



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

IN REPLY PLEASE
REFER TO OUR FILE

December 8, 2015

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:

Enclosed please find the Bureau of Investigation and Enforcement's (I&E) **Reply Brief** 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) 783-6156.

Sincerely,

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CBW/GLL/sea

Enclosure

cc: Certificate of Service
ALJ Christopher P. Pell
ALJ Marta Guhl

**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 :**

**REPLY BRIEF
OF THE
BUREAU OF INVESTIGATION AND ENFORCEMENT**

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Dated: December 8, 2015

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I. INTRODUCTION AND STATEMENT OF THE CASE

The Bureau of Investigation & Enforcement (“I&E”) incorporates, by reference, the Introduction and Statement of the Case sections contained in its Main Brief of November 19, 2015.¹

II. PROCEDURAL HISTORY

The Bureau of Investigation & Enforcement (“I&E”) incorporates, by reference, the Procedural History contained in its Main Brief of November 19, 2015.² On December 4, 2015, Philadelphia Gas Works (“PGW”) and I&E entered into a Stipulation (“Stipulation”) which is herein attached and incorporated as Appendix A. In accordance with the litigation schedule established in this proceeding, PGW, I&E, the Office of the Consumer Advocate (“OCA”), the Office of the Small Business Advocate (“OSBA”), Tenant Union Representative Network (“TURN”) and Alliance of Senior Citizens of Greater Philadelphia (“Action Alliance”) (collectively “TURN et al.”), and the Philadelphia Industrial and Commercial Gas Users Group (“PICGUG”), and the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”) filed Main Briefs on November 19, 2015.³ Pursuant to the procedural schedule and in accordance with Sections 5.501- 5.502 of the Public Utility Code, I&E submits this Reply Brief.

¹ I&E Main Brief, p. 1.

² I&E Main Brief, p. 1-4.

³ Although the Clean Air Council intervened in the proceeding, it did not file a Main Brief.

III. LEGAL STANDARDS

The Bureau of Investigation & Enforcement (“I&E”) incorporates, by reference, the Legal Standard contained in its Main Brief of November 19, 2015.⁴ I&E reiterates that PGW, as the petitioner, has the burden of proof in this proceeding to establish that the costs associated with Phase II of its Demand Side Management Program (“DSM”), as set forth in its *Petition for Approval of Demand-Side Management Plan (“DSM”) 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* (“Petition”), are prudent and reasonable.⁵ Because this case is pending before an administrative tribunal, PGW’s “burden [of proof] is satisfied by establishing a preponderance of evidence which is substantial and legally credible.”⁶ Therefore, to meet its burden of proof in this proceeding, PGW must “present evidence more convincing, by even the smallest amount, than that presented by any opposing party.”⁷

PGW’s Petition, as filed, must be rejected as PGW has failed to satisfy its burden. More specifically, PGW has failed to show that the costs associated with its Cost Adjustment Mechanism (“CAM”) and Performance Incentive (“PI”) proposals, as well as its Low Income Multi-Family Efficiency program (“LIME”), as proposed in the filing, are prudent and reasonable. Accordingly, these proposals should be rejected as they are not supported by a preponderance of the

⁴ I&E Main Brief, p. 4.

⁵ 66 Pa. C.S. § 332(a); 66 Pa.C.S.A. § 1319.

⁶ *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

⁷ *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

evidence. However, I&E supports approval of the LIME program as modified by the Stipulation entered into by PGW and I&E.

IV. CONTINUATION OF DSM PLAN

A. Summary of Briefing Party's Position

After being afforded the opportunity to conduct an investigation, I&E does not oppose the continuation of the DSM Plan, absent its objection to the CAM and PI provisions and the LIME program as filed. I&E, however, supports the LIME program as modified by the attached Stipulation.

B. PGW Proposal to Continue DSM

As noted above, I&E does not object to the continuation of the DSM.

C. Cost Benefit Analysis

I&E took no position regarding the cost benefit analysis in this proceeding.

D. Proposed Program Term

I&E took no position on the term of the proposed program.

V. PROPOSED NON-LIURP PROGRAMS

A. Summary of Briefing Party's Position

I&E does not object to any of the programs listed below.

B. Proposed Non-LIURP Programs

I&E does not object to the proposed non-Low Income Usage Reduction Programs ("LIURP") listed below.

1. **Residential Equipment Rebates**
2. **Efficient Construction Grants**
3. **Efficient Building Grants**
4. **Commercial Equipment Rebates**
5. **Home Rebates Program**

C. Proposed New Pilot Program – Efficient-Fuel Switching

I&E does not object to the Efficient-Fuel Switching program.

D. PGW On-Bill Repayment Program Proposal

I&E does not object to the On-Bill Repayment Program proposal.

E. OCA Confirmed Low-Income Outreach Proposal

I&E takes no position on the OCA’s confirmed Low-Income Outreach proposal.

VI. DSM COST RECOVERY MECHANISMS

A. Summary of Briefing Party’s Position

I&E recommends that the CAM proposed by PGW, which would initially be recovered through the Efficiency Cost Recovery Surcharge (“ECRS”), be rejected. I&E also recommends that the PI, which would be recovered through the ECRS, be rejected. Further, I&E recommended that the filed LIME program proposal, which would be recovered through the Universal Service Charge (“USC”), be rejected. I&E, however, does not oppose the LIME program as modified by the Stipulation entered into by PGW and I&E. Apart from recommending the rejection of these programs, which is discussed in detail below,

and the stipulated LIME recovery, I&E took no further position on recovery through the USC or ECRS.

B. Recovery through Universal Service Charge and Efficiency Cost Recovery Surcharge

Apart from the recommendations noted above, I&E does not object to the cost recovery through the USC and ECRS.

VII. PGW PROPOSED TWO NEW COST ELEMENTS FOR ECRS

A. Summary of Briefing Party's Position

I&E recommends the rejection of both the proposed CAM and the proposed PI award. These proposals by PGW both ignore the simple fact that the Commission already has in place a mechanism to address revenue deficiencies. Both proposals serve as a vehicle for PGW to circumvent the base rate case process.

B. Conservation Adjustment Mechanism

PGW has proposed to recover its lost distribution revenue associated with Phase II of the DSM through the CAM. PGW states that the CAM would be used to recover the cost of reduced contributions to fixed costs that result from the energy efficiency measures taken under the DSM, which results in a reduction of natural gas usage.⁸ PGW states that the proposed DSM plan was, in fact,

⁸ Petition ¶34.

“...designed under the assumption that the CAM cost element may not be approved....”⁹

1. The CAM Is Unnecessary

As stated in its Main Brief,¹⁰ I&E recommends that the CAM be rejected. The issue of recovery of lost revenue as it relates to DSM programs has been well settled by this Commission and a mechanism to recover lost revenue already is in place. As previously noted, in its *Investigation into Demand Side Management by Electric Utilities*, the Commission states:

[i]n considering this issue, we concur with the ALJ's recommendation to not permit the recovery of lost revenues through the DSM surcharge mechanism, but rather in base rate proceedings. We are sympathetic to the arguments of the utilities that prompt recovery through a surcharge mechanism would serve to promote more extensive DSM implementation. However, lost revenues are, by their nature, much more difficult to measure than DSM program costs. Therefore, we feel it necessary to require that these costs be recovered through a base rate proceeding so that they are based on actual program results, as verified through the ratemaking process.¹¹

Therefore, it is clear that recovery of lost revenues is an issue to be examined in a base rate proceeding. The instant proceeding is not the correct forum in which to address this issue. To be clear, I&E is not advocating that PGW be denied the opportunity to pursue a request for recovery of lost revenue related to its DSM

⁹ Petition ¶36.

¹⁰ I&E Main Brief, pp. 7-10.

¹¹ *Investigation into Demand Side Mgt. by Electric Utilities Unif. Cost Recovery Mechanism*, I-900005, 1993 WL 855893, at page 37 (Pa. PUC Dec. 13, 1993).

program. I&E believes, however, that, in order to receive the proper level of scrutiny, this issue must be addressed in a base rate proceeding.

Simply put, PGW faces the same challenge that was presented by this Commission for electric utilities. Namely, that lost revenues are so much more difficult to measure than DSM program costs that the Commission thought it prudent to require that lost revenues related to DSM programs be evaluated through the base rate case process. Contrary to PGW's assertion, its status as a municipal utility does not afford it a way to circumvent the rate case process. Its claimed lost revenues, just like those of investor owned utilities, are still more difficult to measure than its DSM program costs. In this case, PGW's unique position as a cash-flow, municipal gas utility does not make it so different that it requires an exception to a Commission established rule.

As noted by PGW, "...the Commission has not permitted electric utilities to recover lost 'revenue' and rejected such proposals for a voluntary newly proposed DSM program for UGI..."¹² As noted by the Commission in the UGI case:

...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 distribution revenues are not "costs" associated with development, management, financing or operation of UGI's program and are not 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

¹² PGW Main Brief, p. 50.

distinction between “costs” and “decreased revenues” in Act 129 confirms that the term “costs” in Section 1319(a) does not include lost revenue.¹³

In its Main Brief, PGW attempts to distinguish itself from UGI by stating that its DSM program has been operational for five years and therefore its measurements are based on actual data, thus its CAM would address strictly the impact of DSM losses.¹⁴ This may very well be true, but it does nothing to change the fact that the Commission has explicitly stated that lost distribution revenues are not DSM costs and are not recoverable absent a base rate proceeding.

2. Act 129 is Demonstrative in Showing How Lost Revenues Must be Recovered.

Further, I&E agrees with PGW that “Act 129’s express prohibition on large electric distribution companies from recovering lost revenue due to reduced energy consumption other than through a Section 1308 base rate proceeding is instructive here.”¹⁵ Indeed, the Commission also agrees with this assessment as it stated that although UGI was not required to implement an energy efficiency plan under Act 129, deviation from the cost recovery guidance provided in Act 129 was unwarranted.¹⁶

As noted in the OCA Main Brief, Act 129, although not specifically applicable to PGW, has an impact on this proceeding and provides a policy

¹³ *Petition of UGI Utilities, Inc. – Electric Division for Approval of its Energy Efficiency and Conservation Plan*, Docket No. M-2010-2210316, Opinion and Order entered October 19, 2011 at 23.

¹⁴ PGW Main Brief, pp. 51-52.

¹⁵ PGW Main Brief, p. 50.

¹⁶ *Petition of UGI Utilities, Inc. – Electric Division for Approval of its Energy Efficiency and Conservation Plan*, Docket No. M-2010-2210316, Opinion and Order entered October 19, 2011 at 23.

foundation for the implementation of energy efficiency programs in Pennsylvania. Further, as noted by OCA Phase II Plan “is in the best interests of ratepayers and should be pursued whether or not it is accompanied by a CAM.”¹⁷ In fact, PGW’s successful Phase I DSM program was implemented without a DSM. The evidence suggests that the Phase I DSM has not presented the financial harm PGW opines necessitates the CAM as PGW has not filed a base rate case since 2010 in an effort to recover lost revenues resulting from the Phase I DSM.

It seems clear to I&E that the Commission’s intention is to have even those utilities not covered by Act 129 recover lost revenues through a base rate proceeding. This also further invalidates PGW’s argument that the voluntary nature of its DSM program necessitates that it bear no risk of lost revenues, because, as noted above, UGI’s energy efficiency program was not required under Act 129 and UGI was not exempt from bearing the risk of lost revenue.

PGW has failed to meet its burden to show that a CAM should be approved. The Commission has in place a mechanism designed to allow PGW the opportunity to recover lost revenues. The proper regulatory forum to address revenue is a base rate case. The Commission has been quite explicit in its determination of the proper forum in which to recover energy efficiency program related lost revenues. No evidence PGW has presented should change that.

¹⁷ OCA Main Brief, p. 35.

C. Performance Incentives

I&E reiterates its opposition to PGW's proposal to charge its ratepayers, through the ECRS, a PI of up to \$2.27 million over the five years of Phase II of the DSM if it meets performance targets.¹⁸ As previously indicated, as the petitioner, PGW has the burden of proof in this proceeding and it may only recover "all prudent and reasonable costs associated with the development, management, financing, and operation" of its DSM II program.¹⁹ For the reasons indicated below, I&E submits that although PGW's PI proposal should be denied simply because PGW has failed to prove that it is prudent, PGW also fails the second part of the conjunctive recovery standard in that it has also failed to prove that its PI proposal is cost-effective. PGW's failure of both prongs of the "prudent and cost-effective" standard is further compounded by the fact that its PI proposal is not appropriate for the instant proceeding, and instead must be considered in a base rate case. Accordingly, PGW has failed to meet its burden and it should not be permitted to recover any costs associated with its PI proposal.

1. PGW Failed to Prove that its PI Proposal is Prudent

According to PGW, it "currently has no monetary incentive to make extra efforts to try to make these voluntarily-proposed DSM programs as successful as possible."²⁰ The PI mechanism, however, would "encourage greater results."²¹ This skewed logic raises the unsettling question of how much ratepayer money is

¹⁸ PGW St. 3, page 22.

¹⁹ 66 Pa. C.S. § 332(a); 66 Pa.C.S.A. § 1319.

²⁰ PGW St. 3 at 24-25; PGW Main Brief, p. 56.

²¹ PGW Main Brief, p. 56.

enough money for PGW to put forth its actual best efforts in the DSM program.

As indicated by I&E witness Maurer, “[t]he goals set by PGW should not depend upon the performance incentive; to the contrary, these goals can be met with or without a performance incentive.”²² I&E submits that charging captive ratepayers²³ to “incentivize” PGW’s “extra efforts” is imprudent and unnecessary.

PGW has already demonstrated that such incentive is unnecessary through the success of its existing DSM Plan, which was implemented without any performance incentive. In its own assessment of the DSM I, PGW concluded that:

PGW has designed and implemented a comprehensive portfolio of programs that has successfully and cost-effectively delivered substantial natural gas savings to customers across sectors and that incorporates the same proven strategies employed by the nation's most successful natural gas energy efficiency efforts.²⁴

Notably absent from PGW’s assessment of its existing DSM is any allegation that its program was hindered by the lack of a PI award. Instead, PGW simply alleges that it will be motivated to try harder if the PI mechanism is adopted. I&E agrees with OCA’s statement that “as a publicly-owned utility, PGW should not need a direct monetary incentive to do what is in the best interests of its ratepayers since there are no competing shareholder interests to

²² I&E St. 1-SR, p. 8, ln 18-20.

²³ “PGW provides natural gas service to approximately 500,000 customers within the city of Philadelphia and is the only utility distributing natural gas within the city of Philadelphia.” PGW Main Brief, p. 12.

²⁴ PGW Main Brief, p. 16.

balance.”²⁵ Therefore, I&E opines that forcing ratepayers to fund PGW’s motivation to provide an effective voluntary DSM would be imprudent.

PGW’s failure to consider its ratepayers in its PI proposal is evident in that it alleges that “[i]ncluding PI as a recoverable program cost is no different from allowing recovery of the cost of financially rewarding contractors for meeting certain timing or other targets.”²⁶ I&E notes that there are substantial differences between the contractor scenario that PGW references and its PI proposal in this case. Specifically, the contractor scenario results from a bargained-for exchange which confers a measurable benefit upon all involved parties. On the other hand, in the unilateral PI proposal, PGW’s captive ratepayers will be forced to pay PGW a PI, in an amount prescribed by PGW, upon performance of a duty determined by PGW, to benefit PGW. Despite PGW’s attempt to mitigate its PI proposal with the contractor analogy, I&E submits that the analogy only serves to further illustrate that PGW’s one-sided PI proposal is unfair and imprudent.

2. PGW Failed to Prove that PI Proposal is Cost-Effective

Although OCA witness Crandall offered testimony indicating that implementation of the PI mechanism would actually decrease the DSM’s total resource cost (“TRC”) cost-effectiveness from 1.42 to 1.39,²⁷ PGW alleges that

²⁵ OCA Main Brief, p. 57.

²⁶ PGW Main Brief, p. 55.

²⁷ OCA St. 1, p. 22, ln. 20-p. 23, ln. 1.

the PI would have a net neutral effect under the test.²⁸ However, OCA witness Crandall rebutted PGW's allegation by explaining that while PGW characterized the PI as a transfer from ratepayers to PGW to produce its net-neutral conclusion, the PI should have been characterized as a directly-related program expenditure.²⁹ Classifying the PI as a program expenditure, and not as a transfer, is appropriate because "[b]ut for the energy efficiency programs and the enhanced implementation performance, the funds would not have been collected by PGW from PGW customers."³⁰ Overall, the OCA concluded that the PI would "slightly reduce the cost effectiveness of PGW's DSM programs and increase *PGW's* benefits."³¹ I&E submits that the PI proposal is not cost effective because it requires ratepayers to pay more money while decreasing the program's cost-effectiveness.

Additionally, beyond the TRC analysis, PGW has failed to prove that the PI conveys any benefit to its ratepayers. Because PGW has provided conflicting and insufficient information about its intended use of PI funds, the record is devoid of information that would enable the Parties to determine that the PI mechanism would be cost-effective by providing any benefit to ratepayers. As an example, PGW initially claimed that "every dollar recovered through PGW's CAM or from performance incentives will go back to fund PGW's continued

²⁸ PGW St. 3-R, p. 11, ln. 17-21.

²⁹ OCA St. No. 1-S, p. 7, ln. 17- p. 8, ln. 3.

³⁰ OCA St. No. 1-S, p. 7, ln. 17, ln. 22-23.

³¹ OCA St. 1 at 22.

provision of safe and adequate service.”³² PGW additionally alleged that “100% of any performance incentive would contribute to its cost of service. These dollars therefore are not going to increased profits but straight back to customers.”³³ Yet, PGW contradicted itself later in the proceeding by admitting that although “some of the benefits would be transferred to PGW through the design of the performance incentive, customers would still retain the vast majority of benefits if the company is successful in meeting or exceeding its goals.”³⁴ Therefore, it is still unclear to I&E what portion of the PI will be going back to customers, and how such apportionment would be determined.

To the extent that PI proceeds would be available, PGW has failed to specify how they would be spent. Although PGW generally alleges that the proceeds will fund its provision of safe and adequate service, that vague description provides little assurance that a PI award would be cost-effective. Under PGW’s proposal, there is no benchmark to measure any ratepayer benefits, and I&E submits that absent a mechanism to gauge any ratepayer benefits, there can be no determination that the PI mechanism would be cost-effective. Accordingly, the PI proposal should be denied.

³² PGW Statement 1-R, page 6, lines 11-13.

³³ PGW Statement 2-R, page 24, lines 10-11.

³⁴ PGW Statement 2-R, page 23, lines 19-20.

3. A PI Can Only Be Recovered in a Base Rate Case

First, PGW's conclusion that its PI proposal is consistent with Section 1307 of the Public Utility Code is erroneous.³⁵ Section 1307, which permits an automatic rate adjustment "should have limited application and the PUC should not use it to disassemble the traditional rate-making process."³⁶ Although it has been held that, under specific circumstances not applicable here, Section 1307 could be used to recover DSM program costs,³⁷ collection of a PI through an automatic adjustment clause is not warranted. On the contrary, the Public Utility Code prohibits surcharge recovery of PIs, as "Section 523 of the Code does not permit the recovery of incentives outside of a base rate case"....³⁸ As I&E explained in its Main Brief, while Section 523 of the Code does permit the establishment of both incentive and penalty adjustments for conservation programs, it has been established that:

Section 523 only applies to the adjustments being made when rates are determined and based on a utility's claimed costs of service. The section permits incentive adjustments for effective conservation programs and penalty adjustments for the failure to encourage conservation only within a base rate case.³⁹

³⁵ PGW Main Brief, p. 55.

³⁶ *Popowsky v. Pennsylvania Public Utility Commission*, 13 A.3d 583, 589 (Pa.Cmwlth. 2011).

³⁷ *Pennsylvania Indus. Energy Coal. v. Pennsylvania Public Utility Commission*, 653 A.2d 1336, 1352 (Pa.Cmwlth. 1995) aff'd, 543 Pa. 307, 670 A.2d 1152 (1996) (noting that although lost revenues are difficult to measure, there is the possibility that a sufficiently reliable calculation could be developed).

³⁸ *Pennsylvania Indus. Energy Coal. v. Pennsylvania Public Utility Commission*, 653 A.2d 1336, 1353 (Pa.Cmwlth. 1995) aff'd, 543 Pa. 307, 670 A.2d 1152 (1996).

³⁹ *Id.*

Accordingly, PGW is not shielded by Section 1307, and it cannot collect a PI through an automatic adjustment clause. Therefore, it would be improper to implement a performance incentive in the context of this proceeding.

In summary, I&E submits that PGW's PI proposal should be denied because it is impudent and it is not cost-effective. As PGW has failed to meet its burden, and it should not be permitted to recover any costs associated with its PI proposal. Should the Commission determine that a PI is necessary for PGW, the PI must be established in the context of a base rate case.

VIII. DSM II BUDGET

A. Summary of Briefing Party's Position

I&E opposes any increase in the DSM II budget beyond the as-filed amount set forth in PGW's Petition. The as-filed amount, as set forth in Paragraph 29 of PGW's Petition and in Table 5 of the Phase II Plan, specified programs and contemplated a total budget of \$25,896,467.⁴⁰ I&E opposes any DSM II budget that exceeds \$25,896,467. Several parties in this case have proposed DSM II budgets that exceed the as-filed amount, and I&E opposes each of these "moving target" budgets that have exponentially inflated the contemplated budget.

Accordingly, I&E opines that OCA's recommended budget of \$56.2 million over the life of the five-year DSM II plan,⁴¹ which reflects an increase of

⁴⁰ This is the amount that appears as the "TRC Cost" in Table 5 on p. 5 of PGW's DSM II Plan. Paragraph 29 of PGW's Petition lists the budget at "approximately \$25.0 million" so I&E has adopted the higher of the two figures.

⁴¹ OCA Main Brief, p. 61.

LIURP funding to \$38 million,⁴² should be rejected. This increase in DSM II programming costs is far beyond that which was set forth in PGW's Petition, and would impose undue financial costs upon PGW's non-CRP customers.

Furthermore, although CAUSE-PA took no position on the DSM II budget as related to non-LIURP programming,⁴³ it recommended an increase to LIURP funding to an amount of at least \$7.6 million per year,⁴⁴ it failed to set forth a recommended total for the overall budget. At any rate, because I&E believes that CAUSE-PA's recommendation to increase the LIURP budget, and to add additional programming into the DSM II⁴⁵ will serve to increase PGW's budget beyond the as-filed amount, I&E opposes these recommendations as well. Finally, I&E also opposes PGW's last-minute increase of its CRP Home Comfort budget from \$10,155,000 to \$15,945,846, as set forth in its rejoinder testimony.⁴⁶ I&E avers that such increase deviates from PGW's original request and escalates DSM II programming costs to the detriment of its non-CRP customers. Although PGW avers that this increase will place its LIURP spending on par with the state-wide average,⁴⁷ I&E opines that PGW's budget must be built on a basis specific to PGW.

To be clear, I&E is not opposing any of the parties' recommendations on their merits, as all of the recommendations appear to be well-intentioned and well-

⁴² OCA Main Brief, p. 62.

⁴³ Cause PA Main Brief, p. 18.

⁴⁴ Cause PA Main Brief, p. 22.

⁴⁵ Cause PA recommended that PGW adopt and incorporate a *DeFacto* Heating program, a Restore Service Program, and a robust Low-Income Multifamily Efficiency program into its DSM programming. Cause PA Main Brief, p. 10-11.

⁴⁶ PGW St. 1-RJ, p. 1, ln. 16-19.

⁴⁷ PGW St. 1-RJ, p. 2, ln. 1-6.

reasoned. However, at this juncture, I&E believes that any increase in the DSM II budget beyond its as-filed amount, whether that cost be attributed to the CAM, PI, additional programming, or even additional funding for existing programming, would be extremely detrimental to the non-CRP 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.⁴⁸ In this case, no such control feature has been set, but the lack thereof cannot be interpreted as a license for parties to increase PGW's programming costs to an unsustainable level.

Furthermore, I&E agrees with PGW's initial position that the proposals for PGW to increase the DSM II budget are not 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 as PGW is not an investor-owned utility."⁴⁹ As PGW does not have shareholders to help absorb any impact of an increased budget, the burden to shoulder the resulting increased debt would undoubtedly fall upon the already overburdened non-CRP ratepayers.

B. Proposed Budgets (Non-LIURP Programs)

I&E does not object to the proposed budgets for non-LIURP programs other than to recommend the CAM and PI be rejected.

⁴⁸ *Pennsylvania Public Utility Commission v. PGW*, Docket No. R-2009-2139884 (Final Order entered on July 29, 2010, p. 10).

⁴⁹ PGW Main Brief, p. 63.

C. PGW Proposed Budget for CRP Home Comfort Program (LIURP)

I&E initially recommended the LIME program, which is part of the CRP Home Comfort Program, be rejected as discussed further below. Aside from this recommendation, I&E did not object to the proposed budget for the CRP Home Comfort Program, as set forth in PGW's Petition at \$10,155,000. I&E has subsequently entered into a Stipulation with PGW regarding the LIME program and, now, recommends approval of the LIME program as modified by the Stipulation.

IX. CRP HOME COMFORT PROGRAM (LIURP)

A. Continuation of CRP Home Comfort as PGW's LIURP within DSM II Portfolio

I&E recommends approval of the LIME program as modified by the Stipulation. I&E does not however, recommend approval of the LIME program as filed. I&E does not object to the continuation of CRP Home Comfort as PGW's LIURP within the DSM II portfolio.

B. CRP Home Comfort Program Eligibility Criteria

I&E does not object to the CRP Home Comfort Program eligibility criteria.

C. PGW Proposed New Low-Income Multifamily Efficiency ("LIME") Program

Although I&E initially opposed PGW's LIME program, pursuant to the Stipulation entered into by PGW and I&E, PGW has altered the program in a manner that addresses each of I&E's concerns. Specifically, I&E initially opposed

the LIME program as it was previously structured on two bases: (1) the manner in which the housing is designated as low-income was flawed and would have diluted the intended benefits and (2) the cost recovery through the USC was not appropriate for the program as it was previously proposed. Accordingly, I&E supports the LIME program, as modified by the Stipulation, and requests that the program be approved with the modifications contained therein.

1. The Low-Income Designation is No Longer Over-Inclusive

At the outset, I&E disagreed with PGW's assertion that its LIME program complies with the Commission's Final Order approving PGW's Universal Service and Energy Conservation Plan for 2014-2016 ("USECP Order").⁵⁰ Specifically, under the terms of the USECP Order, the LIME program should specifically serve multifamily properties whose occupants are at or below 150% of the Federal poverty guidelines.

However, PGW's LIME program initially adopted over-expansive criteria which contemplated benefits for multifamily buildings with only 50 percent of residents being at or below 150 percent of the Federal Poverty Level.⁵¹ I&E witness Maurer explained that under the initially proposed LIME program, PGW could recover the expenses of energy usage assessments and energy efficiency measures performed for up to 50% non-low-income customers through a surcharge for programs intended to assist low-income customers in conserving

⁵⁰ PGW Main Brief, p. 72.

⁵¹ PGW Main Brief, p. 74.

energy and reducing residential energy bills.⁵² I&E was not alone in opining that PGW's 50% benchmark was insufficient to meet the Commission's directive regarding development of a low-income multifamily program. OCA witness Colton recognized that "[a] building with less than 75% of its units occupied by low-income customers, should not receive 100% subsidized services."⁵³

PGW recognized these concerns and addressed them through the Stipulation. Specifically, the Stipulation includes the following pertinent term:

The low income residency requirement will be revised to subsidized housing with 75% confirmed low income. PGW reserves the right to decrease this percentage beginning in FY 2017 but only after a showing of cause for program incentive budget under-spending, and with either the unanimous approval of the signatory parties, to be obtained by written consent, or by Commission Order.⁵⁴

Through this stipulated term, PGW has agreed to raise its benchmark of low-income occupancy to 75%, thereby preventing the scenario contemplated by witness Maurer under the initial program. The increased threshold will improve the LIME program by ensuring that the greatest use of funding is spent to assist low-income customers, the intended recipients.

The Stipulation also provides a mechanism that protects PGW and its customers in its implementation of the LIME program. As the LIME program is a pilot program, PGW has no data available to gauge its ability to comply with the 75% threshold. If PGW is unable to meet the agreed 75% benchmark, it will have

⁵² I&E St. No. 1-SR, p. 13, ln. 16-20.

⁵³ OCA St. No. 2, p. 41, ln. 5-6.

⁵⁴ Stipulation, ¶1(b).

a mechanism to enable it to adjust the benchmark downward in 2017, but not on a unilateral basis. First, PGW will need to wait until 2017 to determine its capability to comply, and this waiting period will allow it to adequately assess whether it is truly able to confer LIME program benefits in multi-family properties with at least 75% of residents being low-income customers. If, in 2017, PGW determines that it cannot meet the 75% threshold, it can adjust the low-income percentage downward but only but only after a showing of cause for program incentive budget under-spending. This provision will ensure that PGW makes a good-faith effort to serve properties with higher levels of low-income residents. Furthermore, even if PGW determines that it is under-spending at the 75% benchmark, it must obtain I&E's written consent to adjust the percentage downward, or, in the alternative, seek a Commission Order that will permit the adjustment.⁵⁵

Implementing the higher low-income target for the LIME program, and combining the increase with layers of protection that will ensure that PGW does its best to serve multifamily properties with higher levels of low-income residents, furthers the purpose of the LIME program. Furthermore, allowing PGW to assess its ability to target properties with a higher level of low-income residents and providing it with a mechanism to lower the target if it is truly untenable will ensure that program funding is not underspent and wasted. Accordingly, the

⁵⁵ Stipulation, ¶1(b).

LIME Program, as modified by the Stipulation, is in the public interest and it should be approved.

2. Pursuant to the Stipulation, the LIME Program is Now Appropriate for USC Recovery

Although I&E opined that the LIME program cost recovery through the USC was not appropriate for the program, as it was previously proposed, the modifications made in the Stipulation now make the program appropriate for USC recovery. Initially, I&E opposed the as-filed LIME program because PGW's Petition identified the program as being targeted to building owners,⁵⁶ and not residential customers, as the universal service definition contemplates. The recovery of the Enhanced Low Income Retrofit Program ("ELIRP") costs, of which LIME is a part, are not recovered through PGW's ECRS, but they are instead recovered through the Company's USC.⁵⁷ The goals of LIURP, which ELIRP replaced, are to reduce low-income bills, reduce payment problems, and reduce uncollectible expense.⁵⁸ As noted above, under the original LIME proposal, PGW's customers would have been required to subsidize energy efficiency measures taken for customers who, potentially, are not low-income.

PGW recognized these concerns and addressed them through the Stipulation. Aside from increasing the low-income occupancy threshold, as

⁵⁶ PGW Petition ¶ 18.

⁵⁷ I&E St. No. 1, p. 10, ln. 1-4.

⁵⁸ 52 Pa. Code § 58.1.

discussed above, PGW also addressed the USC recovery as well. Specifically, PGW has agreed to the following terms:

Program costs for the LIME will be through PGW's Universal Services Charge ("USC") applicable to all volumes of firm gas delivered and LIME project costs will be recovered: (i) 100% for confirmed low income customer usage through the USC; (ii) 33% of project costs for all other customer usage through ECRS; and, (iii) remainder of project costs will be funded by property owners.⁵⁹

Through the above term, PGW has apportioned its USC recovery in a manner that is commensurate with benefits to low-income customers. I&E opines that permitting 100% USC recovery only for confirmed low-income customers honors the purpose of the USC, and is thereby in the public interest.

Both PGW and I&E note that PGW's apportionment of the USC in this manner may not be consistent with the Commission's directives in the USECP Order. To the extent that the apportionment is inconsistent with the USECP Order, I&E respectfully requests that the Commission modify or revise its prior directive to permit PGW to recover the LIME program costs as contemplated in the Stipulation. I&E's request is made to further the public interest, as the stipulated recovery protects all of PGW's ratepayers from funding unintended beneficiaries' usage and it provides an additional mechanism for PGW track the success of its programming.

⁵⁹ Stipulation, ¶1(c).

D. Chapter 58 Waiver Request

I&E took no position on the Chapter 58 waiver request.

E. De Facto Electric Heating Proposal

I&E does not object to the De Facto Electric Heating Proposal.

F. Restore Service Program

I&E does not object to the Restore Service Program.

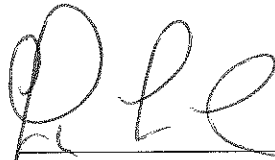
X. OTHER ISSUES

I&E has not identified any further issues in this proceeding.

XI. CONCLUSION

For the reasons stated herein, I&E respectfully submits that the PGW has failed to satisfy its burden of proof to demonstrate that the costs associated with its proposed Conservation Adjustment Mechanism and Performance Incentives are prudent and reasonable programs costs. Accordingly, these proposals must be rejected. Therefore, I&E respectfully requests that any approval of Phase II of Philadelphia Gas Works' Demand Side Management Plan be limited to approval of only the as filed Phase II budget of \$25,896,467 and conditioned upon the removal of the proposals for a Conservation Adjustment Mechanism and Performance Incentives, and approval of the Low Income Multifamily Efficiency Program as modified by the Stipulation.

Respectfully submitted,



Carrie B. Wright
Prosecutor
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Gina Lauffer
Prosecutor
PA Attorney ID #313863

Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
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Harrisburg, PA 17105-3265
(717) 787-1976

Dated: December 8, 2015

Appendix A

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

STIPULATION

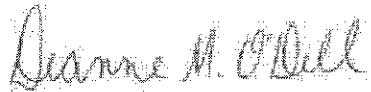
Philadelphia Gas Works (“PGW”) and the Bureau of Investigation and Enforcement (“I&E”) (the “Stipulating Parties”) hereby enter into this Stipulation regarding the issues identified below in the above-captioned proceeding. The Stipulating Parties agree to have this Stipulation admitted as evidence of their agreement and further stipulate and agree as follows:

1. Regarding PGW’s proposed Low-Income Multifamily (“LIME”) Program:
 - a) PGW will convene a stakeholder collaborative to receive input from interested parties;
 - b) The low income residency requirement will be revised to subsidized housing with 75% confirmed low income. PGW reserves the right to decrease this percentage beginning in FY 2017 but only after a showing of cause for program incentive budget under-spending, and with either the unanimous approval of the signatory parties, to be obtained by written consent, or by Commission Order;
 - c) Program costs for the LIME will be through PGW’s Universal Services Charge (“USC”) applicable to all volumes of firm gas delivered and LIME project costs will be recovered: (i) 100% for confirmed low income

customer usage through the USC; (ii) 33% of project costs for all other customer usage through the Efficiency Cost Recovery Surcharge (“ECRS”); and, (iii) remainder of project costs will be funded by property owners.

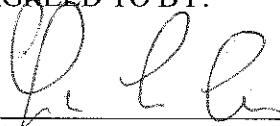
- d) The Stipulating Parties acknowledge that the LIME cost recovery provisions are not consistent with the Commission’s Final Order approving PGW’s Universal Service and Energy Conservation Plan for 2014-2016¹ and ask the Commission to modify or revise its prior directive to the extent necessary to approve this proposed resolution.
2. I&E does not object to continuing PGW’s CRP Home Comfort (LIURP) as part of PGW’s DSM Plan (to the extent PGW continues to offer a DSM Plan).
3. I&E does not object to implementation of all PGW proposed non-LIURP programs.

AGREED TO BY:



Daniel Clearfield, Esq.
Deanne O’Dell, Esq.
Eckert Seamans
For Philadelphia Gas Works

AGREED TO BY:



Gina L. Lauffer, Esquire
Carrie B. Wright, Esquire
For the Bureau of Investigation &
Enforcement, Pennsylvania Public Utility
Commission

Dated: December 4, 2015

¹ Philadelphia Gas Works 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 entered August 22, 2014 at 57. The Commission directed the LIME program to be included as part of PGW’s LIURP and the costs of PGW’s LIURP are recovered through the USC.

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 **Reply Brief** dated December 8, 2015, 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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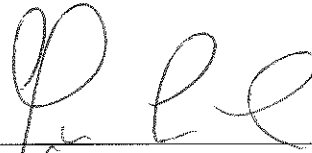
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