



August 15, 2016

Secretary Rosemary Chiavetta  
Pennsylvania Public Utility Commission  
PO 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 Service and Energy Conservation Plan for 2014-2016 52 Pa. Code § 62.4 – Request for Waivers, Docket No. P-2014-2459362*

**Joint Comments of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) and the Tenant Union Representative Network & Action Alliance of Senior Citizens of Greater Philadelphia (TURN et al.)**

Dear Secretary Chiavetta,

Please find the **Joint Comments of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) and the Tenant Union Representative Network & Action Alliance of Senior Citizens of Greater Philadelphia (TURN et al.)**, which are being filed at the above captioned docket pursuant to the Commission's August 4, 2016 Tentative Order at page 145, paragraph 3.

Copies are being served on parties pursuant to the attached Certificate of Service. Please contact me with any questions or concerns.

Respectfully,

A handwritten signature in blue ink, appearing to read "Elizabeth R. Marx", is written above a horizontal line.

Elizabeth R. Marx, Esq.  
***Counsel for CAUSE-PA***

Enclosures  
CC: Parties

**BEFORE THE PENNSYLVANIA PUBLIC UTILITIES COMMISSION**

Petition of Philadelphia Gas Works for :  
Approval of Demand-Side Management :  
Plan for FY 2016-2020, and Philadelphia : P-2014-2459362  
Gas Works Universal Service and Energy :  
Conservation Plan for 2014-2016, 52 Pa.Code :  
§ 62.4 – Request for Waivers :

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served copies of the **Joint Comments of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), and the Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (TURN et al.)** upon the parties of record in the above captioned proceeding in accordance with the requirements of 52 Pa. Code § 1.54 in the manner and upon the persons listed below.

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Dated: August 15, 2016

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Philadelphia Gas Works for  
Approval of its Phase II Demand Side : Docket No. P-2014-2459362  
Management Plan

JOINT COMMENTS

OF

THE COALITION FOR AFFORDABLE UTILITY SERVICES

AND ENERGY EFFICIENCY IN PENNSYLVANIA (“CAUSE-PA”), and

THE TENANT UNION REPRESENTATIVE NETWORK & ACTION ALLIANCE OF

SENIOR CITIZENS OF GREATER PHILADELPHIA (“TURN *et al.*”)

August 15, 2016

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## I. INTRODUCTION

On December 23, 2014, Philadelphia Gas Works (“PGW”) filed its Petition for Approval of PGW’s Demand-Side Management Plan for FY 2016-2020 (“Phase II DSM Plan”) and Philadelphia Gas Works Universal Service and Energy Conservation Plan for 2014-2016 52 Pa. Code Sec. 62.4 – Request for Waivers. On January 12, 2015, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”) filed a Petition to Intervene and Answer. On January 13, 2015, Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (“TURN *et al.*”) filed a Petition to Intervene. Answers or Notices to Intervene were also filed by the Office of Consumer Advocate (“OCA”), the Bureau of Investigation and Enforcement (“I&E”), the Philadelphia Industrial and Commercial Gas Users Group (“PICGUG”), the Office of Small Business Advocate (“OSBA”), and Clean Air Council (“CAC”).

On April 10, 2015, PGW filed a petition to extend its Phase I DSM Plan for an interim period effective September 1, 2015, through the earlier of either: (1) August 31, 2016; or, (2) upon the effective date of a Phase II compliance plan filed in response to a final Commission Order in the Phase II DSM proceeding (“DSM Bridge Plan). The Commission approved PGW’s DSM Bridge Plan on May 7, 2015.

The parties pre-served testimony according to the litigation schedule set forth in Prehearing Order No. 1. The parties engaged in extensive discovery and settlement discussions but were unable to reach a compromise. An evidentiary hearing was held by telephone on October 28, 2015. During the evidentiary hearing, all parties agreed to waive cross examination of all other party witnesses and moved for the admission of various pre-served testimony and

exhibits. All of the parties' pre-served testimony and hearing exhibits were admitted into the record.

The parties filed Main Briefs (MB) on November 19, 2015. Reply Briefs (RB) followed on December 8, 2015.

A Recommended Decision ("RD") was issued by Administrative Law Judges Christopher P. Pell and Marta Guhl on March 18, 2016. In relevant part, the RD ordered PGW to follow statutory and regulatory mandates with respect to its Low-Income Usage Reduction Program (LIURP) budget, and continue its LIURP budget at its Phase I DSM Plan spending level of \$7.6 million per year. The RD also denied PGW's attempt to increase revenue through its DSM, and rejected several of its regulatory waiver requests.

PGW filed Exceptions to the RD on April 7, 2016. Several parties, including CAUSE-PA filed Replies to Exceptions on April 18, 2016. That same day, TURN *et al.* filed a letter with the Commission in which it supported and adopted the Replies to Exceptions of CAUSE-PA.

On August 4, 2016, the Commission entered a Tentative Opinion and Order ("TO") in which it granted, in part, and denied, in part, the Exceptions of PGW. In its TO the Commission directed that official notice be taken of new facts and calculations on which it relied to calculate a reduced budget for PGW's LIURP. The Commission directed PGW to utilize a LIURP budget amount of \$5,860,506 per year. Also in its TO, the Commission directed interested Parties to submit any comments on its new LIURP budget directive for PGW within ten days.

CAUSE-PA and TURN *et al.* (Joint Commenters) respectfully submit these comments, insisting that the Commission preserve PGW's \$7.6 million LIURP budget as required by the Choice Act, Commission regulations and an assessment of the needs of PGW's customers.

## II. SUMMARY

The purpose of these Comments is to address the Commission's LIURP budget directive for PGW's Phase II DSM Plan.<sup>1</sup> As a preliminary matter, the Joint Commenters urge the Commission to take immediate action to ensure that PGW's LIURP funding is not subject to an immediate curtailment of its current level of activities when PGW's DSM Bridge Plan expires on August 31, 2016. In its TO, the Commission arrived at a \$5,860,506 annual LIURP budget using a new methodology and data that was not previously on the record, but which the Commission directed to be placed on the record of this proceeding.<sup>2</sup> The Commission should not adopt its new, unprecedented, and fundamentally flawed methodology for determining PGW's LIURP budget for three reasons. First, the methodology fails to consider the actual needs and unique circumstances in PGW's service territory (as required in the Commission's regulations). Second, the methodology inappropriately relies on data and budget determinations in other natural gas distribution company (NGDC) service territories outside of Philadelphia. Third, the methodology was not presented for consideration and analysis by the parties in this on-the-record proceeding until the Commission entered its TO on August 4, 2016, which was 281 days *after* the date that the record closed and all evidence was entered by the parties.

In reducing PGW's LIURP budget, the Commission has not conducted the assessments required by Section 2203(8) of the Natural Gas Choice and Competition Act and Section 58.4 of the Commission's LIURP regulations. The Joint Commenters submit that the budget recommendation of the ALJs, as set forth in the RD, is reasonable, based on the appropriate, extensive, and complete sets of area-specific data contained within the record of the proceeding.

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<sup>1</sup> TO at 68.

<sup>2</sup> *Id.*

Furthermore, the area-specific data contained in the Affidavit of Roger F. Colton, submitted together with the OCA's comments to the Commission's TO (Colton Affidavit), verify that the characteristics of PGW's service territory require specific consideration in connection with a needs assessment. The use of state-wide data derives a funding standard that is inappropriate for PGW's territory, and would likely be inappropriate for any other service territory in the Commonwealth. The Joint Commenters therefore strongly urge the Commission to uphold the ALJs Recommended Decision to maintain, at a minimum, a \$7.6 million annual budget for PGW's Phase II DSM Plan.<sup>3</sup> A \$7.6 million annual budget is necessary to meet the overwhelming need for LIURP services in PGW's service territory, and is fully supported by the record in this proceeding, as well as the factual data provided in the Colton Affidavit.

In a final section of these comments, the Joint Commenters urge the Commission to clarify that approval of PGW's proposed new Low-Income Multifamily (LIME) program budget to address multifamily housing energy needs is in addition to the approved LIURP budget.

### **III. LEGAL STANDARD**

Both statutory law and Commission regulation require that LIURP funding be established through an assessment of **need in a given geographic service territory**.

First, the Commission has the obligation pursuant to the Natural Gas Competition Act – and its regulations – to ensure that Universal Service programs are appropriately designed and adequately funded to meet the needs of the economically vulnerable low-income households within PGW's service territory.<sup>4</sup> The Natural Gas Choice and Competition Act (Act) provides:

**The Commission shall ensure that universal service and energy conservation policies, activities and services are appropriately funded and available in each**

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<sup>3</sup> RD at 109.

<sup>4</sup> 66 Pa. C.S. § 2203(8); 52 Pa. Code §§ 62.1, 62.3; see also CAUSE-PA MB at 18-19.

**natural gas distribution service territory.** The Commission shall encourage the use of community-based organizations that have the necessary technical and administrative experience to be the direct providers of services or programs which reduce energy consumption or otherwise assist low-income retail gas customers afford natural gas service. Programs under this paragraph shall be subject to the administrative oversight of the commission, which shall ensure that the programs are operated in a cost-effective manner.<sup>5</sup>

This language confers on the Commission the explicit responsibility and obligation to ensure (1) appropriate program funding, (2) adequate program availability, and (3) cost-effective design and administration **in each natural gas distribution territory.**

The statutory mandate contained in the Choice Act is further explained in regulation, which describes the purpose and intent of LIURP:

The programs are intended to assist low income customers conserve energy and reduce residential energy bills. The reduction in energy bills should decrease the incidence and risk of customer payment delinquencies and the attendant utility costs associated with uncollectible accounts expense, collection costs and arrearage carrying costs. The programs are also intended to reduce the residential demand for electricity and gas and the peak demand for electricity so as to reduce costs related to the purchase of fuel or of power and concomitantly reduce demand which could lead to the need to construct new generating capacity. The programs should also result in improved health, safety and comfort levels for program recipients.<sup>6</sup>

To achieve these benefits (reduced energy costs, reduced account delinquency and collections costs, and reduced demand) in compliance with the obligations in the Choice Act (to provide adequately funded, available, and cost-effective energy efficiency programming in every service territory), the Commission's regulations provide that revisions in LIURP program funding in a given service territory be determined based on the following factors:

- (1) **The number of eligible customers** that could be provided cost-effective usage reduction services. The calculation shall take into consideration the number of customer dwellings that have already received, or are not otherwise in need of, usage reduction services.

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<sup>5</sup> 66 Pa. C.S. § 2203(8) (emphasis added).

<sup>6</sup> 52 Pa. Code § 58.1.

- (2) **Expected customer participation** rates for eligible customers. Expected participation rates shall be based on historical participation rates when customers have been solicited through approved personal contact methods.
- (3) **The total expense of providing usage reduction services**, including costs of program measures, conservation education expenses and prorated expenses for program administration.
- (4) **A plan for providing program services within a reasonable period of time**, with consideration given to the contractor capacity necessary for provision of services and the impact on utility rates.<sup>7</sup>

As explained below – and demonstrated throughout the underlying proceeding in this case - the need in PGW’s service territory is great. Reducing PGW’s LIURP budget is not supported by the Choice Act, Commission regulations, or any factual findings made concerning the needs of customers in PGW’s service territory. The Commission’s decision to do so based on the rationale set forth in its TO is in error, and the Joint Commenters respectfully submit that the Commission should modify its decision and direct PGW to maintain LIURP at its current \$7.6 million level as supported by the record and recommended by the ALJs.

#### **IV. LIURP BUDGET**

- a. The Commission should take immediate action to ensure that PGW’s Phase I DSM Plan LIURP is not subject to an abrupt curtailment of its current level of activities on August 31, 2016.**

It is imperative that PGW continue to operate its LIURP at its current funding and production level. The program should not be subject, on August 31, 2016, to an immediate curtailment of its current level of activities. On April 10, 2015, PGW filed a Petition to extend its Phase I DSM Plan. In the Petition, PGW alleged that the Phase I DSM Plan programs will “go dark” on September 1, 2015, before the expected completion of the litigation regarding the Phase

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<sup>7</sup> 52 Pa. Code § 58.4 (emphasis added).

II DSM Plan. In its Bridge Petition, PGW alleged that if its programs were permitted to go dark, the result would be a loss of vendor participation, customer confusion and wasted resources that would harm customers as well as the efforts PGW has taken to promote cost effective natural gas conservation programs. To avoid this result, PGW requested that the Commission extend the Phase I DSM Plan from September 1, 2015, until the earlier of: (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. On May 7, 2015, the Commission issued an Order directing the same:

Philadelphia Gas Works is permitted to implement the DSM Bridge Plan for an interim period effective September 1, 2015, through either: (1) August 31, 2016; or, (2) upon the effective date of a Phase II compliance plan filed in response to a final Commission Order at Docket Number P-2014-2459362, whichever is earlier.<sup>8</sup>

It is now apparent that litigation regarding PGW's Phase II DSM Plan will not result in the entry of a final order in this matter prior to August 31, 2016. It is equally unclear what PGW plans to do on September 1, 2016, in the absence of an approved Plan or budget. A premature throttling down of PGW's LIURP on September 1, 2016, would have disastrous consequences to a successful and effective program. It is respectfully asserted that the same considerations put forward by PGW in regard to its non- low-income programs, and which justified PGW's Bridge Plan, apply equally to a reduction of PGW's LIURP budget. The effect on vendor participation, customer confusion and wasted resources would be equally devastating. To the best of the Joint Commenters' knowledge, the Commission has never before ordered a reduction of a LIURP budget even remotely close to the extent contemplated by its August 4, 2016 Tentative Order, i.e. \$1,710,000 annually, about 23%. And certainly it has never, as here, ordered that any such

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<sup>8</sup> Philadelphia Gas Work's Revised Petition for Approval of Energy Conservation and Demand Side Management Plan, Opinion and Order, Docket P-2009-2097639, at 7 ¶ 2 (May 7, 2015).

budgetary reduction take effect prior to a final resolution of the issues. It is therefore respectfully requested that the Commission immediately clarify that PGW's LIURP not begin any premature curtailment of activity and that it continue at its current level of production.

**b. The record in this proceeding demonstrates the need in PGW's service territory for a \$7.6 million or higher annual LIURP budget, in accord with the Commission's LIURP regulations and the requirements of the Choice Act.**

In its Tentative Opinion and Order, the Commission improperly rejected the ALJs recommendation to maintain an annual LIURP budget of \$7.6 million during PGW's Phase II DSM Plan.<sup>9</sup> The Commission concluded that the \$7.6 million budget is not based upon a needs assessment within PGW's service territory.<sup>10</sup> In reaching its finding, the Commission did not consider the ample evidence produced in this proceeding which clearly demonstrates that there is a need for at least a \$7.6 million annual LIURP budget in PGW's service territory. Contrary to the Commission's assertion that the \$7.6 million is not based on a needs assessment within PGW's service territory, the Recommended Decision shows that the ALJs considered each of the factors contained in Section 54.8 of the Pennsylvania Code. Moreover, the Colton Affidavit verifies the demographics and needs in PGW's service territory, in further support of the ALJs' findings.

**i. The TO does not properly take into consideration the number of eligible customers as required by 52 Pa Code Sec. 58.4(c)(1).**

In their Recommended Decision, the ALJs made the following Findings of Fact regarding PGW's LIURP:

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<sup>9</sup> TO at 65-66

<sup>10</sup> *Id.*

The estimated number of customers who still needed treatment as of March 31, 2013 was 71,625 (the difference between the numbers of customers currently enrolled in CRP and the number who received treatment in the prior two years).<sup>11</sup>

In 2013, CRP participation reached 68,458 low-income customers, only 44% of PGW's confirmed low-income customer population.<sup>12</sup>

These Findings of Fact demonstrate that the vast majority of PGW's LIURP eligible customers have **not** received services. Moreover, as the Colton Affidavit concludes, "PGW's projected population of LIURP-eligible customers is understated."<sup>13</sup> Consistent with these facts, the ALJs correctly concluded that "PGW has not shown that 'the number of eligible customers' that could be provided cost-effective usage reduction services has decreased."<sup>14</sup>

**ii. The TO does not properly take into consideration the expected customer participation rates for eligible customers as required by 52 Pa Code Sec. 58.4(c)(2).**

The ALJs also explicitly considered the rate of PGW's LIURP spending and found that PGW spends at or near 100% of its LIURP budget every year, meaning the rate of expected customer participation not only meets – but exceeds the level of participation that can be accommodated by a \$7.6 million LIURP budget. The ALJs made the following Findings of Fact:

PGW's annual reports indicated that PGW spends at or near 100% of its current LIURP budget every year.<sup>15</sup>

In 2014, the Company spent 104% of its total LIURP budget (\$7.898 million spending vs. \$7.600 million budget).<sup>16</sup>

PGW spent 99% of its LIURP budget in 2013 (\$7.538 million spending vs. \$7.642 million budget) and 100% of its LIURP budget in 2012 (\$6.077 million spending vs. \$6.077 million budget).<sup>17</sup>

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<sup>11</sup> RD at 12, Fact No. 46.

<sup>12</sup> *Id.*, Fact No. 57.

<sup>13</sup> Colton Affidavit at 6-7.

<sup>14</sup> RD at 107.

<sup>15</sup> RD at 12, Fact No. 43

<sup>16</sup> *Id.*, Fact No. 44

<sup>17</sup> *Id.*, Fact No. 45

The ALJs found that “PGW’s expenditures demonstrate that there is a significant need for the program.”<sup>18</sup>

iii. **The TO does not properly take into consideration the total expense of providing usage reduction services as required by 52 Pa Code Sec. 58.4(c)(3).**

There is a considerable amount of record evidence which justifies the total expense of providing LIURP services at the approved budget of \$7.6 million, including reduced bills for vulnerable low income households,<sup>19</sup> savings to ratepayers through reduced CRP (CAP) subsidies,<sup>20</sup> preventative treatment to avoid costly heating system repairs,<sup>21</sup> reduced collections activities,<sup>22</sup> decreased involuntary terminations,<sup>23</sup> and reductions in load loss.<sup>24</sup> Reduced involuntary termination is a particularly noteworthy benefit in PGW’s service territory. As Mitchell Miller explained in Direct Testimony, “PGW stands out among natural gas companies for the number of customers it has involuntarily shut-off and for the number of customers who remain off as winter approaches and continue to be without heat in the dead of winter.” (CAUSE-PA St. 1, at 16:8-10). These compelling facts must be factored into any calculation of the *total expense* of LIURP. Taking into account this essential information, the ALJs correctly

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<sup>18</sup> RD at 107.

<sup>19</sup> “PGW states that on average, [LIURP] projects are achieving **12% savings per home**. Homes receiving comprehensive treatments are achieving 15.5% savings.” (CAUSE-PA St. 1, at 4, citing 2013 DSM Annual Report at 6)

<sup>20</sup> PGW’s DSM I programs directed at CRP customers **will reduce the CRP subsidy by more than \$54 million** (PV 2014\$) over the lifetime of the measures. (CAUSE-PA St. 1 at 9:27-29 & Appendix B). “Total Phase I programming is forecasted to result in a net reduction in the CRP subsidy of \$7.2 million over the life of the measures.” (PGW St. 1, 3:4-10).

<sup>21</sup> “As of the end of the 2013 DSM program year, approximately 40% of homes received a heating system tune-up or new furnace or boiler.” (CAUSE-PA St. 1, at 4, citing 2013 DSM Annual Report.)

<sup>22</sup> “CRP customer shut-off numbers and the length of shut-off duration are significantly reduced among those who have received [LIURP].” (CAUSE-PA St. 1, at 16:6-12)

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

<sup>24</sup> “Households unable to receive service clearly contribute to load loss, and are also unable to contribute to the company’s revenue. By reconnecting these households and providing them with energy efficiency services, PGW will have established a core group of customers who are able to receive and maintain natural gas service.” (CAUSE-PA St. 1, at 16: 12-17).

concluded that the current LIURP budget of \$7.6 million is appropriate in light of the significant benefits to ratepayers, vulnerable low income customers, and the public.

**iv. The TO does not properly take into consideration a plan for providing program services within a reasonable period of time as required by 52 Pa Code Sec. 58.4(c)(4).**

In considering the extent to which PGW's \$7.6 million LIURP funding budget allowed it to meet the need in its service territory, the ALJs found that "PGW's budget estimate of \$7.6 million per year was sufficient to treat 2,108 homes."<sup>25</sup> The record establishes that, at the \$7.6 million budget level, PGW is able to provide LIURP services to less than 3% of its eligible customers. (CAUSE-PA St. 1-R at 3:18-20). At this completion rate, it would take PGW more than 30 years to provide LIURP services to all of its eligible customers. As the Colton Affidavit further explains, the Commission's proposed reduction in PGW's LIURP, to \$5.86 million per year, would result in "total saturation" within roughly 45 years, under PGW's assumptions.<sup>26</sup> That period is beyond the life expectancy of the measures meaning, in effect, that total saturation would never, in fact, occur.<sup>27</sup> In light of these factors, it was reasonable for the ALJs to continue funding at the previously approved \$7.6 million level. While approval of the budget at this level only slightly shortened PGW's long road to meeting the actual needs for low-income weatherization in its service territory, it did attempt to ensure that the service gap would not grow by extending by decades the period of time for PGW to provide LIURP measures.

With regard to the factors as a whole, the Recommended Decision includes the analysis of these factors as set forth by OCA's witness Roger Colton on the record in the case below:<sup>28</sup>

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<sup>25</sup> RD at 12, Fact No. 47.

<sup>26</sup> Colton Affidavit at 8.

<sup>27</sup> *Id.*

<sup>28</sup> RD at 94-95 (citing OCA St. 2-S at 14 and OCA MB at 66-67).

OCA witness Colton reviewed each of the proposed factors and found:

- PGW has not shown, and cannot show, that “the number of eligible customers” that could be provided cost-effective usage reduction services has decreased. Indeed, the demonstration has been quite to the contrary. The need for services has been increasing. Moreover, the Company’s own documents demonstrate that the cost-effectiveness of its LIURP services is trending upwards.
- PGW has not shown, and cannot show, that the number of customer dwellings that are “otherwise in need of, usage reduction services” is decreasing. Indeed, the demonstration has been that by program rule, PGW excludes more than half of all of its confirmed low-income customers from its LIURP program. Moreover, the demonstration has been that PGW systematically excludes individually-metered [and] master-metered housing units from its LIURP program. The number of units in need of usage reduction assistance is greater than PGW has faced in the past.
- PGW has not shown, and cannot show, that the “total expense of providing usage reduction services, including costs of program measures . . . and prorated expenses for program administration” benefits from a reduced budget. Indeed, the demonstration has been that program cost-effectiveness, the costs of program measures, and the prorated expenses for program administration all benefit from the existing LIURP budget as contrasted to the substantially reduced budget now proposed by PGW.
- PGW has not shown, and cannot show, that its contractor capacity is insufficient to manage its existing LIURP budget. Not only does PGW spend at or above its existing LIURP budget on an annual basis, but also the City of Philadelphia provided a substantial one-time appropriation that was seamlessly wrapped into the contractor capacity to deliver.

Given the immense need and already long period of time it will take for PGW to reach total saturation under a \$7.6 million annual LIURP program, the ALJs reached an appropriate conclusion that maintaining PGW’s progress on its current pace, and not allowing it to be slowed down, was supported on the record. The 45-year timeline approved in the Commission’s Tentative Order is contrary to the Choice Act and its regulations, because it fails to implement the reasonable assistance and broad customer benefits derived from LIURP within a reasonable period of time as required by 52 Pa Code Sec. 58.4(c)(4).

- c. **The TO incorrectly asserts that a \$7.6 million LIURP budget would simply continue an agreed upon budget amount that PGW implemented within the context of its last base rate case.**

In its TO, the Commission rejects a budget of \$7.6 million for PGW's LIURP because it finds that "this particular budget amount is not based upon a needs assessment within PGW's service territory, but would simply continue an agreed upon budget amount that the Company implemented within the context of the settlement of its most recent base rate case."<sup>29</sup> This is an incorrect conclusion that is not based on record evidence. As explained above, a review of the evidence in this proceeding demonstrates the need for an annual LIURP budget of \$7.6 million or higher in PGW's service territory.

Further, the \$7.6 million is not simply the product of settlement negotiations during PGW's last base rate case. PGW proposed a LIURP budget of \$7.6 million in its last USECP proceeding **and the Commission approved that budget.** In its Reply to Exceptions, CAUSE-PA explained:

[T]he most recently approved LIURP budget was authorized in the Commission's 2014 Final USECP Order, and indisputably falls within section 58.4(a), as the Commission made a searching inquiry into the program and approved the budget based on that inquiry. (2014 Final USECP Order at 49-51; 53). In its Final Order, the Commission explicitly found that PGW's statutorily required portfolio of universal service programs – including its LIURP – **“contain(s) all of the components cited in the statutory definition of universal service 66 Pa. C.S. § 2202” and “appears to meet the requirements mandating that universal service programs be available ...and that the programs be appropriately funded.”** (2014 Final USECP Order at 7). The Commission further concluded that – with some exception – **“it also appears to meet the submission and content requirements of the LIURP regulations at 52 Pa. Code §§ 58.1-58.18.”** (2014 Final Order at 7). Later in the Order, the Commission showed concern for the prospect of allowing PGW to continue to operate its LIURP through its DSM, but reserved judgement on the placement of the program within its DSM or its USECP, pending the outcome of this proceeding. (2014 Final USECP Order at 49). The Commission then went on to assess both the cost-effectiveness of PGW's LIURP, its administrative costs, and specific programmatic aspects – such as the provision

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<sup>29</sup> TO at 65-66

of services to multifamily homes. (2014 Final USECP Order at 49-51; 53-56). By approving the budget, and issuing orders with respect to the provision of LIURP services, the Commission certainly assessed the program with respect to need, and ruled appropriately, thereby meeting the requirements of 58.4(a), and Commission precedent, in setting a floor for future LIURP funding determinations.<sup>30</sup>

PGW's \$7.6 million LIURP budget is supported by both the record in this proceeding and the record in PGW's USECP proceeding.

**d. The Commission's LIURP budget calculation is not based on a needs assessment in PGW's service territory, as required by Commission regulation and the Choice Act.**

Without precedent, the Commission elected to perform its own needs assessment to guide its decision on PGW's Phase II DSM Plan.<sup>31</sup> The Commission's stated that the reason it created an entirely new needs assessment formula is because PGW's existing DSM budget is not based upon a needs assessment "within PGW's service territory."<sup>32</sup> Ironically, however, the Commission's assessment is flawed for that very reason, as it does not consider the needs in PGW's service territory, and instead relies on averages of data from other service territories which were established through varied methods of analysis and the unique population and needs in each of those individual service territories.

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<sup>30</sup> CAUSE-PA MB at 13-14 (emphasis added).

<sup>31</sup> *Id.* at 66.

<sup>32</sup> *Id.* at 65-66.

To explain, the Commission provides the following chart in support of its calculations:<sup>33</sup>

	Columbia	Peoples	Peoples - Eqt	National Fuel	PECO	PGW	UGI	UGI-PNG		
Total LIURP Eligible Customers	17,504	14,604	9,319	13,695	32,170	71,625	7,265	6,861	Total	173,043
Anticipated Annual LIURP Jobs	600	245	165	250	1,345	2,108	176	121	Total	5,010
Cost Per Job	\$ 7,917	\$ 5,102	\$ 4,848	\$ 5,200	\$ 1,673	\$ 3,605	\$ 6,250	\$ 7,025	Average	\$ 5,203
LIURP Annual Spend - 2014	\$ 4,750,000	\$ 1,250,000	\$ 800,000	\$ 1,300,000	\$ 2,250,000	\$ 7,600,000	\$ 1,100,000	\$ 850,000	Average	\$ 2,487,500
Job Completion Rate (Anticipated Jobs/Eligible Jobs)	3.43%	1.68%	1.77%	1.83%	4.18%	2.94%	2.42%	1.76%	Average	2.50%

As the chart makes evident, PGW’s total population of LIURP eligible customers **greatly exceeds** that of all of the other NGDCs listed. PGW’s total LIURP eligible customers constitute more than 40% of the total LIURP eligible customers in the state. A cursory review of this data explains why PGW has maintained, and must continue to maintain, a LIURP budget that is above any statewide average. Plainly stated, the city of Philadelphia, PGW’s service territory, is not an average Pennsylvania service territory. There is a distinct and far greater need for LIURP in PGW’s service territory than any other area in the state. As set forth in the Colton Affidavit, Philadelphia has some of the oldest housing stock in the state of Pennsylvania; Philadelphia households have some of the lowest incomes in the state of Pennsylvania; and, Philadelphia low-income households have disproportionate housing expense burdens.<sup>34</sup>

The Joint Commenters submit that all of the evidence required to conduct a needs assessment in PGW’s service territory is on the record in this proceeding. The ALJs reviewed

<sup>33</sup> *Id.* at 67.

<sup>34</sup> Colton affidavit at 2-6.

this record and determined that PGW's LIURP budget should be maintained at the current, higher level of funding. The Commission has not provided any explanation as to why it finds the record evidence insufficient or how the evidence in this proceeding differs from what the Commission routinely reviews in its evaluation of universal service and energy conservation plans, in which it determines that there is adequate information on the needs in the service territory.

In contrast to the record evidence, the Commission's needs assessment is premised on three calculations, none of which is supported by the record.<sup>35</sup> First, the Commission calculates a "Job Completion Rate." The Commission multiplies PGW's total number of eligible LIURP customers by the state's average job completion rate of 2.5%. The Commission then multiplies the resulting 1,791 jobs by the average cost per job for PGW, to arrive at a calculation of \$6,455,203. The Commission does not explain why it relies on the state's average job completion rate. Next, the Commission utilizes a "Historical Cost Budget" calculation. The Commission divides the state average cost per job of \$5,203 into the historical program cost for PGW. The Commission then multiplies the result by the average cost per job for PGW, to arrive at a calculation of \$5,265,808. Again, the Commission does not explain why it relies on the statewide average cost per job. Finally, without explaining its rationale, the Commission averages the results of its two calculations to arrive at what it deems a "reasonable result" of \$5,860,506 for PGW's LIURP budget.

The effect of the Commission's unsubstantiated formula is to reduce the PGW LIURP budget by more than \$1.7 million per year. Given PGW's average cost per job, this reduction will decrease the number of homes PGW anticipated treating annually from 2,108 to 1,625

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<sup>35</sup> *Id.* at 67-68.

LIURP jobs. At this rate, PGW would not achieve total saturation of its currently eligible LIURP customers for approximately 45 years. The Commission's calculations are unreasonable, as they are not based on either the actual cost to PGW of performing LIURP measures, or the actual historical job completion rate PGW has experienced. Given that there is no evidence that PGW's actual costs will go down, the result of the Commission's calculations is to directly reduce PGW's job completion rate going forward.<sup>36</sup> We are aware of no basis on the record for a determination that PGW's job completion rate should be so reduced. Given the immense need, and particular circumstances (e.g., higher levels of poverty, older, less-efficient housing stock, etc.) there can be no evidence-based argument that a reduction in LIURP is appropriate for PGW.

**e. The Commission's calculations – which rely substantially on statewide averages – are not in accord with Section 2203(8) of the Natural Gas Choice and Competition Act and Section 58.4 of the Commission's LIURP regulations prior to reducing PGW's LIURP budget to \$5,860,506.**

In conducting its independent assessment of PGW's LIURP budget, the Commission did not review whether a reduction in PGW's LIURP budget complies with the requirements of Section 2203(8) of the Natural Gas Choice and Competition Act and the assessment factors contained in Section 58.4 of the Commission's LIURP regulations. Instead, the Commission relied on average statewide job completion rates and cost per job averages, which reflect the needs of non-PGW service territories across the state – not in Philadelphia.

The Commission's regulations require that LIURP funding determinations be premised on the following factors: (1) the eligible population, (2) the expected rate of participation, (3) the total expense, and (4) a plan for providing program services within a reasonable period of time.

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<sup>36</sup> Incidentally, the impact of a reduced job completion rate going forward would necessitate a continuing decline in LIURP funding, if the Commission's methodology were used in future proceedings.

As discussed above, the ALJs clearly considered these factors in their Recommended Decision. The ALJs findings were based on the record evidence, which established the need to maintain LIURP funding at the Phase I DSM level. The Commission did not consider these factors in its calculations, and instead focused on the state’s average job completion rate and historical cost budget calculations – neither of which account for PGW’s uniquely vast and vulnerable eligible population, the robust anticipated participation rates, the vast and multifaceted benefits (including \$54 million in reduced CRP subsidies and 12% bill savings for vulnerable households), and the very low current penetration rate (under 3%).

In addition to setting forth the critical factors for LIURP funding determinations, Section 58.4(a) provides: “Proposed funding revisions that would involve a reduction in program funding **shall include public notice** found acceptable to the Commission’s Bureau of Consumer Services, **and the opportunity for public input from affected persons or entities.**”<sup>37</sup> The ALJs appropriately rejected PGW’s request to waive the requirements of 58.4, as PGW failed to set forth any special circumstances to warrant waiver – the requisite standard for regulatory waiver.

The Commission agreed and stated:

Upon our consideration of the record evidence, as well as the arguments put forth by the Parties in this proceeding, we shall deny PGW’s waiver request of 52 Pa. Code § 58.4(a). We are in agreement with the recommendation of the ALJs that the public notice and due process requirements are fundamental requirements of Section 58.4 of the LIURP Regulations. Contrary to PGW’s claim, the ALJs supported the OCA and CAUSE-PA who have both indicated that PGW’s proposal will significantly reduce its LIURP program funding. We conclude that despite the involvement of the public advocacy groups in this fully litigated proceeding, there is still a need for public notice and due process as required in 52 Pa. Code § 58.4(a), especially, because PGW is proposing a reduction in its program funding. Further, we find that PGW has not established any “special circumstances” to justify a waiver request of Section 58.4 of the LIURP Regulations at this time. Therefore, we shall deny the Exceptions of PGW on this issue and adopt the ALJs’

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<sup>37</sup> 52 Pa. Code § 58.4(a) (emphasis added).

recommendation that denies PGW's waiver request of Section 58.4 of the Commission's LIURP Regulation.<sup>38</sup>

The Commission's determination above was both appropriate and correct. However, by issuing a TO *which reduced the level of PGW's LIURP funding*, the Commission has implicitly granted PGW's waiver request and inexplicably ignored 52 Pa. Code § 58.4(a), the importance of this public notice, and due process provision. As explained in CAUSE-PA's Main Brief, "abrupt funding changes in essential universal services cause significant hardship for low-income households." (CAUSE-PA MB at 12). This risk of harm "is precisely the reason why the regulations require any funding change to be subject to public scrutiny and based on the carefully balanced and geographically specific factors set forth in Section 58.4(c) of the LIURP regulations. The Commission's LIURP budget directive was not based upon a process which comported with Section 58.4 and cannot be shown to comply with the Commission's LIURP regulations.

**f. The Commission properly rejected PGW's proposed reduced LIURP budget, which could not be supported based on a needs assessment.**

In its TO the Commission rejected PGW's proposal to establish a LIURP budget of approximately \$3.2 million per year for PGW's Phase II DSM Plan.<sup>39</sup> The Commission correctly concluded that PGW's proposal was not based upon a needs assessment within the Company's service territory. PGW has never asserted – or presented evidence to establish – that its proposed LIURP budget is derived from a needs assessment. In its initial Phase II DSM Plan filing, PGW proposed a LIURP budget of approximately \$2 million per year. PGW clearly articulated that it was proposing a reduction in LIURP spending "in recognition of the effect that promoting energy conservation has had and will continue to have on PGW's revenues and

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<sup>38</sup> TO at 116-117.

<sup>39</sup> TO at 66.

margins and that it is uncertain whether PGW would be permitted to recover these amounts in the new program.”<sup>40</sup> PGW never purported to base its proposed LIURP budget on a determination of need within its service territory. Similarly, PGW did not assess the needs in its service territory when it proposed a LIURP budget of approximately \$3.2 million per year in its rejoinder testimony.<sup>41</sup> Instead, PGW based its \$3.2 million budget proposal on a comparison to the budgets of gas utilities serving other territories.<sup>42</sup> Given PGW’s own stated reasons for its LIURP budget proposal, the Commission correctly rejected PGW’s LIURP budget proposal.

**g. Judicial notice of a new calculation to establish need is inappropriate and contravenes important due process protections.**

The Commission’s Tentative Order adopts newly proposed calculations for determining need, concluding “that it is prudent at this time for this Commission to perform an independent needs assessment to guide our decision on this difficult and controversial issue.” The Commission went on to “propose a needs assessment for PGW based upon information contained within the most recent USECP Program filings for each of our major jurisdictional NGDCs,” and directed that “official notice of these new facts and calculations be placed on the record of this proceeding” pursuant to 52 Pa. Code § 5.408.

Section 5.408 of the Pennsylvania Code provides:

- (a) Official notice or juridical notice of facts may be taken by the Commission or the presiding officer.
- (b) When the decision of the Commission or the presiding officer rests on official notice or judicial notice of a material fact not appearing in the evidence in the record, the parties will be so notified.
- (c) Upon notification that facts are about to be or have been noticed, a party adversely affected shall have the opportunity upon timely request to show that the facts are not properly noticed or that alternative facts should be noticed.

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<sup>40</sup> PGW Petition at 12.

<sup>41</sup> TURN et al. MB at 11-12.

<sup>42</sup> *Id.*

- (d) The Commission or the presiding officer in its discretion will determine whether written presentations suffice, or whether oral argument, oral evidence or cross-examination is appropriate in the circumstances.
- (e) The Commission or presiding officer may also give official notice as the term is defined in section 331(g) of the act (relating to powers of commission and administrative law judges).<sup>43</sup>

The Commission's use of judicial notice here is inappropriate, as it notices new facts which are not pertinent to a needs assessment in PGW's service territory and utilizes those facts in a new methodology and calculations for determining need for LIURP services that is contrary to its existing regulations for LIURP funding determinations.

As explained at length above, the methodology set forth by the Commission takes into account statewide averages and trends, rather than looking at service territory specific data. The Commission's reliance on data from other services territories – and its use of that data to determine statewide averages – is **not** part of a needs assessment for low-income weatherization for PGW's customers. The Commission should not take notice of this new methodology. Its ramifications in this proceeding are significant and depart from the legislative intent of the Choice Act to meet the need for low-income universal service **in each service territory**. Its ramifications beyond this proceeding are equally troubling, and could have the effect of reducing or increasing LIURP funding, in either case, without a supporting needs assessment from the territory being served, and without supporting the needs of the customers of the applicable NGDC.

In addition to being imprudent, the Commission's use of judicial notice at this time raises other concerns. PGW's DSM II petition was originally filed on December 23, 2014. For well over a year, and approaching two, the parties have cycled through multiple stages of litigation, filed voluminous testimony (summarized above), engaged in extensive discovery, and toiled

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<sup>43</sup> 52 Pa. Code § 5.408.

through multiple rounds of briefing and exceptions. Although affording the parties a limited 10 day period to respond to this new methodology, the Joint Commenters submit that changes of this magnitude, at this time, and in this manner, are ill-advised and improper. The Commission's proposed methodology could potentially affect all NGDC LIURP programs, and is worthy of thorough and careful consideration, involving all potential stakeholders. Indeed, this very issue highlights the overarching need for a statewide rulemaking to establish more specific standards and requirements for the Universal Service and Energy Conservation programs across the state, and the concurrent need to ensure that Universal Service and Energy Conservation Plans are thoroughly vetted through a proceeding before the Commission that is **on the record** – as is done with most other programmatic plan proceedings, including Demand Side Management, Default Service Procurement, and Act 129 Energy Efficiency Plans.

## **V. LOW INCOME MULTIFAMILY (LIME) PROGRAM**

- a. The Commission should clarify that approval of the LIME budget to address multifamily housing energy efficiency needs is in addition to the approved LIURP budget.**

In the Tentative Order, the Commission upheld PGW's LIME proposal, as agreed to in the PGW/I&E Stipulation, which "indicates that program costs for the LIME will be recovered through PGW's USC applicable to all volumes of firm gas delivered and LIME project costs will be recovered: (i) 100 percent for confirmed low income customer usage through the USC; (ii) thirty-three percent of project costs for all other customer usage through the ECRS; and (iii) the remainder of project costs will be funded by property owners." (TO at 99, citing RD at 156).

The Commission found:

Next, we note that in our USECP 2014-2016 Order we required that a portion of the LIURP budget be allocated to the LIME program and recognized that the LIURP budget is funded through the USC. We find that as the Stipulation agreed to by the Company and I&E would allocate some of the costs through the USC

and some of the costs through the ECRS and the property owners, we are in agreement with PGW and shall modify this prior directive to be consistent with the PGW/I&E Stipulation. (TO at 103).

Unfortunately, the directive in the stipulation did not clarify whether the LIME would be part of the approved LIURP budget, or would be included as a separate budget amount.

Throughout this proceeding, the Joint Commenters argued that “the budget allocations to LIME should be developed as a supplement and an addition to the currently existing LIURP / CRP Home Comfort budget.” (CAUSE PA MB at 25). CAUSE-PA pointed out that “In directing the creation of a multifamily component, the Commission indicated that multifamily programs should be new initiatives, and did not suggest that the new program be developed at the expense or dilution of currently existing LIURP energy efficiency programs. (CAUSE-PA MB at 25; CAUSE-PA St. 1, 18:12-18).

In light of the significant budget reduction set forth by the Commission in its TO, this issue becomes even more critical. Not only will LIURP resources be significantly stretched if the budget is reduced, serving nearly 1,000 fewer households, the influx of multifamily units will further reduce the reach of the program. Thus, the Joint Commenters urge the Commission to clarify that, while some of the costs of LIME are to be allocated through the USC and some of the costs through the ECRS and the property owners, none of those costs are to be included in the approved LIURP budget (which should not be reduced, as discussed thoroughly above).

## **VI. CONCLUSION**

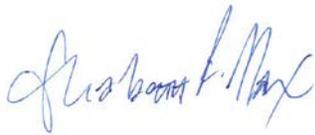
For the reasons set forth in these Comments, CAUSE-PA and TURN *et al.* urge the Commission to modify its Tentative Order and adopt the budget recommendation of the ALJs as set forth in the Recommended Decision and to maintain, at a minimum, a \$7.6 million annual budget for PGW’s Phase II DSM Plan. A \$7.6 million annual budget is necessary to meet the

overwhelming need for LIURP services in PGW's service territory, and is fully supported by the record in this proceeding. The record in this proceeding has not shown a need for a reduction in PGW's current Phase I DSM LIURP spending. Further, a reduction in PGW's LIURP spending has not been shown to satisfy the requirements of the Natural Gas Choice and Competition Act and the Commissions' LIURP regulations.

Respectfully submitted,

**PENNSYLVANIA UTILITY LAW  
PROJECT**

*Counsel for CAUSE-PA*

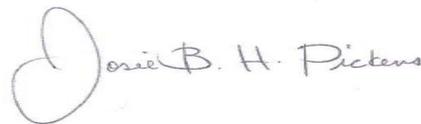


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