No. 1, p.15.

benefits of price suppression is a complex matter, as is the legal issue as to whether price suppression is a monetary benefit as required by Act 129.¹⁸ The OSBA therefore respectfully submits that, to the extent the Commission sees possible merit in such an approach, any evaluation would be best evaluated in a generic proceeding involving all utilities.

b. Carbon Tax

PGW proposes that a value for avoided carbon emissions be included in the TRC Test based on the Company's assessment of the level of a future carbon tax or carbon allowance scheme.¹⁹

Like Mr. Knecht, the OSBA is somewhat less optimistic than PGW that, given today's political climate, the nation or the Commonwealth will adopt a significant carbon tax in the near future.²⁰ As such, the OSBA respectfully submits that the Company's proposal in this respect is little more than wishful thinking.

Moreover, as noted earlier, the Commission has made it very clear that its policy is that no environmental taxes will be included in the TRC Test until such time as legislation is enacted to allow such an inclusion. The OSBA concludes that the Commission's approach is considerably more realistic and defensible than that proposed by PGW.

The OSBA therefore respectfully submits that PGW's proposal to include a future carbon tax as a benefit associated with energy conservation is unsupported, inconsistent with sound and established policy, and should be rejected. In the alternative, if the Commission sees merit in recognizing the potential benefits associated with a hypothetical future carbon tax in the TRC Test, the OSBA respectfully submits that the issue would be better addressed systematically in the Commission's TRC Test policy proceedings, rather than in this isolated proceeding.

¹⁸ 66 Pa. C.S.A. §2806.1(m)

¹⁹ PGW Statement No. 4-R, p. 22.

²⁰ OSBA Statement No. 3, p. 10.

V. CONCLUSION

WHEREFORE, The OSBA respectfully requests that the Pennsylvania Public Utility Commission adjudicate this proceeding in accordance with the arguments presented herein and in the OSBA's Main Brief.

Respectfully Submitted,



Sharon E. Webb
Assistant Small Business Advocate
Attorney I.D. No. 73995

For: John R. Evans
Small Business Advocate

**Office of Small Business Advocate
300 North Second Street, Suite 202
Harrisburg, PA 17101**

Dated: December 8, 2015

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Petition of Philadelphia Gas Works for :
Approval of Demand Side Management :
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And : Docket No. P-2014-2459362
Philadelphia Gas Works Universal :
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for 2014-2016 52 Pa. Code §62.4 - :
Request for Waivers :**

CERTIFICATE OF SERVICE

I certify that true and correct copies of the foregoing, have been served via email and/or First-class Mail (unless otherwise indicated below), on all known parties in this matter, on behalf of the Office of Small Business Advocate.

The Honorable Christopher P. Pell
Administrative Law Judge
PA Public Utility Commission
801 Market Street, Suite 4063
Philadelphia, PA 19107

The Honorable Marta Guhl
Administrative Law Judge
PA Public Utility Commission
801 Market Street, Suite 4063
Philadelphia, PA 19107

Christy M. Appleby, Esquire
Darryl A. Lawrence, Esquire
Office of Consumer Advocate
555 Walnut Street, 5th Floor Forum Place
Harrisburg, PA 17101
cappleby@paoca.org
dlawrence@paoca.org

Josie B.H. Pickens, Esquire
Thu B. Tran, Esquire
Robert Ballenger, Esquire
Energy Unit, Community Legal Services
North Philadelphia Law Center
1410 West Erie Avenue
Philadelphia, PA 19102
jpickens@clsphila.org
ttran@clsphila.org
rballenger@clsphila.org

Daniel Clearfield, Esquire
Deanne O'Dell, Esquire
Eckert Seamans Cherin & Mellott, LLC
213 Market Street - 9th Floor
Harrisburg, PA 17101
dclearfield@eckertseamans.com
DODell@eckertseamans.com

Charis Mincavage, Esquire
Adeolu A. Bakare, Esquire
Elizabeth Trinkle, Esquire
McNees Wallace & Nurick
P.O. Box 1166
Harrisburg, PA 17108-1166
cmincavage@mwn.com
abakare@mwn.com
etrinkle@mwn.com

Harry S. Geller, Esquire
Elizabeth R. Marx, Esquire
The Pennsylvania Law Project
118 Locust Street
Harrisburg, PA 17101-1414
pulp@palegalaid.net

Richard Kanaskie, Esquire
Gina L. Lauffer, Esquire
Carrie Wright, Esquire
Bureau of Investigation & Enforcement
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105
rkanaskie@pa.gov
ginlauffer@pa.gov
carwright@pa.gov

Joseph Magee, Esquire
Grace McGovern, Esquire
Bureau of Consumer Services
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265
jmagee@pa.gov
gmcgovern@pa.gov

Joseph Otis Minott, Esquire
Ernest Logan Welde, Esquire
Clean Air Council
135 S. 19th Street, Suite 300
Philadelphia, PA 19103
Joe_minott@cleanair.org
jwelde@cleanair.org
(EMAIL ONLY)

Dated: December 8, 2015



Sharon E. Webb
Assistant Small Business Advocate
Attorney ID No. 73995