



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

IN REPLY PLEASE
REFER TO OUR FILE

August 15, 2016

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

Dear Secretary Chiavetta:

Attached, please find the the Bureau of Investigation and Enforcement's (I&E)
Comments 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) 787-6156.

Sincerely,

Carrie B. Wright
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PA Attorney I.D. #208185

Gina L. Lauffer
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CBW/GLL/snc
Enclosure

cc: Certificate of Service
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Gladys M. Brown, Chairman
Andrew G. Place, Vice Chairman
John F. Coleman, Jr., Commissioner
Robert F. Powelson, Commissioner
David W. Sweet, Commissioner
Director Cheryl Walker Davis, OSA

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 and Energy :
Conservation Plan for 2014-2016 52 Pa. :
Code § 62.4 – Request for Waivers :

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Comments** dated August 15, 2016, in the manner and upon the persons listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party):

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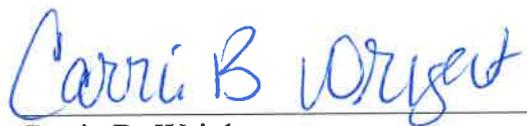
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

**COMMENTS OF THE
BUREAU OF INVESTIGATION & ENFORCEMENT**

I. INTRODUCTION

On December 23, 2014, Philadelphia Gas Works (“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, served as a request to institute Phase II of PGW’s initial five-year DSM Plan (“DSM II”), 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. PGW's Petition sought approval to implement Phase II of the DSM program for five years beginning September 1, 2015 and ending August 21, 2020. As part of the DSM II, PGW proposed a Low-Income Usage Reduction Program ("LIURP") budget of \$2.0 million in 2016; \$2.075 million in 2017; \$2.0 million in 2018; \$2.080 in 2019; and \$2.0 million in 2020.¹ The proposed funding level represents an approximate 75% reduction of LIURP funding from the previously approved annual budget of \$7.6 million dollars from 2014-2016.²

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 *et al.*") 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 a litigation schedule was adopted. In accordance with the litigation schedule, a Hearing

¹ PGW Petition, Appendix B at 90.

² RD at 100.

was held on October 28, 2015, at which testimony and exhibits were entered into the record by PGW, I&E, OCA, OSBA, and CAUSE-PA.

Along with I&E, in accordance with the established procedural schedule, PGW, the OCA, TURN *et al.*, PICGUG, and CAUSE-PA filed Main Briefs on November 19, 2015. In accordance with a granted extension request, the OSBA filed its Main Brief on November 20, 2015. Pursuant to the procedural schedule, with the exception of PICGUG, on December 8, 2015, all parties filed Reply Briefs. In their briefs, PGW, I&E and OSBA all opposed an increase in PGW's LIURP budget to the historic level of \$7.6 million per year, as supported by OCA, CAUSE-PA and TURN *et al.*³

On March 18, 2016, Administrative Law Judges Christopher P. Pell and Marta Guhl ("ALJs") issued a Recommended Decision ("RD") approving PGW's Petition in part, and modifying it in part. As part of their RD, the ALJs' adopted OCA, CAUSE-PA and TURN's proposed LIURP budget of historic levels of \$7.6 million per year.⁴ In reaching that determination, the ALJs noted that "PGW has not demonstrated that the need for the LIURP program has decreased."⁵ Among other things, PGW had not met the requirements of 2203(8) of the Natural Gas Choice and Competition Act for a reduction in its LIURP budget.⁶ As recognized in the RD, the Commission has indicated that compliance with 2203(8) is to be measured in conjunction with a "needs assessment" to be periodically prepared by the utility and filed with the Commission in the

³ RD at 105.

⁴ RD at 105.

⁵ RD at 109.

⁶ RD at 105-106.

Company's triennial universal service proceeding.⁷ However, the \$7.6 million dollar annual budget adopted in the RD was not originally based on a needs assessment, but it was instead based on a settlement approved in 2010 for PGW's 2009 DSM I.⁸

PGW filed Exceptions to the RD on April 7, 2016, and OCA, OSBA, I&E, and CAUSE-PA filed Replies to PGW's Exceptions on April 18, 2016. On August 4, 2016, the Commission entered a Tentative Opinion and Order ("Tentative Order") in this case. As part of its Tentative Order, the Commission indicated that it did not agree with the \$7.6 million LIURP budget approved in the RD because it was not based on a needs assessment within PGW's service territory, but only on an amount previously agreed upon for settlement purposes. Accordingly, the Commission performed an independent needs assessment to guide its decision and incorporated that assessment into its Final Order. Through the Tentative Order, the Commission invited parties to this proceeding to file Comments in response to the Commission-directed modification to the annual LIURP budget within ten days. I&E now submits this timely Comment for the Commission's consideration.

II. COMMENTS

As provided for in the Electricity Generation Customer Choice and Competition Act and the Natural Gas Choice and Competition Act (collectively "Competition Acts"), Universal Service Plans are subject to the administrative oversight of the Commission. LIURP, which is defined as an "energy usage reduction program that assists low-income

⁷ RD at 106.

⁸ PGW Main Brief at 64.

customers conserve energy and reduce residential energy bills,⁹ remains a universal service program regardless of whether it is addressed through PGW's DSM II or in a USECP proceeding. Accordingly, the Commission's oversight includes the responsibility to ensure that utilities operate universal service programs, such as LIURP, in a cost effective manner. In addition, the Commission must ensure that the programs contained in the Companies' Universal Service Plan are appropriately funded.¹⁰ The costs of the programs in the Companies' Universal Service Plan are included in the rates charged to their customers. As such, I&E maintains that it is important to ensure that the costs are prudent and result in the maintenance of rates that are just and reasonable. In addition, the resulting Universal Service Plan must include programs that are affordable, as defined in the Commission's Policy Statement on Customer Assistance Programs,¹¹ and readily available to customers with demonstrated need.

The Commission has determined that the design of Universal Service Plans must balance the interests of both the beneficiaries and the jurisdictional ratepayers responsible for providing the necessary funding.¹² I&E is charged with representing the public interest in Commission proceedings having an impact on customer rates. The I&E representation of the public interest includes balancing the interests of ratepayers, utilities and the welfare of the Commonwealth.

⁹ 52 Pa. Code §62.2.

¹⁰ See 66 Pa. C.S. §§ 2203(8) and 2804(9).

¹¹ Pa. Code §§69.261 – 69.267.

¹² See, *Final Investigatory Order on Customer Assistance Programs: Funding Levels and Cost Recovery Mechanisms*, Docket No. M-00051923, Order Entered December 18, 2006, pp. 6-7.

A. The Commission's Needs Assessment for PGW

I&E has reviewed the Commission's needs assessment as presented on pages 66-68 of the Tentative Order. The basis for the Commission's calculations is sound. Accordingly, I&E opines that the Commission's needs assessment appropriately satisfies the elements of 52 Pa. Code § 58.4 regarding natural gas utility's usage reduction program funding, and I&E does not object to the resulting \$5,860,506 annual LIURP budget.

However, while I&E opines that the Commission's needs assessment is appropriately calculated, I&E also recognizes that a central tenet of the Natural Gas Choice Competition Act is that universal service and energy conservation policies are to be operated in a cost-effective manner.¹³ I&E's concerns regarding the cost-effectiveness of PGW's LIURP drove I&E's opposition to any increase in the DSM II budget beyond the as-filed amount set forth in PGW's Petition.¹⁴ As I&E previously noted, an increase in LIURP funding would come at the detriment of PGW's non-CRP customers. In its Tentative Order, the Commission acknowledged that PGW's customers are already overburdened: "We note that it is a matter of public record that PGW already has the highest universal service budget of any public utility in this Commonwealth, and that its customers have the heaviest burden in paying for these programs."¹⁵ In I&E's opinion, this burden is only compounded by the fact that PGW does not have shareholders to help absorb any impact of an increased budget. Resulting increased costs would undoubtedly

¹³ 66 Pa.Code § 2203(8).

¹⁴ I&E Reply Brief at 16.

¹⁵ Tentative Order at 69.

fall upon the already overburdened non-CRP ratepayers.

To be clear, it is not PGW itself, but PGW ratepayers who are ultimately responsible for funding any increase in LIURP spending. Unlike most utilities, PGW's sole funding source is its ratepayers. With no shareholders to fall back on, any increase to PGW's LIURP budget must be viewed with an eye to the ability of PGW's customer base to afford that increase to their bill. Any increase in the DSM II budget beyond its as-filed amount, would likely be extremely detrimental to the already overburdened ratepayers who must pay such costs. In the past, the Commission recognized the need to control PGW's DSM costs by confining PGW's initial DSM yearly budget to no more than 1% of PGW's total projected gross intrastate operating revenue.¹⁶ I&E agrees with PGW's initial position that the proposals for PGW to increase the DSM II budget are not currently sustainable for PGW. Specifically, PGW recognized that increasing its budget by expanding its CRP Home Comfort costs would be detrimental for all of PGW's ratepayers because PGW is not an investor-owned utility.¹⁷ As PGW does not have shareholders to help absorb any impact of an increased budget, the burden to shoulder the resulting increased debt would absolutely fall upon the already overburdened PGW ratepayers.

Therefore, while I&E does not dispute the Commission's calculation, it is imperative that the LIURP budget be evaluated in terms of PGW's customer's ability to pay for the increase to the LIURP budget. Ultimately the burden of the increased budget

¹⁶ *Pennsylvania Public Utility Commission v. PGW*, Docket No. R-2009-2139884 (Final Order entered on July 29, 2010, p. 10).

¹⁷ PGW Main Brief, p. 63.

falls squarely on these customers, and not on PGW itself. Therefore, when setting the LIURP budget, the Commission must keep in mind both the needs of PGW's service territory and the ability of the ratepayers in that service territory to fund the LIURP.

B. I&E Is Not Opposed to LIURP Being Removed From Future DSM Filings

On July 29, 2010, pursuant to an approved a Joint Petition for Settlement (Demand Side Management (DSM) Settlement) at Docket Nos. R-2009-2139884 and P-2009-2097639,¹⁸ the Commission permitted PGW to implement the DSM I. As part of the DSM I, PGW replaced its LIURP Conservation Works Program (CWP), which had been part of PGW's USECP, with the Enhanced Low Income Retrofit Program (ELIRP), that would not be part of the USECP, but which would instead be incorporated ELIRP PGW's DSM I.¹⁹ PGW's ELIRP was designed to assist low income customers in reducing their energy usage and bills through cost-effective weatherization services and energy conservation education.²⁰ The Commission previously noted that ELIRP was authorized to operate within PGW's DSM through the end of August 2015,²¹ but that time period was extended until 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. For purposes of the DSM II, PGW changed

¹⁸ *Pa. PUC, et al. v. PGW*, Docket No. R-200902139884, *et al.* (July 29, 2010) (*PGW's 2009 Rate Case*) and *PGW's Revised Petition for Approval of Energy Conservation and Demand Side Management Plan*, Docket No. P-2009-2097539 (July 29, 2009) (*PGW's Revised DSM Plan Filing*), collectively *DSM Settlement Order*.

¹⁹ *See, PGW Universal Service and Energy Conservation Plan for 2014-2016 Submitted in Compliance with 52 Pa.Code § 62.4*, Docket No. M-2013-2366301, Final Order at 6 (*August 22 Order*).

²⁰ *PGW USECP 2014-2016*, Docket No. M-2013-2366301, Final Order at 44 (August 22, 2014).

²¹ *PGW USECP 2014-2016*, Docket No. M-2013-2366301, Final Order at 52 (August 22, 2014).

the name of the program from ELIRP to CRP Home Comfort,²² but for ease of reference, I&E will simply refer to the program as LIURP.

In its Tentative Order, the Commission solicited comments on whether PGW's LIURP should remain within its DSM program. During the course of this proceeding, I&E did not take a position on whether future LIURP funding issues should be addressed in PGW's USECP proceedings instead of the current practice of addressing them in DSM proceedings. However, I&E opines that the inclusion of LIURP issues has made the DSM proceeding protracted and complicated, and I&E would not oppose any future LIURP issues be addressed only in USECP proceedings.

First, I&E is mindful of the Commission's determination that "there are many facts that were not developed on the record of this proceeding that are relevant to the funding of PGW's LIURP."²³ I&E certainly appreciates the necessity of having a clear and well-developed record for the Commission's review. With this in mind, I&E believes that placing LIURP within its traditional purview of the USECP proceeding would provide a more appropriate avenue for the analysis and consideration that LIURP funding warrants. More specifically, I&E opines that returning PGW's LIURP to a USECP proceeding would allow for greater input and oversight from the Commission's Bureau of Consumer Services than may have been afforded in the context of this adversarial proceeding.

²² PGW Petition, Appendix B at 85.

²³ Tentative Order at 70.

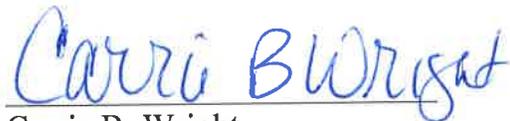
Finally, while I&E acknowledges that in the past, PGW has touted the benefits of including LIURP in the DSM, I&E opines that those benefits have not materialized. PGW previously argued that removing LIURP from the DSM would create confusion and administrative difficulties and disrupt the cost efficiencies established for the DSM programs.²⁴ In this case, I&E submits that the inclusion of LIURP has created confusion and administrative difficulties in this case, as is evident in the length of this proceeding and through the Commission's determination that the record lacked evidence regarding LIURP funding. Furthermore, it is unclear to I&E whether and to what extent any DSM cost efficiencies have been produced by inclusion of LIURP, and therefore, PGW's rationale is not compelling. Accordingly, I&E is not opposed to PGW's LIURP being removed from its future DSM proceedings and returned to USECP proceedings.

²⁴ *PGW USECP 2014-2016, Docket No. M-2013-2366301, Final Order at 47 (August 22, 2014).*

III. CONCLUSION

WHEREFORE, for the reasons state herein, the Bureau of Investigation & Enforcement respectfully requests that the Pennsylvania Public Utility Commission consider the impact and increase to PGW's budgeted LIURP amount would have on PGW's ratepayers who will shoulder the burden of ultimately providing the increased funding.

Respectfully submitted,



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Dated: August 15, 2016