



100 Pine Street • PO Box 1166 • Harrisburg, PA 17108-1166
Tel: 717.232.8000 • Fax: 717.237.5300

Adeolu A. Bakare
Direct Dial: 717.237.5290
Direct Fax: 717.260.1725
cmincavage@mwn.com

November 19, 2015

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

VIA ELECTRONIC FILING

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

Dear Secretary Chiavetta:

Please find enclosed for filing with the Pennsylvania Public Utility Commission the Main Brief of the Philadelphia Industrial and Commercial Gas Users Group ("PICGUG"), in the above-referenced proceeding.

As evidenced by the attached Certificate of Service, all parties to this proceeding are being duly served.

Sincerely,

McNEES WALLACE & NURICK LLC

By 

Adeolu A. Bakare

Counsel to the Philadelphia Industrial and Commercial Gas Users Group

Enclosure

c: Administrative Law Judge Christopher P. Pell (via e-mail and First-Class Mail)
Administrative Law Judge Marta Guhl (via e-mail and First-Class Mail)
Certificate of Service

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CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a true copy of the foregoing document upon the participants listed below in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant).

VIA E-MAIL AND FIRST-CLASS MAIL

Richard A. Kanaskie, Esq.
Gina L. Lauffer, Esq.
Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
P. O. Box 4365
Harrisburg, PA 17105-3265
rkanaskie@pa.gov
ginlauffer@pa.gov

Sharon E. Webb, Esq.
Office of Small Business Advocate
1102 Commerce Building
300 North Second Street
Harrisburg, PA 17101
etriscari@pa.gov
swebb@pa.gov

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

Christy M. Appleby, Esq.
Darryl A. Lawrence
Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
cappleby@paoca.org
dlawrence@paoca.org

Daniel Clearfield, Esq.
Deanne O'Dell, Esq.
Carl R. Shultz, Esq.
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
dclearfield@eckertseamans.com
dodell@eckertseamans.com
cshultz@eckertseamans.com

Joseph Otis Minott, Esq.
Ernest Logan Welde
Clean Air Council of Philadelphia
135 South 19th Street, Suite 300
Philadelphia, PA 19103
Joe_minott@cleanair.org
lwelde@cleanair.org

Harry S. Geller, Esq.
Elizabeth R. Marx, Esq.
The Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101
hgellerpulp@palegalaid.net



Adeolu A. Bakare
Counsel to the Philadelphia Industrial and
Commercial Gas Users Group

Dated this 19th day of November, 2015, at Harrisburg, Pennsylvania

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**MAIN BRIEF OF THE
PHILADELPHIA INDUSTRIAL AND
COMMERCIAL GAS USERS GROUP**

Aria Health
Einstein Healthcare Network
Magee Rehabilitation Hospital
Thomas Jefferson University
Thomas Jefferson University Hospitals, Inc.
Philadelphia College of Osteopathic Medicine

Charis Mincavage (Pa. I.D. 82039)
Adeolu A. Bakare (Pa. I.D. 208541)
Elizabeth Trinkle (Pa. I.D. 313763)
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
Phone: (717) 232-8000
Fax: (717) 237-5300
cmincavage@mwn.com
abakare@mwn.com
etrinkle@mwn.com

Counsel to the Philadelphia Industrial and
Commercial Gas Users Group

Dated: November 19, 2015

I. INTRODUCTION AND STATEMENT OF THE CASE

The Philadelphia Industrial and Commercial Gas Users Group ("PICGUG")¹ hereby files this Main Brief in response to Philadelphia Gas Works ("PGW" or "Company") Petition for Approval of Demand-Side Management Plan for FY 2016-2020 ("2016 DSM Plan"). *Petition of Philadelphia Gas Works for Approval of Demand-Side Management Plan for FY 2016-2020*, Docket No. P-2014-2459362 (Dec. 23, 2014) (hereinafter, "Petition"). As set forth below, PICGUG requests that the Commission approve the Company's proposed cost allocation methodology, deny the additional cost components for the 2016 DSM Plan, and condition any approval of the Company's proposed commercial data uploading tool upon an opt-in participation structure.

II. PROCEDURAL HISTORY

PGW filed its Petition seeking approval of the 2016 DSM Plan on December 23, 2014. On January 12, 2015, the Bureau of Investigation and Enforcement ("I&E") filed an Answer to PGW's Petition and the Office of Consumer Advocate ("OCA") filed a Notice of Intervention, Public Statement and an Answer. Also 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, the Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia ("TURN") filed a Petition to Intervene. On the same day, the Office of Small Business Advocate ("OSBA") filed a Notice of Intervention and Public Statement. PICGUG also filed a Petition to Intervene on January 13, 2015. Finally, the Clean Air Council ("CAC") filed a Petition to Intervene on January 16, 2015.

¹ PICGUG's compilation is listed on the cover page of this Main Brief.

A Prehearing Conference was held on February 17, 2015, before Administrative Law Judges ("ALJs") Christopher P. Pell and Marta Guhl, during which PICGUG's Petition to Intervene was granted and the procedural schedule was set.

On April 10, 2015, PGW filed with the Commission a Petition for a limited extension of its initial DSM plan, which expired on August 31, 2015,² for an interim period from September 1, 2015, through either: (1) August 31, 2016; or (2) upon the effective date of a compliance plan filed in response to a final Commission order in this proceeding, whichever is earlier ("DSM Bridge Plan"). The Commission entered an Order on May 7, 2015, approving PGW's DSM Bridge Plan.

PICGUG received the Company's Direct Testimony on May 4, 2015. Pursuant to the procedural schedule, on June 23, 2015, PICGUG received Direct Testimony from the following parties: OCA, OSBA, I&E, and CAUSE-PA. On July 21, 2015, PICGUG received Rebuttal Testimony from the Company, OCA, OSBA, and CAUSE-PA. On August 5, 2015, PICGUG received Surrebuttal Testimony from the Company, OCA, OSBA, I&E, and CAUSE-PA. PICGUG received PGW's Supplemental Testimony on October 20, 2015, and PGW's Rejoinder Testimony on October 22, 2015.

The ALJs presided over a telephonic hearing on October 28, 2015, during which all testimony and exhibits were admitted into the record, without objection, including PICGUG Exhibit No. 1. Pursuant to the procedural schedule, PICGUG submits this Main Brief.

III. LEGAL STANDARDS

Section 332(a) of the Public Utility Code, 66 Pa. C.S. § 332(a), provides that the proponent of a rule or order has the burden of proof. As the proponent of a rule or order, in this

² See *Petition for Approval of Energy Conservation and Demand-Side Management Plan, Order*, Docket No. P-2009-2097639 (July 2010) (hereinafter "Initial DSM Plan")

instance an order seeking approval of a second DSM Plan, PGW bears the burden of proof in this proceeding and, therefore, the duty to establish facts by a "preponderance of the evidence." *Selling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950); *Samuel J. Lansberry, Inc. v. Pa. P. U. C.*, 578 A.2d 600 (Pa. Cmwlth. 1990). Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. 2 Pa. C.S. §704; *Mill v. Pa. P. U. C.*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transportation Corp. v. Pa. P.U.C.*, 623 A.2d 6 (Pa. Cmwlth. 1993). More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk and Western Ry. v. Pa. P. U. C.*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Commonwealth, Dept. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

IV. CONTINUATION OF DSM PLAN

PICGUG has no position on this issue.³

V. PROPOSED NON-LIURP PROGRAMS

PICGUG has no position on this issue.

VI. DSM COST RECOVERY MECHANISMS

A. Summary of Briefing Party's Position

PGW's 2016 DSM Plan addresses cost allocation matters impacting PICGUG's members. As clarified by discovery propounded by PICGUG and admitted to the record as PICGUG Exhibit No. 1, PGW proposes to allocate 2016 DSM costs only to firm sales and transportation customers, exempting interruptible transportation consumers from any rate increases. *See* PICGUG Exhibit No. 1, p. 2. PICGUG recommends that the Commission approve PGW's

³ PICGUG has not commented on every issue raised in this proceeding, but silence on any particular issue shall not be construed as support for positions advanced by other parties.

proposal to allocate costs to firm customers only, as this proposal complies with cost causation requirements.

B. Recovery through Universal Service Charge ("USC") and Efficiency Cost Recovery Surcharge ("ECRS")

PGW's 2016 DSM Plan proposes to maintain the cost allocation structure approved as part of the Initial DSM Plan. Specifically, PGW projects to incur \$25 million in 2016 DSM Plan costs and recover such costs through the ECRS and USC, each of which are recovered from only PGW firm sales and transportation customers. Petition, p. 4. PICGUG supports the Company's proposal to continue allocating costs in a manner reflective of cost causation principles.

Regarding cost allocation, PGW proposes to continue recovering DSM charges from Rate General Service ("GS") Residential, Rate GS Commercial, Rate GS Industrial, and Rate Philadelphia Housing Authority ("PHA"). Petition, pp. 18-19; *see also* PGW Statement No. 2, Direct Testimony of Elliott Gold ("PGW Statement No. 2"), p. 12. Moreover, as clarified in PICGUG Exhibit No. 1, p. 1, Rate GS Industrial includes both firm sales and firm transportation customers. PICGUG Exhibit No. 1, p. 1. As a result, all customers receiving service under Rate GS Industrial would be allocated DSM charges. *See id.* Conversely, for customers receiving Interruptible Transportation ("IT") service, PGW serves these customers via Rate IT, which is exempt from DSM charges.⁴

This cost allocation methodology is consistent with cost causation principles. Under the proposed 2016 DSM Plan, PGW will offer programs benefitting firm sales and transportation customers, but these programs would be unavailable to IT customers. *See* Petition, Appendix B, p. 36 (listing rate classes expected to benefit from the 2016 DSM Plan). Accordingly, PGW will

⁴ PICGUG's discovery also confirmed that legacy customers served on Rate General Transportation Service ("GTS") are exempt from DSM charges. *See* PICGUG Exhibit No. 1, p. 2.

recover costs of the 2016 DSM Plan solely from firm sales and transportation customers, as these are the only customers eligible to take advantage of these programs. *See id.* (listing rate classes subject to DSM charges).

Because PGW's proposed cost allocation proposal for its 2016 DSM Plan only assigns costs to those customer classes for whom the benefits of the DSM programs are available, PGW's proposed cost allocation appropriately adheres to cost causation principals. Accordingly, PICGUG supports PGW's cost allocation proposal for the 2016 DSM Plan.

VII. PGW'S PROPOSED TWO NEW COST ELEMENTS FOR ECRS

A. Summary of Briefing Party's Position

The 2016 DSM Plan proposes two new cost recovery mechanisms: (1) a Conservation Adjustment Mechanism ("CAM") for recovery of lost margins from conservation-based sales reductions; and (2) performance incentives for "achieving and surpassing targeted program goals." *See* Petition, pp. 5-6. As discussed below, PICGUG opposes the additional cost components proposed for the 2016 DSM Plan because the mechanisms would provide financial windfalls for PGW at the expense of ratepayers.

B. Conservation Adjustment Mechanism ("CAM")

PICGUG does not support PGW's proposals to implement the CAM, which would allow PGW to recover lost margins associated with reduced gas usage resulting from the DSM programs. Petition, pp. 19-20. PICGUG concurs with testimony offered by the OCA and OSBA averring that the CAM constitutes detrimental single-issue ratemaking, is inconsistent with Energy Efficiency and Conservation ("EE&C") plans approved under Act 129 of 2008 for Electric Distribution Companies ("EDCs"), and should not be approved as part of the 2016 DSM Plan. *See* OCA Statement No. 1, Direct Testimony of Geoffrey C. Crandall ("OCA Statement No. 1") OCA Statement No. 1, pp. 4-5, 17; OSBA Statement No. 1, Direct Testimony of Robert

D. Knecht ("OSBA Statement No. 1"), p. 9. For these reasons, the Commission should deny the Company's request to implement the CAM.

C. Performance Incentives

As with the CAM, PICGUG opposes PGW's proposal to implement a performance incentive mechanism. The proposed performance incentive mechanism would compensate PGW for meeting or exceeding conservation benchmarks. Petition, p. 23. PICGUG concurs with testimony offered by the OCA and OSBA averring that the performance incentive mechanisms proposed by the Company would generate unnecessary revenue for the Company at the expense of ratepayers and should not be approved as part of the 2016 DSM Plan. *See* OCA Statement No. 1, p. 17; OSBA Statement No. 1, p. 12. As such, the Commission should deny the proposed performance incentive mechanism.

VIII. DSM II BUDGET

PICGUG has no position on this issue.

IX. CRP HOME COMFORT PROGRAM (LIURP)

PICGUG has no position on this issue.

X. OTHER ISSUES

A. Summary of Briefing Party's Position

During this proceeding, PICGUG raised concerns with PGW's proposal to implement an online tool allowing Commercial and Industrial ("C&I") customers to track natural gas usage data and upload such data to the United States Environmental Protection Agency ("EPA") Portfolio Manager program. To protect customers' privacy interests, PICGUG recommends that the Commission require PGW to limit data uploads to customers that have explicitly authorized such uploads.

B. PGW Should Submit The Plan For Its Proposed Online Platform To The Parties To Ensure Privacy Issues Are Appropriately Addressed.

As part of its 2016 DSM proposal, PGW is seeking to implement a Commercial Data Uploading Tool ("Data Tool") that would not only permit C&I customers to track natural gas data, but would also automatically upload these customers' usage data to the EPA Portfolio Manager program. PGW Statement No. 2, p. 11. In response to discovery propounded by PICGUG, PGW confirmed that the Data Tool would be developed to store and transmit monthly consumption volumes, bill amounts, and read types. *See* PICGUG Exhibit No. 1, p. 4. PGW also noted that the software costs would be subsumed within the proposed DSM budget and allocated among customers as an administrative expense. *See id.* In addition, PGW affirmed that customer data will not be uploaded onto the Data Tool without customer authorization. *See id.*

Consistent with the Company's representation, the Commission should condition approval of the Data Tool upon compliance with the "opt-in" structure outlined by PGW in response to PICGUG Interrogatory I-1(d). *See id.* Requiring interested customers to explicitly authorize participation in the Data Tool ensures that customers concerned with data security are not unnecessarily exposed to unauthorized data transmissions.

XI. CONCLUSION

WHEREFORE, the Philadelphia Industrial and Commercial Gas Users Group respectfully requests that the Pennsylvania Public Utility Commission:

- (1) approve PGW's proposal to allocate costs of the 2016 DSM Plan to firm customers only;
- (2) deny the Company's proposed CAM and performance incentives mechanism; and
- (3) condition any approval of PGW's proposed commercial data uploading tool on a requirement that the data uploads remain limited to customers that have provided explicit customer authorization.

Respectfully submitted,

McNEES WALLACE & NURICK LLC



By _____

Charis Mincavage (Pa. I.D. 82039)
Adeolu A. Bakare (Pa. I.D. 208541)
Elizabeth Trinkle (Pa. I.D. 313763)
100 Pine Street
P. O. Box 1166
Harrisburg, PA 17108-1166
Phone: (717) 232-8000
Fax: (717) 237-5300
cmincavage@mwn.com
abakare@mwn.com
etrinkle@mwn.com

Counsel to the Philadelphia Industrial and
Commercial Gas Users Group

Dated: November 19, 2015

APPENDIX A

PROPOSED FINDINGS OF FACT

1. PGW plans to recover \$25 million in 2016 DSM Plan costs through the Efficiency Cost Recovery Surcharge ("ECRS") and Universal Service Charge ("USC"), each of which are recovered from only PGW's firm sales and transportation customers. *See* Petition, p. 4.
2. PGW will offer programs benefitting firm sales and transportation customers, but will not offer such programs to interruptible transportation customers. *See* Petition, Appendix B, p. 36 (listing rate classes expected to benefit from the 2016 DSM Plan).
3. PGW will recover costs of the 2016 DSM Plan solely from firm sales and transportation customers. *See* Petition, Appendix B, p. 36 (listing rate classes subject to DSM charges).
4. The proposed CAM would allow PGW to recover lost margins associated with reduced gas usage resulting from the DSM programs. *See* Petition, pp. 19-20.
5. The proposed performance incentive mechanism would compensate PGW for achieving 70% or more of its conservation target. *See* Petition, p. 23; OSBA Statement No. 1, p. 12.
6. The proposed CAM would allow PGW to postpone base rate proceedings and comprehensive review of the Company's sales volumes, operating costs, and rate levels. *See* OCA Statement No. 1, p. 9; OSBA Statement No. 1, p. 10.
7. The General Assembly rejected lost revenue compensation for utilities subject to Act 129. *See* OCA Statement No. 1, p. 6.
8. The proposed performance incentive would add to the cost of PGW's DSM programs without producing commensurate benefits. *See* OCA Statement No. 1, p. 17.
9. PGW proposes to implement a "commercial data uploading tool" that would not only permit C&I customers to track natural gas data, but would also automatically upload these customers' usage data to the EPA Portfolio Manager program. PGW Statement No. 2, p. 11.
10. Costs for the proposed commercial data uploading tool will be subsumed within the proposed DSM budget and allocated among customers as an administrative expense. *See* PICGUG Exhibit No. 1, p. 4.
11. Only data from customers that have provided PGW with explicit authorization will be uploaded to the commercial data uploading tool. *See* PICGUG Exhibit No. 1, p. 4.

APPENDIX B

PROPOSED CONCLUSIONS OF LAW

1. As the proponent of a Commission Order, PGW bears the burden of proof in this proceeding. 66 Pa. C.S. § 332(a).
2. Any costs recovered for implementation of PGW's proposed Demand-Side Management Plan must be just and reasonable. 66 Pa. C.S. § 1301.