BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of Philadelphia Gas Works for Approval of Demand Side Management Plan for FY 2016-2020	:	
&	:	
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**

REPLY EXCEPTIONS

OF THE COALITION FOR AFFORDABLE UTILITY SERVICES AND ENERGY EFFICIENCY IN PENNSYLVANIA ("CAUSE-PA")

PENNSYLVANIA UTILITY LAW PROJECT

Counsel for CAUSE-PA

Elizabeth R. Marx, Esq., PA ID: 309014
Patrick M. Cicero, Esq., PA ID: 89039
Joline Price, Esq., PA ID: 315405
118 Locust Street
Harrisburg, PA 17101
Tel.: 717-236-9486
Fax: 717-233-4088

April 18, 2016

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I. INTRODUCTION AND SUMMARY OF REPLY EXCEPTIONS

Before the Pennsylvania Public Utility Commission ("Commission") are the Petitions of Philadelphia Gas Works (PGW) for Approval of PGW's Demand-Side Management (DSM) Plan (DSM Plan or Plan) for FY 2016-2020 and its Universal Service and Energy Conservation Plan (USECP) for 2014-2016 52 Pa. Code Sec. 62.4 – Request for Waivers (together, "Petition").

A Recommended Decision (RD) was issued by Administrative Law Judges Christopher P. Pell and Marta Guhl on March 8, 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 current spending level, the level put forward by PGW itself and approved by the Commission on August 22, 2014, as part of its Universal Service and Energy Conservation Plan for 2014-2016, at Docket No. M-2013-2366301 (hereinafter 2014 Final USECP Order).[1] 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, in which it does nothing more than restate the same arguments rejected by the two presiding ALJs. Rather than alleging actual error, PGW instead relies on misleading rhetoric, mistaken statements of the facts, and mischaracterizations of the law to support its unjustified attempt to gut its current LIURP funding and production levels and to increase rates. Indeed, PGW goes so far as to hold hostage the continuation of *any* demand reduction programming if the Commission upholds and maintains the legally required, Commission approved, and currently existing LIURP budget approved in the RD.

The Commission should not allow PGW to use LIURP as a bargaining chip in PGW's quest to offset revenue loss due to usage reduction trends. LIURP is a statutory and regulatory

[1] PGW Universal Service and Energy Conservation Plan for 2014-2016 Submitted in Compliance with 52 Pa. Code § 62.4, Final Order, Docket M. 2013-2366301 (August 22, 2014) (hereinafter 2014 Final USECP Order).,

requirement, and must continue to be adequately funded by PGW to meet the needs of low income households. To hold otherwise would contravene statutory, regulatory, and precedential standards set by the General Assembly and the Commission over two decades.[2] As such, CAUSE-PA staunchly opposes PGW's attempts to slash its LIURP budget.

In addition, PGW's other Exceptions in this case undermine the intent and purpose of targeted energy efficiency programming, and the delivery of LIURP – which is a mandatory universal service program. CAUSE-PA's positions with regard to each Exception are as follows:

- **Reply to PGW Exception 1:**
  The ALJs appropriately rejected PGW's proposal to reduce its LIURP budget by 75% from the existing levels approved by the Commission and agreed to by PGW.
    - The ALJs correctly interpreted the Natural Gas Choice Competition Act as requiring the continuation of LIURP at the funding and production levels approved by the Commission in its 2014 Final USECP Order.
    - The ALJs correctly applied 52 Pa Code Section 58.4(a), and subsequent Commission precedent, to require continuation of LIURP funding at the current level, which was approved by the Commission in its 2014 Final USECP Order.
    - The ALJs correctly concluded that the LIURP budget set through a Joint Settlement in PGW's last base rate proceeding established a minimum funding level for PGW's LIURP pursuant to 52 Pa Code Section 58.4(a), which cannot be reduced absent public notice and input.
    - The ALJs properly considered the factors set forth in Section 58.4(c) regarding adjustments to LIURP funding, and arrived at the appropriate conclusion that PGW's LIURP budget must be continued at the current level, the level approved in the Commission's 2014 Final USECP Order.
- **Reply to PGW Exception 2:**
  The ALJs properly rejected PGW's attempt to collect additional revenue outside of a base rate proceeding through a Conservation Adjustment Mechanism (CAM).
    - The ALJs rightly rejected PGW's CAM proposal as impermissible single-issue ratemaking, which is likely to result in overlapping revenue streams.

[2] 52 Pa. Code §§ 58.1-58.18 (Residential Low Income Usage Reduction Programs) (adopted January 15, 1993, effective January 16, 1993).

- The ALJs appropriately concluded that the policy concerns of a CAM are the same in the context of a natural gas utility EE&C programs as the outright prohibitions of a revenue adjustment mechanisms contained in Act 129.

- The ALJs correctly applied Commission precedent in denying PGW's CAM proposal.

- **Reply to PGW Exception 3:**
  The ALJs correctly rejected PGW's proposed performance incentive for a task it is already mandated to do by statute and regulation.

- **Reply to PGW Exception 4:**
  CAUSE-PA did not take a position on PGW's Efficient Fuel Switching Pilot, and does not take a position here except to say that full funding and appropriate implementation of mandatory programs must be prioritized over voluntary and discretionary programs. The Commission should not sanction PGW's attempt to create and fund a voluntary EE&C program while concurrently proposing to slash funding for LIURP.

- **Reply to PGW Exception 5:**
  The ALJs appropriately rejected PGW's attempt to circumvent Section 58.10(a) (2) and (3), which requires the prioritization of customers for LIURP services based on arrearages and income.

  - PGW did not allege any special circumstances that would warrant waiver of appropriate LIURP prioritization.

  - Nothing in the record supports PGW's claim that the effectiveness of LIURP will be eroded if it is required to follow the Commission's prioritization requirements contained in the LIURP regulations.

- **Reply to PGW Exception 6:**
  The ALJ's appropriately rejected PGW's attempt to circumvent the due process requirements contained in Section 58.4(a).

- **Reply to PGW Exception 7:**
  The ALJ's appropriately rejected PGW's attempt to circumvent the inter-utility coordination requirements contained in Section 58.14(c).

- **Reply to PGW Exception 8:**
  CAUSE-PA takes no position on PGW's request for clarification of Finding of Fact Numbers 62 and 64, except to note that it supports the adoption of LIME – as approved by the ALJs – and the decision to approve the program should not be disrupted.

II. REPLY TO EXCEPTIONS

A. Reply to PGW Exception 1: The ALJs appropriately rejected PGW's proposal to reduce its LIURP budget by 75% from the existing levels approved by the Commission and agreed to by PGW.

In an attempt to re-characterize the facts, PGW incorrectly recasts the ALJs decision as an increase in LIURP funding, claiming the decision would increase its proposed LIURP budget by 140% and represents an increase from the regulatory minimum funding of 436%. PGW's representation here is blatantly misleading.[3] PGW's proposal would in fact drastically reduce PGW's LIURP budget, and would result in a reduction of the current funding levels to just **one quarter** of PGW's current LIURP budget – **a reduction of 75%.** This is impermissible.

PGW erroneously asserts that "the LIURP budget must not be viewed as something separate from and not affecting the entire DSM Plan," and threatens that continuation of the LIURP budget as approved by the Commission in its 2014 Final USECP Order would cause PGW to "seriously reconsider" or "outright discontinue" PGW's voluntary energy efficiency programs. (PGW Exceptions at 10). It also draws the absurd conclusion that the ALJ's RD demands that it "serve every low income gas customer in the City of Philadelphia immediately," without consideration of the cost to other ratepayers. (PGW Exceptions at 10).

As explained below, in direct testimony, in our Main Brief, in our Reply Brief, and in the Recommended Decision, LIURP budgets are determined based on need – a decision which is

[3] PGW's December 23, 2014 Petition in this matter summarizes PGW's proposal for DSM II. PGW states: "The budgets **were reduced** beginning with the largest programs and greatest contributors to the reduced delivery charges, the CRP Home Comfort Program [LIURP]" (PGW Dec. 23, 2014 Petition at 25, Appx. B.2.1.2 (emphasis added)); see also *Petition of Philadelphia Gas Works to Extend Demand Side Management Gas Plan*, filed April 10, 2015, to the same Dockets in which PGW states and shows through its own Tables that **the Commission previously approved the CRP Home Comfort 2015 (LIURP) funding level of $7,570,000 as part of the DSM Phase I Plan**, and that it was PGW that proposed a reduced funding level to $2,000,000 for DSM Phase II. (April 10, 2015 Petition at 4, & 11-12 para. 14-15 (emphasis added)).

wholly independent of any other program budget determinations. (RD at 101-03, 105-06; CAUSE-PA Main Br. at 18-21; CAUSE-PA Reply Br. at 11-13). Indeed, the ALJs recognized in their RD that conflating mandatory and voluntary programming, and diluting the LIURP budget in order to run other types of voluntary programming, directly contravenes the Natural Gas Competition Act, Commission regulation, and established Commission precedent. (RD at 106-08). LIURP is separate from the rest of PGW's DSM, and its budget must be considered in accordance with specific requirements set forth in regulation. Far from requiring "immediate" weatherization service to "every low income gas customer in the City of Philadelphia," the ALJs required only that that PGW's LIURP continue at its current funding and production levels – sufficient to treat an estimated 2,108 of the 71,625 potentially eligible households in Philadelphia.[4] (RD at 96; 2014 Final USECP Order at 47).

PGW claims that its proposed budget "is consistent with PGW's needs assessment filed in this proceeding." (PGW Exceptions at 11). This absurd statement ignores the evidence in this proceeding. In fact, PGW does not explain how the budget will adequately serve its population, but instead points to the fact that its proposed budget is greater than .2% of jurisdictional revenues (which it erroneously asserts is the "regulatory minimum"[5]) and to "the financial stressor created by increased unrecoverable costs in the form of reduced distribution charges due to LIURP weatherization services" as evidence that its proposed reduction is needs based. (PGW Exceptions at 11). There is nothing in the record to suggest that the reduction in usage gained through LIURP is causing PGW financial stress. The ALJs picked up on the absurdity of this claim, noting: "We are suspicious that PGW will have to make cuts in other areas, including

[4] The simple reality is that even at its current levels, PGW's LIURP likely does not meet the weatherization needs of its low-income customers. A fact that would be exacerbated if PGW's LIURP is reduced by 75% from its current levels as proposed by PGW.

[5] The error of this assertion is addressed below in subsection 2.

pipeline replacement, since the Company was recently granted an increase to its Distribution System Improvement Charge to 7.5%." (RD at 108-09). The record in this proceeding is replete with evidence of the extensive need for LIURP services in PGW's service territory, which includes many neighborhoods that are plagued by significant, intractable poverty, and the demonstrated return on investment for ratepayers in the form of significantly reduced CAP-related costs. (RD at 102, 107-09).

1. *The ALJs correctly interpreted the Natural Gas Choice Competition Act as requiring the continuation of LIURP at the funding and production levels approved by the Commission in its 2014 Final USECP Order.*

PGW argues that Section 2203(8) of the Natural Gas Choice Competition Act – which requires that universal service programming be "appropriately funded and available" – was taken out of context, claiming that the ALJs ignored subsection (10) of that same section, which requires that universal service programs "are operated in a cost-effective manner." (PGW Exceptions at 14).

PGW is incorrect in its assertion. The ALJs explicitly noted the cost-effectiveness of LIURP. The ALJs noted that the reduced budgets proposed by PGW would "adversely impact the ability to control its administrative costs." (RD at 108). They also explored the cost effectiveness of PGW's current LIURP, finding a benefit-cost ratio of 1.26 in 2015, an increase over its 1.22 benefit-cost ratio in 2014. (RD at 107). In fact, in 2014, LIURP produced $5,429,804 net benefits to ratepayers.[6] (RD at 107). The ALJs then pointed to the lifetime benefits of LIURP, explaining:

> The total reduction in CRP subsidies paid by CRP non-participants resulting from LIURP investments in Phase I of the DSM Plan reached $54,631,743 (2014$). The

[6] These benefits are derived through the reduction in the Customer Responsibility Program (CRP) shortfall as CRP participant usage is decreased.

> reduced LIURP budget proposed by PGW in this proceeding is estimated to result in a reduced CRP subsidy of $1.4 million." (RD at 108).

The ALJs then concluded:

> **We believe that because of this reduction in the amount of CRP subsidies, PGW ratepayers would pay higher distribution bills if the LIURP budget proposed in the 5-year DSM Plan is approved. (RD at 108).**

The ALJs were clear and correct in their analysis of the facts: PGW's proposal to reduce its LIURP budget by 75% will increase costs to ratepayers.

Contrary to PGW's assertion, the ALJs fulfilled the multiple requirements set forth in the Natural Gas Competition Act to carefully consider the need in PGW service territory, and to ensure that cost-effective programs are appropriately funded and available to low income households within PGW's service territory. This is what the Act requires to safeguard Pennsylvanians' ability to access and maintain safe, reliable, and affordable utility services.

2. *The ALJs correctly applied 52 Pa Code Section 58.4(a), and subsequent Commission precedent, to require continuation of LIURP funding at the current level, which was approved by the Commission in its 2014 Final USECP Order.*

PGW argues next that the ALJs did not correctly interpret section 58.4(a) of the Pennsylvania Code, and excerpts a portion of the section, which provides: "the annual funding for [LIURP] shall be at least .2% of a covered utility's jurisdictional revenues." (PGW Exceptions at 16 (quoting 52 Pa. Code § 58.4(a))). PGW pairs this excerpt with a small excerpt from a recent Commission decision, explaining "the Commission has already determined that this .2% of jurisdictional revenues 'is a starting point or floor for LIURP budgets.'" (PGW Exceptions at 16[7]). PGW then claims that its proposal "far exceeds" this .2% minimum and, thus, is "appropriately funded" in accord with the Competition Act.

[7] PGW was quoting from a recent Commission decision in *UGI Utilities Inc. – Gas Division, UGI Utilities, Inc. – Electric Division, UGI Penn Natural Gas, Inc. and UGI Central Penn Gas, Inc., Universal Service and Energy*

PGW's decision to pick and choose which sections of the regulation to cite is misleading. When the provision is read in full, it is clear that that ALJs were correct::

> Annual funding for a covered natural gas utility's usage reduction program shall be at least .2% of a covered utility's jurisdictional revenues. Covered gas utilities shall submit annual program budgets to the Commission. **A covered gas utility will continue to fund its usage reduction program at this level until the Commission acts upon a petition from the utility for a different funding level, or until the Commission reviews the need for program services and revises the funding level through a Commission order that addresses the recovery of program costs in utility rates.** Proposed funding revisions that would involve a reduction in program funding shall include public notice found acceptable by the Commission's Bureau of Consumer Services, and the opportunity for public input from affected persons or entities.[8]

Indeed, while LIURP funding is *initially* based on .2% jurisdictional revenues, at the program's inception, funding determinations are made *thereafter* in one of two ways: (1) a utility seeks a funding change through a petition which is subject to public notice and input,[9] or (2) the Commission reviews the relative need and revises the funding level in a Commission Order which addresses cost recovery.

The ALJs explained:

> The Commission has previously held that the standard of Section 58.4(a) of the Commission's regulations **is not a minimum of 0.2% but the needs of the service territory**. In the recent UGI Universal Service and Energy Conservation proceeding, the Commission stated that "the 0.2% of jurisdictional revenues is a starting point of floor for LIURP budgets, rather than a ceiling." As one example, UGI Gas had been funding its program at 0.2% of jurisdictional revenues. After review of this practice, the Commission ordered the Company to address issues with the Needs Assessment for LIURP and the resultant budget for LIURP." (RD at 105 (emphasis added)).
>
> … We would note that **PGW could not identify a single utility (gas or electric), or a single year, in which the Commission had approved a LIURP budget at**

Conservation Plan for 2014-2017 Submitted in Compliance with 52 Pa. Code 54.74 and 62.4, Docket No. M-2013-2371824, Final Order, at 70 (Jan. 15, 2015).

[8] 52 Pa. Code § 58.4(a).

[9] Rather than fulfill the public notice and input requirement, and petition for a decrease based on need, PGW instead sought a waiver of the public input requirement, which the ALJs rightfully rejected. (RD at 104). This is discussed further below in response to PGW's Exception 6.

the "regulatory minimum" as being a program that is "appropriately funded and available." (RD at 106 (emphasis added)).

The ALJ's interpretation looked at the full provision and concluded – based on strong precedent and consistent trends – that section 58.4(a) does not permit approval of PGW's proposed reduction of its LIURP budget, which would drastically reduce the last Commission Order approving PGW's LIURP.

3. *The ALJs correctly concluded that the LIURP budget set through a Joint Settlement in PGW's last base rate proceeding established a minimum funding level for PGW's LIURP pursuant to 52 Pa Code Section 58.4(a), which cannot be reduced absent public notice and input.*

PGW goes on to argue that, because the most recent increase in LIURP funding was determined as part of a "black box settlement," it cannot form the floor from which the budget is assessed. (PGW Exceptions at 5 (emphasis in original)). PGW explains that it agreed to the LIURP budget in the settlement "based on its interest in testing a pilot DSM program that would include a large LIURP." (PGW Exceptions at 17). This reasoning is not contained in any of the Statements filed in support of the Joint Petition for Settlement, but PGW nonetheless claims that its unstated rationale in joining the Settlement is proof that the Settlement – as approved by the Commission – did not assess need.

PGW cannot point to its previously un-asserted logic in joining a settlement without looking to the stated logic of other parties in joining the settlement – as well as the logic of the Commission in approving the settlement. Indeed, all Commission approved settlements must be in accord with the law and must further the public interest – which could only be said if the universal service programs are adequately funded and available in PGW's service territory in accord with the Natural Gas Competition Act. TURN *et al.*, a party to the Joint Settlement,

explained in its Statement in Support that the LIURP budget contained in the Settlement was "long overdue" to meet the expanding needs of this vulnerable population:

> All reasonable efforts should be made to assure that CRP participants have the means to utilize natural gas efficiently. Conservation related savings by CRP customers (whose numbers have approximately doubled since 2003) reduce the necessary energy credits paid by other customers. In paragraph 24(b) [of the Settlement], PGW commits to full finding of the Enhanced Low Income Retrofit Program [(PGW's LIURP, now known as CRP Home Comfort)], which represents a long overdue tripling of the annual budget for the CRP related Conservation Works Program (CWP) from historical levels of approximately $2 million annually.[10]

Indeed, the budget from the Settlement represented a balancing of the needs and the costs and represented a Commission-approved compromise to meet the needs of low income populations within PGW's service territory. As such, it is consistent with the triggering events of Section 58.4(a) described above, as it was a Commission Order that approved the revision of LIURP funding consistent with the public interest, which required both an assessment of need and the relative cost to fulfill those needs.

Notwithstanding this fact, however, the 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

[10] *Philadelphia Gas Works' Revised Petition for Approval of Energy Conservation and Demand Side Management Plan*, Docket Nos. R-2009-2139884, P-2009-2097639, Statement in Support of TURN et al., at 4-5 (May 19, 2010) (attached to the Joint Petition for Settlement as Statement F).

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 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.

Regardless of whether the current LIURP funding level was set in the context of a settlement or the most recent USECP, the fact is that the level of current funding is now the floor and represents a level which is based on need. The ALJs appropriately found that the budget set in the Settlement – and most recently approved in the 2014 Final USECP Order, established a minimum funding level for PGW's LIURP which cannot be reduced absent public notice and input.

4. *The ALJs properly considered the factors set forth in Section 58.4(c) regarding adjustments to LIURP funding, and arrived at the appropriate conclusion that PGW's LIURP budget must be continued at the current level, the level approved in the Commission's 2014 Final USECP Order.*

Section 58.4(c) requires that LIURP budgets be revised with due consideration to (1) the number of eligible customers, (2) the expected participation rates, (3) the total expense of the program, and (4) the ability to provide services within a reasonable period of time to all eligible customers. In its exceptions, PGW asks the Commission to reassess these four factors to find in its favor. Specifically, PGW again points to fact that it cannot serve "all" low income households "immediately" – arguing that this is not a "reasonable period of time." But as we noted above, the budget recommended by the ALJs (and previously approved by the Commission) will serve just 2,108 of the 71,625 potentially eligible households in Philadelphia. (RD at 96; 2014 Final USECP Order at 47). At this rate, it would take nearly 34 years to address every potentially eligible household. This is far different from PGW's assertion that it is being required to serve all households immediately. If anything, this rate of progress shows that the LIURP budget continues to be insufficient to meet the needs of low income households in PGW's service territory. But, given the competing concerns, the ALJs saw fit to continue LIURP at current levels, and not allow further cuts – or increases – in LIURP funding.

PGW then points to program expense, arguing against the ALJ's well-reasoned and supported conclusion that a reduced LIURP budget would result in higher distribution charges to ratepayers. (PGW Exceptions at 21-22). Yet PGW does not point to a single piece of record evidence to support its argument. It instead cites its tired and specious claim that LIURP is draining its operating costs, without any specific support for such assertions.

A reweighing of the four factors contained in 58.4(c) is unnecessary, as the ALJs have already identified, assessed, and analyzed the relevant facts and concluded that the current level LIURP funding is necessary to be maintained in order to ensure that the programs are appropriately funded and available to low income customers within its service territory.

B. <u>Reply to PGW Exception 2:</u> The ALJs properly rejected PGW's attempt to collect additional revenue outside of a base rate proceeding through a Conservation Adjustment Mechanism (CAM).

PGW reiterates all of the same arguments to enable it to collect revenue for profits lost to usage reduction through energy efficiency, hoping this time one will stick. First, PGW continues to argue that the CAM is not single issue rulemaking, but is instead an attempt to recover its prudent and reasonable costs for developing the energy efficiency programs pursuant to sections 1307 and 1319 of the Public Utility Code. (PGW Exceptions at 22). PGW is incorrect.

As we explained in our Main Brief: "The costs for PGW's low-income universal service programs, including LIURP, are already recovered through a surcharge to PGW customers. Approving PGW's CAM would, thus, result in overlapping revenue streams. This is precicely the issue that the prohibition on "single issue ratemaking" is intended to prevent." (CAUSE-PA Main Br. at 16 (citing 2014 Final USECP Order at 16)). The ALJs agreed, explaining: "PGW is isolating one factor that has had an impact on its revenue stream, the reduced number of Ccfs of gas used by PGW ratepayers as a result of PGW's DSM program. Without consideration for any other factors which have an impact on revenues, approval of PGW's proposed CAM on this single factor would constitute impermissible single-issue rulemaking." (RD at 58).

Moreover, the ALJs drew appropriate parallels to Act 129's prohibition on recovery of lost profits[11] and rightly concluded that the Act – although not binding because it deals only with electric distribution companies - was persuasive. (RD at 59[12]). The Act allows for recovery of

[11] 66 Pa. C.S. § 2806.1(k).
[12] The ALJs point to *Equitable Gas Company, LLC Request for Approval of Supplement No. 79 to Tariff Gas Pa. PUC No. 22, Supplement No. 80 to Tariff Gas Pa PUC No. 22 and Supplement No. 81 to Tariff Gas Pa PUC No. 22*, Docket No. R-2012-2304727, Recommended Decision at 10 & Order at 16 (Nov. 2, 2012); and to *Petition of UGI Utilities, Inc. – Electric Division for Approval of its Energy Efficiency and Conservation Plan*, Docket No. M-2010-2210316, Opinion and Order, at 23 (Oct. 19, 2011).

reasonable and prudent costs of running energy efficiency and conservation programming; however, it explicitly prohibits recovery of lost revenues as a result of conservation efforts.

> (1) An electric distribution company shall recover on a full and current basis from customers, through a reconcilable adjustment clause under section 1307, all reasonable and prudent costs incurred in the provision or management of a plan provided under this section. This paragraph shall apply to all electric distribution companies, including electric distribution companies subject to generation or other rate caps.
>
> (2) Except as set forth in paragraph (3), decreased revenues of an electric distribution company due to reduced energy consumption or changes in energy demand **shall not be a recoverable cost under a reconcilable automatic adjustment clause.**
>
> (3) **Decreased revenue and reduced energy consumption may be reflected in revenue and sales data used to calculate rates in a distribution-base rate proceeding** filed by an electric distribution company under section 1308 (relating to voluntary changes in rates).[13]

In reviewing this explicit prohibition against an automatic adjustment clause for lost profits for mandatory Act 129 programming, the ALJs rightly concluded that it was prudent to also prohibit an automatic adjustment clause for voluntary EE&C programming.

Finally, the ALJs rightly concluded that Commission precedent prohibited approval of a CAM in the context of this proceeding, and cited to the 2011 Commission decision regarding the Petition of UGI Utilities, Inc. – Electric Division for Approval of its Energy Efficiency and Conservation Plan, in which the Commission concluded that lost revenues are not recoverable program costs. The ALJs excerpted the following language from that decision:

> UGI avers that Section 1319(a) provides all of the legal authority necessary for the Commission to approve recovery of lost revenues as part of a voluntary EE&C Plan. However, we concur with IECPA that lost

[13] 66 Pa. C.S. § 2806.1(k) (emphasis added).

> distribution revenues are not 'costs' associated with development, management, financing or operation of UGI's program and are recoverable under Section 1319(a). In addition, the General Assembly made a distinction in Act 129 between the recovery of 'costs' and 'decreased revenues.' 66 Pa. C.S. § 2806.1(k)(2). The General Assembly's distinction between 'costs' and 'decreased revenues' in Act 129 conforms that the term 'costs' in Section 1319(a) foes not include lost revenue.[14]

The ALJs were correct when they concluded, in light of the prohibition on single issue rulemaking, the significant risk of crossed revenue streams, the clear parallel to the Act 129 prohibition on the use of an adjustment clause for lost revenues, and established Commission precedent that PGW must wait until its next base rate to seek approval for a CAM. This decision is legally sound, and should be adopted without revision.

C. Reply to PGW Exception 3: The ALJs correctly rejected PGW's proposed performance incentive for a task it is already mandated to do by statute and regulation.

PGW argues in its Exceptions – as it has throughout this proceeding – that ratepayers should pay an additional fee when PGW meets and exceeds performance goals. PGW claims that the ALJs "recognized the value" of imposing a fee – and only declined to approve it because the fee is not properly addressed outside a rate case. (PGW Exceptions at 28). PGW says this latter conclusion was made in error because – without a return on equity or shareholders - it cannot get a performance enhancement through traditional ratemaking. (PGW Exceptions at 29).

In fact, the ALJs did not "recognize the value" of a performance incentive in the manner that PGW insinuates. In addition to rejecting the performance incentive as improper in the context of this proceeding – which was fully in accord with the plain language of the regulations – the ALJs also opined that they "agree that since PGW is legally obligated to offer a LIURP

[14] RD at 61-62 (quoting Petition of UGI Utilities, Inc. – Electric Division for Approval of its Energy Efficiency and Conservation Plan, Docket No. M-2010-2210316, Opinion and Order, at 23 (Oct. 29, 2011)).

program (CRP Home Comfort), allowing an incentive to offer something they are required to provide would be inappropriate." (RD at 79; see also CAUSE-PA Main Br. at 17).

The ALJs issued their recommendations appropriately, based on the record evidence and the plain language of the regulation, and their recommendation to reject PGW's proposed performance incentive and defer the decision to base rate proceeding should be adopted by the Commission.

D. Reply to PGW Exception 4: CAUSE-PA did not take a position on PGW's Efficient Fuel Switching Pilot, and does not take a position here except to say that full funding and appropriate implementation of mandatory programs must be prioritized over voluntary and discretionary programs.

Although CAUSE-PA did not take a position on these issues in the underlying proceeding, it would be inappropriate for the Commission to sanction PGW's attempt to create and fund a voluntary EE&C program while concurrently proposing to slash funding for LIURP. PGW is **obligated** to run LIURP. While CAUSE-PA supports PGW's voluntary EE&C programs, no such program should be run **at the expense of** PGW's mandatory obligations.

E. Reply to PGW Exception 5: The ALJs appropriately rejected PGW's attempt to circumvent Section 58.10(a)(2) and (3), which requires the prioritization of customers for LIURP services based on arrearages and income.

PGW argues that it should not be required to comply with section 58.10, which requires it to prioritize LIURP treatment based on income and arrearages. In support, PGW asserts that it "has a rigorous prioritization strategy in place, based on years of actual program experience and data, to ensure the greatest energy savings and program cost-effectiveness." (PGW Exceptions at 39). Apart from asserting its own expertise as a reason for regulatory waiver, PGW fails to provide any support for its requested waiver.

The ALJs correctly found that PGW's assertion regarding its own expertise in running DSM programming was not sufficiently persuasive to meet the "special circumstances" burden required for regulatory waiver – especially in light of record evidence rebutting PGW's wholly unsupported claim that applying the prioritization factors in section 58.10 would cause harm. (RD at 174-75; OCA Main Br. at 82; TURN et al. Main Br. at 16-17; CAUSE-PA Main Br. at 28-29). Indeed, the Commission has already explained that PGW's LIURP should be subject the universal service requirements, regardless of its placement of the program within its DSM portfolio:

> The LIURP regulations clearly establish a priority for selecting customers to receive weatherization services under the program. Although the PGW ELIRP program is operating within the DSM portfolio of programs, **the selection method for customers should not change from what it would be if [PGW's LIURP] were part of PGW's USECP.** (2014 Final USECP Order at 55; RD at 171; CAUSE-PA Main Br. at 29).

Roger Colton, expert witness for OCA, explained the need for prioritization in the context of universal service provision – and the ALJs found this argument persuasive. (RD at 174). In relevant part, Mr. Colton explained: "Whether or not prioritizing LIURP investments based on arrearages and income deficits helps the Company to achieve its DSM-related objectives, using such a prioritization within those customers who are equally eligible would help the Company meet its universal service objectives." (RD at 166; OCA Main Br. at 82-83).

The ALJ's rejection of PGW's waiver request should be upheld, as PGW has failed to meet its burden to show special circumstances that would warrant deviation from the regulatory prioritization established by the Commission. Indeed, the prioritization contained in the regulations are an important part of the universal service goals of targeting high use, low income customers for additional assistance. The regulatory guidelines set to achieve these goals should

not be supplanted by PGW's bald claim of superior program expertise. More is required to support a regulatory waiver.

F. Reply to PGW Exception 6: The ALJ's appropriately rejected PGW's attempt to circumvent the due process requirements contained in Section 58.4(a).

PGW again tries to subvert section 58.4(a), which requires that a petition to decrease LIURP funding be subject to public notice and input – critical due process protections embedded into the regulations. (PGW Exceptions at 45). As above, in its argument against the ALJs' requirement to maintain current LIURP funding, PGW again argues that it has not proposed a decrease in LIURP funding, and that the regulation does not apply. We will not reiterate the lengthy explanation above which addresses why this claim is incorrect. Instead, we focus here on PGW's argument that even if this were a petition to decrease LIURP funding (which it clearly is), it should not be subject to the due process provisions of section 58.4(a). Rather, PGW asserts that participation in this litigation by what it deems "public interest advocacy groups" is sufficient to fulfill this regulatory requirement. (PGW Exceptions at 47). PGW asserts that it "needs approximately three months after final resolution of this proceeding to smoothly transition to the new plan," presumably insinuating that the public notice requirements would create a hardship for it in the continuation of its LIURP. (PGW Exceptions at 48).

The ALJs were right on the mark when they explained that "the public has a need and an interest to provide comment on such reductions in the program funding." (RD at 174-75). Notwithstanding the involvement of several consumer groups (including CAUSE-PA) in the proceeding, the ALJs found that "the notice and due process requirements are fundamental and the Company has not established that there are any special circumstances which would entitle PGW to a waiver of this particular section." (RD at 174). PGW's insinuation that it now has

inadequate time to be subject to public notice requirements – after years of opportunity – should not be accepted as a special circumstance that would warrant waiver of a critically important public right. Granting this waiver would be tantamount to allowing a utility to wait out its due process requirements. Indeed, PGW has alleged no special circumstances that would warrant an exception to this important protection, and its repeated attempts to do so should be rejected.

G. Reply to PGW Exception 7: The ALJ's appropriately rejected PGW's attempt to circumvent the inter-utility coordination requirements contained in Section 58.14(c).

PGW next argues that it should not be required to coordinate with other utilities in delivery of its LIURP "[g]iven the complexity involved in intra-utility coordination … and in light of extensive program steps that PECO is already taking as part of its Act 129 Energy Efficiency and Conservation program." (PGW Exceptions at 48). It then concedes that it has no objection to inter-utility coordination, but asks for the Commission to not place any further directives on it regarding coordination.

Coordination amongst and between utilities – and other state-run energy efficiency programs – is an integral part of the overall energy efficiency strategy. The requirement for inter-utility coordination, by its essential nature requires utilities-particularly those sharing the same service territory. If the Commission were to waive this coordination regulation for PGW it would send the wrong signal to other utilities that, coordination is not a priority. As the ALJs explain, section 58.14(c) was "designed in a way that promotes the concept of inter-utility coordination … where there is an opportunity for significant enough energy savings and bill reductions to warrant more comprehensive coordination.'" (RD at 175). Even without specific instructions to enhance coordination efforts, the Commission should not approve a waiver.

Doing so would encourage PGW to neglect its responsibility to look for meaningful ways to coordinate, and – thus – the ALJ's decision to reject PGW's waiver request should be denied.

H. Reply to PGW Exception 8: CAUSE-PA takes no position on PGW's request for clarification of Finding of Fact Numbers 62 and 64, except to note that it supports the adoption of LIME – as approved by the ALJs – and the decision to approve the program should not be disrupted.

PGW seeks clarification of two findings of fact (FOF): Number 62, which finds that there would be no direct benefit of LIME to PGW's residential low-income customers, and Number 64, which finds that PGW's selection criteria is based only on income status of residents not billed for gas service and building usage criteria. CAUSE-PA does not take a positon on PGW's request for clarification, except to say that it supports PGW's adoption of a multifamily program, and the carefully reasoned decision of the ALJs approving that program should not be disrupted.

III. CONCLUSION

For the reasons set forth above, CAUSE-PA urges the Commission to reject PGW's Exceptions and to approve the ALJ's Order in its entirety.

Respectfully Submitted,

PENNSYLVANIA UTILITY LAW PROJECT

Counsel for CAUSE-PA

Elizabeth R. Marx, Esq., PA ID: 309014
Patrick M. Cicero, Esq., PA ID: 89039
Joline Price, Esq., PA ID: 315405
118 Locust Street
Harrisburg, PA 17101
Tel.: 717-236-9486
Fax: 717-233-4088

April 18, 2016