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April 7, 2016

**Via Electronic Filing**

Rosemary Chiavetta, Secretary  
PA Public Utility Commission  
PO Box 3265  
Harrisburg, PA 17105-3265

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

Dear Secretary Chiavetta:

Enclosed for electronic filing please find Philadelphia Gas Works' ("PGW") Exceptions with regard to the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,



Deanne M. O'Dell  
DMO/lww  
Enclosure

cc: Hon. Christopher Pell w/enc.  
Hon. Marta Guhl w/enc.  
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## CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of PGW's Exceptions upon the parties and persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

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Deanne M. O'Dell, Esq.

Date: April 7, 2016

**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 :

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**EXCEPTIONS OF  
PHILADELPHIA GAS WORKS**

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## I. INTRODUCTION AND SUMMARY OF EXCEPTIONS

Philadelphia Gas Works (“PGW” or “Company”) seeks the Commission’s approval to continue to offer its energy efficiency and conservation programs for the benefit of all its ratepayers. PGW’s demand-side management (“DSM”) plan was launched in 2011 and includes a variety of programs which have significantly assisted PGW’s General Service customers in saving energy and money through cost-effective programs designed in accordance with industry best practices. From its inception in 2011 through the end of the 2014 program year, PGW’s DSM program has invested in over 9,700 energy savings projects for customers, including the direct weatherization of over 7,500 low-income customers’ homes. These programs cost-effectively provide significant benefits to PGW customers and society in terms of energy savings, emission reductions and the creation of hundreds of new jobs. All of these programs, except for PGW’s required residential low-income reduction usage program (“LIURP”),<sup>1</sup> are offered on a voluntary basis. Unlike the electric distribution companies (“EDCs”), natural gas distribution companies (“NGDCs”), like PGW, have no statutory obligation to offer energy efficiency and conservation programs.

To be clear, PGW wants to continue to offer its DSM Plan but, to do so, the program’s impact on PGW’s revenues used to fund its core operations must be taken into consideration. Over the five years of PGW’s existing DSM Plan, PGW is projected to incur \$8.46 million (nominal) in total non-gas revenue losses through the end of FY 2015 as a result of its DSM Plan. In addition to this, adopting the recommendation of the Administrative Law Judges

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<sup>1</sup> The name of residential low income usage reduction program (“LIURP”) is CRP Home Comfort. The predecessor program names were the Conservation Works Program (“CWP”) and the Enhanced Low Income Retrofit Program (“ELIRP”). PGW’s new name CRP Home Comfort is intended to more clearly represent the program and its purpose. PGW Exh. TML-4 at 82.

(“ALJs”) would require PGW to incur nearly \$6 million (nominal) in lost revenues from measures installed during the DSM Phase II five year plan – this is a 61% increase over what PGW has determined can reasonably be absorbed and are a direct result of implementing the DSM programs.<sup>2</sup> Importantly, these losses represent dollars that are not available to fund PGW’s core operations including its base rate financed cast iron main replacement program. Incurring lost revenues creates a direct conflict with the purpose of the energy conservation programs themselves which are to help customers use less natural gas and, therefore, pay less in utility bills. PGW will have to make up for these losses in future rate cases as best it can – but only on a prospective basis. The losses it has already experienced (and, potentially, will be forced to continue to experience) can never be recovered.

To design the proposed DSM Phase II Plan at issue here, PGW engaged the support and analysis of industry experts to determine how to best balance these two competing concerns. Recognizing that, to date, the Commission has not permitted the recovery of lost revenues resulting from energy conservation for investor-owned utilities subject to traditional ratemaking (PGW is a municipal-owned utility with rates set by the cash-flow methodology), PGW designed a DSM Phase II Plan – which includes a LIURP budget based on a needs assessment – that it could implement if the Commission declined to allow recovery of lost revenues. This “base scenario” assumes that the Commission will not permit PGW to recover future anticipated unrecovered losses in revenue. As a result, this base scenario is necessarily designed in a more

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<sup>2</sup> Estimated lost revenues based on PGW’s proposed budget for LIURP and the other non-LIURP programs would result in lost revenues of \$3,703,961. Adopting the ALJs recommended LIURP budget in addition to the budgets for the other non-LIURP programs would result in lost revenues of \$5,957,306. Because PGW is a municipal-owned utility with rates set based on the cash-flow methodology the loss of this revenue stream does not reduce return on equity but results in less dollars available to fund PGW’s core operations.

limited way in terms of reduced budgets and the proposed discontinuance of one of the current voluntary programs (Home Rebates). The sole purpose of this scaled back design is to mitigate financial losses to PGW (and its ratepayers) due to a decreasing revenue stream as a result of DSM conservation, while still supporting and encouraging customer energy conservation. Unless the impact of unrecovered lost revenue resulting directly from the DSM Plan is remedied, the scaled down base scenario DSM Phase II Plan is the only proposal that PGW can in good conscience support as still being in the best interest of all its ratepayers.

However, in many ways, the base scenario represents a missed opportunity for PGW's customers and the City of Philadelphia, given the investments and progress PGW (and its ratepayers) has made to date in implementing and scaling these conservation programs. That is why PGW's petition also includes an "expanded scenario" detailing how approval of its proposed Conservation Adjustment Mechanism ("CAM") could lead to a more robust DSM plan overall because the CAM would allow PGW to recover lost revenue caused by the DSM Plan. Approving the CAM would significantly open the door to greater innovation and more robust energy efficiency and conservation programs that PGW could offer its customers.

Despite all this, and while the ALJs recognize that the DSM Plan has resulted in significant benefits to PGW's ratepayers,<sup>3</sup> they recommended that the Commission reject the CAM while – at the same time – recommending that PGW be required to implement a nearly

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<sup>3</sup> On many issues, the ALJs rightly resisted the suggestions of other parties that would have imposed unreasonable increased unrecoverable costs on PGW's ratepayers with little to no resulting benefits. These issues include rejecting the following proposals: (1) Confirmed Low Income Outreach Program; (2) *De Facto* Heating proposal; and, (3) Restore Service Program. RD at 130-131, 186-187, 192-193. The ALJs also rightly rejected a proposal to increase to the non-LIURP DSM budget without CAM approval; and, proposals to increase the eligibility for LIURP weatherization services; and. RD at 83, 139-140. Finally, the ALJs rightly approved a reasonable approach for implementing a Low-Income Multifamily ("LIME") program (as negotiated with I&E). RD at 155-156.

140% increase in the budget it proposed for its LIURP<sup>4</sup> – which is a budget level that is 436% higher than the required regulatory minimum budget level.<sup>5</sup> Adopting this proposal would ignore PGW’s careful approach in proposing, developing, and implementing voluntary conservation programs that offer cost-effective benefits of conservation programs while still factoring in the negative impact of financial stressors created by the program. Unfortunately, for PGW’s ratepayers, the most likely practical result of adopting the ALJs’ recommendations will be to force PGW to consider limiting the size and scope (or outright discontinue) of the voluntary energy efficiency and conservation programs that PGW has chosen to offer since 2011.<sup>6</sup> More broadly though, such a decision would discourage PGW – and other NGDCs – from pursuing additional energy conservation efforts going forward including proposing any LIURP expansions or pilots.

The ALJs’ recommended LIURP budget was proposed by the Office of Consumer Advocate (“OCA”) and supported by the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”) and the Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (“TURN et. al.”); but, it was opposed

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<sup>4</sup> PGW proposed 5-year LIURP budget is \$15,945,846 and this budget is not contingent on the Commission also approving PGW’s proposed CAM. The ALJs recommend that the Commission direct a 5-year budget of \$38,000,000 without approving the CAM. This is a 138% increase beyond what PGW has reasonably determined is a feasible budget to the extent its proposed CAM is not approved. It is also 436% higher than the required regulatory minimum and significantly higher than the average spending for LIURP of other natural gas utilities across the Commonwealth. PGW Main Brief at 61. The average 2015 LIURP budgets of the other natural gas utilities is \$1,453,333.

<sup>5</sup> While PGW is required to offer a LIURP, the required regulatory minimum budget for LIURP is “at least .2% of a covered utility’s jurisdictional revenues.” 52 Pa. Code § 58.4(a). The ALJs recommended LIURP budget would equal 1.07% of PGW’s jurisdictional revenues. As discussed further in Exception Number 1, PGW is proposing a LIURP budget of approximately .45% of forecasted jurisdictional revenues and this amount is fully supported by the record in this proceeding.

<sup>6</sup> To be clear, PGW is referencing the other non-LIURP voluntary energy efficiency and conservation programs of the DSM Plan since LIURP is a legally required program that PGW must offer; although, PGW did voluntarily propose a significant LIURP budget as part of the settlement of its base rate case.

by the Bureau of Investigation and Enforcement (“I&E”) and the Office of Small Business Advocate (“OSBA”). As explained in Exception Number 1, directing PGW to increase its proposed LIURP budget to 436% more than the regulatory minimum is neither legally required nor supported by the record, and PGW urges the Commission to reject this recommendation.

The ALJs erroneously focus on PGW’s most recent historical LIURP budget – which was the product of black box settlement negotiations of a rate case six years ago – to reach the incorrect conclusion that PGW (and presumably any utility that agrees to a LIURP budget increase as part of a settlement or as part of a pilot program) is precluded from thereafter ever proposing a lower LIURP budget in future years. Such a result would remove the issue of need (which PGW did address on the record in support of its proposed budget) out of the analysis. And, setting aside the financial impact of the ALJs’ decision on PGW, accepting the ALJs’ position would likely stifle the willingness of any utility from considering, let alone proposing, a larger LIURP budget either as part of a settlement or on a voluntary program expansion basis beyond regulatory requirements. Such a result is not in the public interest. PGW submits that the only supportable and sustainable LIURP budget that would enable the non-LIURP DSM programs to continue with the LIURP is that recommended by PGW – \$15,945,846 over five years, which was developed to balance necessary LIURP programming against the ability of the Company (and its ratepayers) to afford program costs.<sup>7</sup>

However, as discussed in Exception Number 2, the Commission has full authority to adopt PGW’s CAM and the ALJs erred in concluding that PGW’s proposed CAM is legally

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<sup>7</sup> It is also worth noting that this amount is approximately 16% higher than PGW’s initial budget and was offered in rejoinder only after PGW carefully considered the positions of the other parties and the LIURP budgets of the other NGDCs. PGW Reply Brief at 51. PGW simply cannot absorb a further increase to this budget and continue to implement the other non-LIURP DSM programs at the same levels (if at all).

barred. The entire purpose of the CAM is to enable PGW to offer robust DSM programs by allowing the full recovery of all costs incurred. PGW's CAM: (1) is based on its five years' experience operating the DSM plan; (2) was developed after a study of at least forty US jurisdictions where lost revenue adjustments are currently in use; and, (3) would establish a simple process that provides a thorough, unbiased and, and precise accounting of PGW's costs.<sup>8</sup> Therefore, PGW urges the Commission to reject the ALJs' recommendation to deny PGW's proposed CAM.

In addition to these issues, as explained in Exception Number 4, PGW also urges the Commission to reject the ALJs' recommendation to deny its proposed Efficient Fuel-Switching load management pilot program. This pilot program would help small and mid-sized commercial and industrial customers improve the overall net energy efficiency of their buildings. Based on PGW's initial analysis, only cost-effective projects that achieve a benefit cost ratio greater than 1.0 and which will reduce the customer's total energy use are currently included in the proposed pilot. PGW's proposal involves initially focusing on Micro-Combined Heat and Power ("CHP"), but also includes a custom measure path for other energy efficiency measures that meet program criteria. Thus, the ALJs erred by incorrectly characterizing PGW's proposal as a load growth program and concluding that it was not appropriate for an energy conservation plan. On the contrary, PGW's proposed pilot program is consistent with the overall core purpose of PGW's DSM program, is lawful and should be approved. Additionally, rejecting the ALJs' recommendation and approving the pilot is a way of supporting the Commission's recently stated

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<sup>8</sup> If PGW's CAM were approved, PGW proposed to chair a working group of stakeholders and industry experts to analyze an appropriate On-Bill Repayment ("OBR") mechanism for PGW's customers. PGW Main Brief at 40-42. Because the ALJS recommended that the Commission deny the CAM, they deemed the issue moot. RD at 127.

policy to encourage utilities (including NGDCs) to make CHP systems an integral part of their energy efficiency plans.

PGW also urges the Commission to reject the ALJs' recommendation to deny its requested waiver of 52 Pa Code Section 58.10(a)(2) and (3) which require prioritization of LIURP weatherization projects based on arrearages and income deficits. As explained in Exception Number 5, PGW's method currently meets LIURP and universal service objectives. Requiring LIURP projects to be prioritized based on a CRP customer's arrearage and income deficit (as the ALJs erroneously recommend) provides no direct financial benefits for the CRP customers and only distracts from the program's actual and primary impact of providing cost-effective energy savings.

Finally, PGW requests that the Commission either reject or clarify the ALJs' recommendations regarding: (1) PGW's limited waiver request of the public notice requirements of 52 Pa Code Section 58.4(a) (discussed in Exception Number 6); (2) PGW's waiver request of 52 Pa. Code Section 58.14(c) regarding inter-utility cooperation (discussed in Exception Number 7); and, (3) the factual description of PGW's proposed Low-Income Multifamily ("LIME") program along with any clarification to the Commission's *USECP 2014-2016 Order*<sup>9</sup> necessary to implement the cost recovery structure set forth in the stipulation between PGW and I&E (discussed in Exception Number 8).

In sum, while the ALJs reached reasonable and sound decisions on many of the issues in this proceeding, PGW respectfully urges the Commission to modify the RD as follows:

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<sup>9</sup> *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. ("USECP 2014-2016 Order").*

- Reject the ALJs' recommendation that PGW be directed to increase its proposed LIURP budget by nearly 140% over the budget PGW has proposed (as explained in Exception Number 1)
- Reject the ALJs' recommendation to deny PGW's proposed CAM (which is intended to enable PGW to offer robust DSM programs by allowing for the full recovery of all costs incurred as a direct result of the programs) (as explained in Exception Number 2)
- Reject the ALJs' recommendation to deny PGW's proposed Performance Incentives (which would create positive incentives to reward and encourage superior program designs and implementation approaches leading to greater savings and greater benefits at lower costs) (as explained in Exception Number 3)
- Reject the ALJs' recommendation to deny PGW's proposed Efficient Fuel-Switching pilot program (which would provide a cost-effective overall net energy reduction pilot program and foster the development of CHP programs for the benefit of small and mid-sized commercial and industrial customers) (as explained in Exception Number 4).
- Reject the ALJs' recommendation to deny PGW's requested waiver of 52 Pa Code Section 58.10(a)(2) and (3) regarding prioritization of customers for LIURP services based on arrearages and income (because requiring this prioritization would erode the cost-effectiveness of PGW's LIURP without any resulting benefit to CRP customers) (as explained in Exception Number 5).
- Reject or clarify the ALJs' recommendation to deny PGW's limited waiver regarding the public notice requirement of 52 Pa Code Section 58.4(a) (as explained in Exception Number 6).
- Reject or clarify the ALJs' recommendation to deny PGW's requested waiver of 52 Pa Code Section 58.14(c) addressing inter-utility coordination (as explained in Exception Number 7)
- Correct the erroneous findings the ALJs regarding PGW's LIME program and either modify or revise the *USECP 2014-2016 Order* to permit the proposed LIME cost recovery mechanisms to be implemented

Finally, while the ALJs did not specifically address this issue, the outcome of this proceeding will necessitate changes to the currently operating DSM programs (authorized pursuant to the *DSM Bridge Plan Order*)<sup>10</sup> and will overlap with the first year of any approved

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<sup>10</sup> *Philadelphia Gas Works' Revised Petition For Approval of Energy Conservation and Demand Side Management; and, Pennsylvania Public Utility Commission v. Philadelphia Gas Works*, Docket Nos. P-2009-2097639 and R-2009-2139884, Opinion and Order entered May 7, 2015 ("*DSM Bridge Plan Order*").

DSM Phase II Plan. To the extent the Commission elects not to re-authorize the voluntary non-LIURP DSM programs or PGW elects to withdraw these programs, PGW offered two transition processes to implement the final outcome of this proceeding. These processes are detailed more fully in PGW's Main Brief and take into consideration the logistics of transitioning the budgets, winding down any programs, on-going reporting and, if necessary to do so, moving the LIURP back into PGW's Universal Service and Energy Conservation Plan.<sup>11</sup> PGW respectfully requests that once the Commission reaches its final outcome on the issues in this case, it direct PGW to submit a compliance filing to propose the appropriate transition process necessary to implement the Commission's decision.

## II. EXCEPTIONS

### A. **Exception No. 1: The ALJs Erred By Recommending PGW's Proposed LIURP Budget Be Increased By Nearly 140% More Than PGW Proposal And 436% More The Required Regulatory Minimum While Simultaneously Rejecting PGW's Proposed Conservation Adjustment Mechanism (RD at 105-109; FOF #46, #47; COL #13, #14)**

PGW's proposed DSM Phase II Plan represents a careful and deliberate balancing of energy efficiency and conservation programs (available to all customers classes in addition to the LIURP weatherization services available to CRP customers) with the costs to implement the programs and the need to control costs. More specifically, PGW's proposal for the DSM Phase II Plan includes: (1) an analysis and recommendations regarding program structure and budgets for five currently existing non-LIURP programs; (2) an analysis and recommendations regarding the LIURP; (3) two new proposals (the Efficient Fuel-Switching Pilot Program and On-Bill Repayment Proposal) for the non-LIURP programs; (4) a proposal regarding the Commission

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<sup>11</sup> PGW Main Brief at 28-31.

directed Low-Income Multifamily (“LIME”) Program; (5) two new cost elements (CAM and PI); and, (6) requests for waivers of various Chapter 58 regulations. This overall context is important to keep in mind when assessing the ALJs’ recommendation regarding the LIURP budget. Importantly, the LIURP budget must not be viewed as something separate from and not affecting the entire DSM Plan because that is simply not accurate. Requiring PGW (as the ALJs recommend) to implement a LIURP budget that is nearly 140% more than the budget proposed by PGW without addressing the very real impact that decision will have to increase the amount of PGW’s unrecovered costs (i.e. lost revenue) will require PGW to seriously reconsider its entire DSM Plan to assess whether to limit the size and scope (or outright discontinue) the energy efficiency and conservation programs that PGW has voluntarily offered since 2011.

The fundamental dispute regarding the LIURP budget is how much ratepayers should be required to pay for weatherization services to customers enrolled in PGW’s Customer Responsibility Program (“CRP”) (which is PGW’s CAP program).<sup>12</sup> To fairly and equitably answer this question, the appropriate balance must be struck between maximizing the positive benefits that can be achieved from the weatherization services for low income customers with ensuring that the resulting costs do not unreasonably and negatively impair the ability of PGW (a municipal utility with rates established using the cash flow method of ratemaking) to fund the continued provision of safe and adequate service for all its customers. Focusing on just one side of this issue (i.e. requiring that every low income gas customer in the City of Philadelphia receive weatherization treatments immediately) without considering the impact on other

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<sup>12</sup> As a CAP program, CRP is designed as an alternative to traditional collection methods for low income customers consistent with the Commission’s policy statement on customer assistance programs. 52 Pa. Code § 69.261. As such Finding of Fact Number 67 which states that the “CRP is designed to include customers that exhibit higher consumption than customers on average” is not correct. RD at 15.

customers as well as the Company (and assuming that all low income customers require weatherization merely due to income status) in terms of the reduced distribution charges' impact on PGW's ability to provide other required services, does not serve the public interest. It is worth noting that there is not unanimous agreement among the parties as to the appropriate way to achieve a "balanced" LIURP budget. OCA, CAUSE-PA and TURN, et. al. all support requiring PGW to significantly increase its proposed LIURP budget – a position that the ALJs recommend. On the other hand, I&E and OSBA support requiring PGW to lower its proposed LIURP budget.

PGW sought approval of a five-year LIURP budget of \$15,945,846.<sup>13</sup> This budget is not dependent on the Commission approving PGW's proposed CAM but it is consistent with PGW's needs assessment filed in this proceeding and is 125% greater than the required .2% regulatory minimum. In addition, PGW's proposed non-CAM LIURP budget balances the financial stressor created by increased unrecoverable costs in the form of reduced distribution charges due to LIURP weatherization measures. According to PGW's experts and its five years of experience with the DSM program, PGW's proposed LIURP budget strikes the appropriate balance among: (1) providing a necessary and sustainable level of LIURP services to low income customers, (2) permitting PGW to continue to provide non-LIURP energy efficiency and conservation programs; and, (3) incurring only a manageable level of unrecoverable costs in the form of lost revenues.<sup>14</sup>

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<sup>13</sup> PGW Main Brief at 60. This proposed budget was offered during rejoinder and is approximately 16% greater than the budget PGW initially proposed in this proceeding. PGW Reply Brief at 52. PGW revised its initial budget proposal based on the record developed in this proceeding and its further assessment of how the increase would impact the overall DSM Plan. Due to the negative impact of increased lost revenues, PGW cannot support a higher LIURP budget.

<sup>14</sup> The ALJs state that they are "suspicious" that PGW would have to "make cuts in other areas, including pipeline replacement, since the Company was just recently granted an increase in its Distribution

Notwithstanding this, the ALJs recommend that “the budget in place under the previous Phase of the DSM for the LIURP program must be maintained.”<sup>15</sup> Importantly, the ALJs make this recommendation regardless of the fact that this most recent historic LIURP budget was not established based on need or any other assessment of its reasonableness as PGW agreed to it as part of a settlement of its base rate case. The ALJs’ recommendation: (1) represents a nearly 140% increase to PGW’s proposed LIURP budget; and, (2) would be 436% higher than the required regulatory minimum.<sup>16</sup> This is a significant expansion beyond the required regulatory minimum amount, statewide precedent, and levels that PGW, in consultation with its experts, believes the Company and its ratepayers can afford given the direct impact of weatherization services on reducing the Company’s distribution charges. Thus, PGW urges the Commission to reject this recommendation.

The ALJs’ erroneously conclude that PGW has not satisfied the requirements of Section 2203(8) of the Natural Gas Choice and Competition Act<sup>17</sup> and Section 58.4(c) of the Commission’s regulations<sup>18</sup> to support the proposed budget.<sup>19</sup> According to the ALJs, these legal requirements establish that PGW is required to maintain its most recent historic LIURP

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Improvement Charge.” RD at 108-109. Pipeline improvement, however, is just one area of PGW’s core operations and the approval of a cost recovery mechanism for these specific costs does not negate the fact that PGW has other operational costs that have to be funded through revenues generated by gas usage. If those revenues are decreased, because customers are using less gas, and PGW is not able to recover those lost revenues, then there are less dollars available to fund core operations. This fact is not (because it cannot be) seriously disputed.

<sup>15</sup> PGW RD at 106. The ALJs also recommend rejection of PGW’s CAM.

<sup>16</sup> PGW Main Brief at 61.

<sup>17</sup> 66 Pa C.S. § 2203(8).

<sup>18</sup> 52 Pa. Code § 58.4(c). PGW did not as the RD erroneously states, seek a waiver of Section 58.4 in lieu “of meeting these required factors.” As explained in Exception Number 6, to the extent the Commission concludes that this section applies, PGW sought a limited waiver of just the public notice requirements of Section 58.4(a). *See* Exception Number 6 at Section II.F.

<sup>19</sup> RD at 109.

budget unless it can show that the needs of its service territory have decreased sufficiently enough to support a reduction.<sup>20</sup> This is a fundamentally flawed interpretation of the legal framework upon which the Commission must analyze PGW’s proposed LIURP budget and a proper analysis of the record in this proceeding supports the conclusion that PGW’s proposed LIURP is consistent with all legal requirements and must be approved.

**1. The Natural Gas Choice Competition Act**

The ALJs cite the Natural Gas Choice Competition Act’s requirement that LIURP programs must be “appropriately funded and available”<sup>21</sup> and, from there, focus on assessing the need for LIURP services in PGW’s territory.<sup>22</sup> PGW is unaware of the Commission ever applying Section 2203(8) to suggest that a utility’s LIURP budget could never be modified downward.<sup>23</sup> Moreover, this analysis also completely ignores the rest of the words in the Natural Gas Choice Competition Act which – in addition to requiring that “universal service and energy conservation policies” be “appropriately funded and available” – also require that the Commission “shall ensure that the programs are operated in a cost-effective manner.”<sup>24</sup> Further, Subsection (10) of Section 2203 sets forth the implementation action the Commission was to take, i.e. “convene a task force to review universal service programs and their funding.”<sup>25</sup>

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<sup>20</sup> RD at 106-109.

<sup>21</sup> 66 Pa. C.S. § 2203(8).

<sup>22</sup> RD at 106.

<sup>23</sup> Moreover, since this section was added with the Gas Choice Act in 1999, if it did mandate a certain level of LIURP funding it would arguably be the level of Commission regulated funding for PGW when the Act was passed. Since PGW did not come under full Commission regulatory authority until 2003, that amount would be zero.

<sup>24</sup> 66 Pa. C.S. § 2203(8).

<sup>25</sup> 66 Pa. C.S. §2203(10). Historically, PGW’s Commission approved LIURP budget averaged \$2.3 million per year which was at or close to the required regulatory minimum with an average actual spend that was .28% of PGW’s actual average revenues in 2008-2010. PGW Main Brief at 65.

Focusing only on ensuring that LIURP is “appropriately funded and available” by suggesting that Section 2203 – or any provision of the Public Utility Code – somehow mandates PGW’s LIURP to fully address all the needs of its entire low income population at the quickest possible pace is simply unreasonable and illogical.<sup>26</sup> Approximately one third of PGW’s ratepayers are confirmed low income<sup>27</sup> with the substantial majority of the rest just above the poverty level – the working poor. If one were to focus only on fully satisfying all the needs of low income customers in PGW’s service territory (the logical extension of the ALJs recommendation), then PGW’s LIURP would need to be increased exorbitantly, creating an enormous financial burden for non-CRP customers and creating “ability to pay” issues for the non-CRP low and near low income.

The ALJs do reference the cost-effectiveness of LIURP treatments (pursuant to the most recent historical LIURP budget) in reducing the CRP subsidy borne by non-CRP customers.<sup>28</sup> However, these comparisons are of benefits accrued over the lifetime of the measures (over 20 years in some cases) against the immediate upfront costs. This analysis cannot then justify absorbing all costs to treat all customers immediately, as that is simply not affordable in the short-term and, therefore, does not result in a LIURP that is operated in a “cost-effective

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<sup>26</sup> The purpose of LIURP is not to remediate all of the City’s low income housing. The OCA appears to believe this and the ALJs appear to have erroneously accepted this view in support of their recommendation that the Commission direct PGW to increase its LIURP budget by nearly 140% more than it proposed.

<sup>27</sup> Approximately 30.8% of PGW’s customers are confirmed low-income and this is the highest proportionate number of low income customers of all Pennsylvania’s utilities – electric or gas. *Pennsylvania Public Utility Commission 2014 Report on Universal Service Programs and Collections Performance*, October 2015 at 7. Available at: [http://www.puc.pa.gov/General/publications\\_reports/pdf/EDC\\_NGDC\\_UniServ\\_Rpt2014.pdf](http://www.puc.pa.gov/General/publications_reports/pdf/EDC_NGDC_UniServ_Rpt2014.pdf)

<sup>28</sup> RD at 108. The CRP subsidy is what non-CRP customers pay for a CRP customer’s usage that is not paid by the CRP customer in his or her asked-to-pay amount, plus arrearage forgiveness if there are arrears. When a CRP customer’s home receives weatherization services, their usage is decreased leading to a reduction in the CRP subsidy.

manner.” All of PGW’s ratepayers bear the risk of unrecovered costs from a LIURP that may become too large to result in positive program cost-effectiveness which, therefore, could even negate the long-term benefit of the program. Thus, reliance on historical CRP subsidy reductions alone is not sufficient to prove that the program is being operated in a cost-effective manner going forward.

Contrary to the conclusion reached by the ALJs, PGW’s proposed LIURP fully satisfies the requirements of the Natural Gas Choice Competition Act. The proposed budget allows LIURP benefits to remain available to participants at a significant level by providing LIURP weatherization services to approximately 3,216 customers over the next five years.<sup>29</sup> Additionally, PGW’s proposed LIURP budget is proportionately higher than every other Pennsylvania NGDC (with the exception of Columbia – whose budget has been set in rate case proceeding settlements – and based on the analysis available in this proceeding).<sup>30</sup> Finally, the proposed budget provides reasonable and prudent funding which strikes an appropriate balance among all the financial stressors related to costs (including unrecoverable lost revenue) while still continuing to offer a thorough and cost-effective LIURP program.<sup>31</sup> For these reasons, PGW’s proposed LIURP budget satisfies the statutory requirements and the ALJs flawed conclusion that PGW’s LIURP is not “appropriately funded” must be rejected.

## **2. Section 58.4(a) LIURP Program Funding Minimum Requirements**

In combination with their statutory analysis, the ALJs also consider the Commission’s regulatory requirements regarding program funding as set forth in Section 58.4(a) and

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<sup>29</sup> PGW Reply Brief at 61-62.

<sup>30</sup> PGW Reply Brief at 55; PGW Exh. DA-6.

<sup>31</sup> PGW Reply Brief at 55.

Commission precedent interpreting these requirements.<sup>32</sup> The plain text of Section 58.4(a) states that “the annual funding for [LIURP] shall be at least .2% of a covered utility’s jurisdictional revenues,”<sup>33</sup> and the Commission has already determined that this .2% of jurisdictional revenues “is a starting point or floor for LIURP budgets.”<sup>34</sup> To be clear, PGW did not and does not seek a waiver of this minimum funding requirement as the ALJs erroneously state.<sup>35</sup>

On the contrary and consistent with the plain text of the regulation, PGW’s proposed funding level would result in a LIURP budget of 0.45% of PGW’s forecasted revenues, which far exceeds the .2% minimum funding requirement of Section 58.4(a).<sup>36</sup> Despite this, the ALJs move the starting point of the analysis to PGW’s most recent historic funding level and erroneously conclude that PGW is legally required to show why that historic level should not be continued.<sup>37</sup> This determination of the ALJs is not based on the plain text of the regulation and the Commission’s interpretation of the regulation as described previously. To the contrary, PGW has offered a proposed budget that far exceeds the .2% regulatory minimum which fully supports the legal requirements that LIURP be appropriately funded and available” and

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<sup>32</sup> RD at 106-109.

<sup>33</sup> 52 Pa. Code § 58.4(a).

<sup>34</sup> *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 Conservation Plan for 2014-2017 Submitted in Compliance with 52 Pa. Code § 54.74 and § 62.4*, Docket No. M-2013-2371824, Final Order entered January 15, 2015 at 70 (emphasis added).

<sup>35</sup> RD at 107. PGW’s waiver request of 52 Pa. Code § 58.4(a) is limited to the public notice requirements as explained further in Exception Number 6 at Section II.F.

<sup>36</sup> PGW Main Brief at 63, PGW St. 1-RJ Exh. DA-6. The record does not support the ALJs’ erroneous statement 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 the regulatory minimum as being a program that is appropriated funded and available.” RD at 106. This is a direct quote from the testimony of OCA and references an initial response PGW provided in discovery that it did not have the requested information. OCA St. 2 at 13. In fact, PGW continued to analyze the budgets of other utilities and subsequently revised the discovery response to provide its calculation of the LIURP budgets of the other NGDCs. The revised discovery response was admitted into the record as PGW Exh. DA-6.

<sup>37</sup> RD at 106-109.

“operated in a cost-effective manner.”<sup>38</sup> As such, PGW has satisfied its legal requirements to justify its proposed LIURP budget and the ALJs’ imposition of additional, unsupported requirements must be rejected.

### **3. PGW’s Most Recent Historic LIURP Budget Was Developed As Part Of A Commission Approved Base Rate Case Settlement**

Even if one were set aside the ALJs flawed legal reasoning regarding the starting point for analyzing PGW’s LIURP budget, it is important to remember that PGW’s most recent historic LIURP budget<sup>39</sup> relied upon by the ALJs was first implemented as part of a comprehensive settlement approved in 2010 regarding PGW’s DSM Phase I Plan and its rate case.<sup>40</sup> PGW agreed to the LIURP budget (and the other elements of the DSM Plan and the settlement of its rate case) based on its interest in testing a pilot DSM program that would include a large LIURP.<sup>41</sup> Importantly, the LIURP budget was not based on a needs assessment nor was the final agreed-to LIURP budget ever portrayed or intended as a permanent funding level from which PGW could never be released.<sup>42</sup>

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<sup>38</sup> 66 Pa. C.S. § 2203(8).

<sup>39</sup> Prior to its inclusion in the DSM Plan, PGW’s Commission approved LIURP funding had been at or close to the required regulatory minimum with an average actual spend that was .28% of PGW’s actual average revenues in 2008-2010. PGW St. 1-R at 20-21.

<sup>40</sup> *Philadelphia Gas Works’ Revised Petition For Approval of Energy Conservation and Demand Side Management Plan*, Docket Nos. R-2009-2139884, P-2009-2097639, Opinion and Order entered July 29, 010 at 3. (“*DSM I Final Order*”)

<sup>41</sup> Inclusion of LIURP with the DSM Plan has resulted in administrative efficiencies, well-established reporting requirements, review and assessment. PGW Main Brief at 67. In addition, as the Commission described in its *USECP 2014-2016 Order*, information about the LIURP program is more comprehensive since it a part of the DSM Plan and cost efficiencies are gained. *USECP 2014-2016 Order* at 47. As such, Finding of Fact Number 55 which states that “LIURP was included in the DSM program in order to gain administrative efficiencies” is not completely accurate. RD at 13.

<sup>42</sup> PGW Main Brief at 64, PGW Reply Brief at 56-57. *PaPUC v. PGW*, Docket N. P-2009-20979639, Joint Petition for Settlement dated May 12, 2010 at ¶¶ 37-38.

That agreed-to LIURP budget has only been continued on an interim basis subject to the resolution of this proceeding.<sup>43</sup> Upon approving the continuation of the agreed-to LIURP budget on an interim budget, the Commission specifically acknowledged that PGW agreed to maintain that program funding level in the interests of reaching a consensus among the parties to avoid the costs of winding down, and possibly later ramping up, the DSM programs pending the outcome of this proceeding.<sup>44</sup> All of this history makes clear that the historic LIURP budget upon which the ALJs erroneously recommend that the Commission judge PGW's current LIURP budget proposal makes no sense. The historical budget is not based on a needs assessment. As such, how can the Commission determine that PGW's proposed budget should be rejected on the basis that PGW has not demonstrated that the need for the LIURP program has decreased? There is no baseline need upon which to make this evaluation and, therefore, using the historic budget as a starting point is meaningless.

Moreover, from a policy standpoint, accepting the reasoning of the ALJs that a prior agreed-to LIURP budget resulting from a settlement of a base rate proceeding forms the baseline for all LIURP budgets going forward would negatively impact all future LIURP programs. All utilities would be discouraged from agreeing to increased LIURP budgets as part of a settlement

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<sup>43</sup> *DSM Bridge Plan Order* at 7. The ALJs reference information PGW was required to provide to the Commission during the USECP 2014-2016 proceeding with the unexplained statement that PGW's LIURP budget proposed here is "contrary to the budget presented in PGW's most recent USECP" and then use the information to support their view that PGW's "expenditures demonstrate that there is a significant need for the program." RD at 107. It should be noted though that: (1) the *USECP 2014-2016 Order* pre-dated approval of the currently effective interim LIURP budget; and, (2) PGW was specifically directed by the Commission to provide enrollment and budget information for the LIURP program fiscal years 2015 and 2016 during that proceeding. In doing so, PGW made clear (and the Commission acknowledged) that the DSM Phase II Plan (the subject of this proceeding) was not yet finalized and PGW would update the LIURP budget upon the filing of the new proposal. PGW Main Brief at 65, PGW Reply Brief at 59. Thus, despite the ALJs' characterization, the information presented in the USECP 2014-2016 proceeding does not somehow preclude or firmly resolve the issues here.

<sup>44</sup> *DSM Bridge Plan Order* at 5.

(just as PGW did here) for fear that they would never be able to reduce that budget in the future. Similarly, such a decision would likely even further discourage utilities from proposing pilot LIURP expansions in any way if that would mean they would be held to those levels going forward. Without the flexibility to consider larger LIURP budgets on a pilot, no future commitment basis, innovation in terms of LIURP programs would be stifled. None of this is a good result for customers. To avoid this, the Commission must reject the ALJs recommendation to assess PGW's proposed LIURP budget based on its most recent historic budget.

#### **4. Section 58.4(c) Guidelines For Revising Program Funding**

Setting aside the above arguments about whether or PGW must be held to its most recent historical LIURP budget, the Commission's regulations do permit utilities to implement revised funding levels<sup>45</sup> after the Commission: (1) acts upon a petition for a different funding level; or (2) the Commission reviews the need for the program services and revises the funding level through a Commission order that addresses the recovery of program costs in utility rates.<sup>46</sup> Section 54.8(c) sets forth the guidelines for revising program funding.<sup>47</sup> The ALJs focus on whether or not the needs of PGW's customers have decreased to justify PGW's proposed LIURP budget which is lower than the most recent historic budget. However, they never acknowledge that the Commission has the authority – based on the fully developed record of this proceeding (including a needs assessment) – to approve PGW's proposal. For all the reasons previously

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<sup>45</sup> For purposes of this discussion only, PGW is also setting aside its view that this section applies: (1) to revisions of the regulatory minimum budget amount; or, (2) revisions of a currently approved LIURP budget. Neither situation applies here because PGW is proposing a LIURP budget above the regulatory minimum; and, (2) PGW does not have a Commission approved LIURP budget for the period in question in this proceeding. PGW Reply Brief at 58-60.

<sup>46</sup> 52 Pa. Code § 58.4(a).

<sup>47</sup> 52 Pa. Code § 58.4(c).

discussed, PGW's proposed LIURP budget represents a reasonable balance between its LIURP obligations and the negative consequences of LIURP in terms of the amount non-CRP customers must pay to fund the programs and the increase in decreased revenues that will result in less dollars available to PGW to fund its core operations for the benefit of all ratepayers. Thus, the Commission has full support in the record of this proceeding to exercise its clear authority pursuant to Section 58.4(a) to approve PGW's petition regarding the LIURP budget.

However, and to the extent the Commission elects to analyze PGW's proposed LIURP budget pursuant to the guidelines set forth in Section 58.4(c), PGW did provide this information in this proceeding and it fully supports PGW's proposed budget.<sup>48</sup> Notably, the factors do not require a utility to show a "reduction" in each element to support its budget request as the ALJs require through their analysis.<sup>49</sup> Nor do these factors compel the conclusion (erroneously reached by the ALJs) that because PGW has spent the historical LIURP budget that historical budget is the appropriate amount going forward.<sup>50</sup> Rather, the elements are simply requests for factual data which PGW provided and which fully support PGW's proposed LIURP budget.

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<sup>48</sup> PGW Main Brief at 66-67; PGW Reply Brief at 61.

<sup>49</sup> RD at 107. For the reasons discussed previously, there is no baseline to just whether a reduction has occurred since PGW's most recent historical budget was the product of a settlement of a base rate case and not based on a needs assessment.

<sup>50</sup> Essentially, the ALJs rely on the functioning of the LIURP program pursuant to the historical budget to justify how their analysis of the Section 58.4(c) guidelines support their recommendation to maintain the historic LIURP budget. RD at 107. For example, according to the ALJs: (1) PGW's full utilization of the historic budget proves there is a need for the program and PGW has not shown a decrease in need; (2) PGW has not shown how the expense of providing the LIURP services would benefit from a reduced budget but would actually adversely impact PGW's ability to control administrative costs; (3) PGW has not shown that its contractor capacity is insufficient to manage the historic budget; and, (4) PGW's historic LIURP has resulted in net benefits to PGW's customers. RD at 107-108. All these show is that PGW spent its prior historical LIURP budget. This, however, does not compel the conclusion that the historical budget is the appropriate budget going-forward.

Also notable from the factual data requested by the regulation is that while it includes information regarding total eligibility and participation rates it also requests information regarding total expense and “a plan for providing program services within a reasonable period of time.”<sup>51</sup> As such, the regulations do not – as the ALJs’ analysis suggests – require utilities to treat all eligible customers as quickly as possible. Doing so would be unrealistic, unmanageable and unaffordable. Rather, an appropriate balance between the LIURP budget’s impact against other considerations, such as expenses and cost-effectiveness, must be made to assess the reasonableness of a proposed budget. PGW’s proposed LIURP budget is the result of this analysis and more reasonably balances all relevant factors than that recommended by the ALJs.

Finally, the ALJs take the view that PGW’s proposed LIURP budget would result in higher distribution bills, presumably, on the theory that less LIURP weatherization treatments would result in less energy usage and bill reductions which non-CRP customers fund through the CRP subsidy.<sup>52</sup> This conclusion, however, does not necessarily follow from PGW’s proposed LIURP budget for several reasons. First, bills (more specifically the amount non-CRP customers pay for the CRP subsidy) would not immediately increase to the extent PGW provides less weatherization services. Rather, and just accepting this hypothesis for the sake of argument, bills would not decrease as much as fewer weatherization treatments are implemented. Second, as noted above, these reductions are spread over the lifetime of the measures installed, meaning that the actual reductions in any given year are a minor percentage as compared against the immediate installation costs. PGW’s budget then does not result in increased distribution bills; it results in bills decreasing, albeit at a slower pace in order to properly balance upfront costs and

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<sup>51</sup> 52 Pa. Code § 58.4(c).

<sup>52</sup> RD at 108-109.

affordability against long-term benefits. Furthermore, this entire discussion focusing on customer distribution bills does not acknowledge the impact of the DSM lost revenues (to the extent they cannot be recovered) on the Company and its ratepayers – lower customer bills are a good thing, so long as the Company is able to maintain safe and reliable service.

Thus, for all these reasons, PGW has satisfied any and all applicable legal requirements set forth in Section 54.8(a) and (c) to justify its proposed LIURP budget and the ALJs conclusion to the contrary must be rejected.

**B. Exception No. 2: The ALJ Erred In Concluding That PGW’s Proposed CAM Is Legally Barred (RD at 58-62; COL #9, #10, #11)**

PGW proposes to include the recovery of future DSM-related costs that it is unable to fully recover as a result of reduced margins caused by reduced consumption of gas. Such recovery is permitted because it is a cost of the DSM program, consistent with Sections 1307 and 1319 of the Public Utility Code which permit all prudent and reasonable costs for developing, managing, financing and operating DSM programs to be recovered through an automatic adjustment clause.<sup>53</sup> As the Commission is well aware, when a utility provides demand side management services that result in reducing the amount of gas it sells, it incurs two kinds of costs: (1) the cost of installing the conservation activity (such as retrofitting a boiler); and, (2) the reduction in margin that the utility experiences because of charging for less gas delivered. Utilities like PGW recover their fixed, non-gas costs in the “per Mcf” delivery service charge they impose on customers. That delivery service charge is where PGW recovers costs such as debt service and debt service coverage, labor and employment, cash working capital and the

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<sup>53</sup> 66 Pa. C.S. § 1307; 1319.

costs of its construction program funded through base rates (including the base rate funded portion of its cast iron main replacement program). Thus, it is critically important for PGW to recover these amounts to be fully compensated for its DSM activities and to avoid imposing financial risks on the company. Conversely, if PGW (or any utility) is denied such full and fair recovery of all DSM-related costs as part of its ongoing recovery mechanism, it will have a clear incentive to reduce, eliminate, or avoid future discretionary DSM activities. Unfortunately, a rate case is not an adequate means of mitigating such losses, since rate case recovery is only prospective and only applies to projected losses in the test year (if those losses grow beyond the test year the utility is without any cost recovery opportunity).

Notwithstanding the importance of the inclusion of a CAM in PGW's cost recovery the ALJs unfortunately adopted the arguments of the OCA and the other advocates that the CAM is "illegal" and also barred by applicable Commission precedent.<sup>54</sup> This conclusion is plainly erroneous and must be rejected by the Commission.

#### **1. CAM Is Not "Impermissible Single Issue Ratemaking"**

The principal basis on which the ALJs concluded that PGW's CAM was "illegal" was that it was "impermissible single issue ratemaking."<sup>55</sup> But the ALJs misapplied the concept. Courts have consistently stated that the doctrine of single issue ratemaking does not apply when a utility is properly seeking the recovery of costs through an automatic adjustment clause mechanism, which is the case here. For example, in *Popowsky v. Pa PUC*<sup>56</sup> the Commonwealth Court rejected a virtually identical claim by OCA in response to a water company's proposal to

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<sup>54</sup> RD at 58-62

<sup>55</sup> *Id.* at 58.

<sup>56</sup> *Popowsky v. Pa. PUC*, 13 A.3d 583, 593 (Pa. Cmwlth. 2011).

establish a “purchased water adjustment clause” pursuant to Section 1307(a) of the Public Utility Code. After finding that recovery of the claimed costs could occur in an automatic adjustment clause mechanism, the Court made clear that the “single issue ratemaking” concept only applies when recovery for a single cost is attempted in a base rate increase request, not via a surcharge mechanism:

Single-issue ratemaking is similar to retroactive ratemaking and, in general, is prohibited if it impacts on a matter that is normally considered in a base rate case. This is, however, not a base rate case. No party has asked for specific recovery of a line item that traditionally would be requested in a rate-making procedure. The PUC applied [Section 1307 of the Code]’s authorization to specifically allow an automatic adjustment of rates outside of the rate-making procedures. Because the surcharge is permitted under the Code, with procedures to determine the reasonableness of the charges outside of a base rate case, the doctrine of single-issue ratemaking is inapplicable.<sup>57</sup>

Unlike the *Equitable* case incorrectly cited by the RD,<sup>58</sup> here PGW is not asking that its base rates be modified for a “single issue” in a proceeding under Section 1308 of the Public Utility Code. Instead, PGW is seeking to recover a cost of its DSM program – lost revenues – in the cost recovery mechanism authorized by Section 1319 of the Public Utility Code. DSM lost revenues are a standalone item that exist themselves regardless of other company revenues and expenses, and are directly and verifiably attributable to PGW’s DSM programs. This is why PGW proposes to recover the CAM through the DSM automatic adjustment surcharge. Thus, the single issue ratemaking doctrine is not applicable here.

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<sup>57</sup> RD at 59.

<sup>58</sup> *Id. Accord, PA Indus. Energy Coalition v. Pa PUC*, 653 A.2d 1336, 1350 (Pa. Cmwlth. 1995); *McCloskey v. Pa PUC*, 2015 Pa. Commw. Unpub. Lexis 919 (Pa. Cmwlth. 2015).

## 2. Act 129 Does Not Bar PGW's Proposed CAM

The ALJs similarly erred by concluding that the “no lost revenue, recovery except in a base rate case” provision of Act 129 applies to PGW and that, because of the definition of lost revenue in Act 129, lost revenue is not a “cost” recoverable under Section 1319.<sup>59</sup> But this conclusion is exactly the opposite from that which is dictated by the rules of statutory construction. There is no dispute that Act 129 does not apply to NGDCs and only applies to EDCs. The proper conclusion from this omission is that the General Assembly did not intend to bar NGDCs from using lost revenue adjustments or to exclude lost revenue from the definition of “costs” for an NGDC.

The General Assembly, in 2008, determined to amend the Electricity Generation Customer Choice and Competition Act, to limit the Commission’s discretion to permit EDCs to recover lost revenues outside of a rate case.<sup>60</sup> But it declined to similarly amend the Natural Gas Choice and Competition Act, despite having the opportunity to do so.<sup>61</sup> By not applying Act 129 to gas utilities, like PGW, the legislature gave the Commission discretion to permit recovery of lost revenues associated with efficiency and conservation programs. Further, by specifically setting forth in Act 129 how costs should be recovered for the large EDCs, the statute implicitly acknowledges that the Commission has the authority to determine how costs for a gas utility’s DSM program may be recovered.<sup>62</sup> Moreover, Courts have regularly found that when a section

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<sup>59</sup> RD at 59-61.

<sup>60</sup> 66 Pa. C.S. § 2806.1(k) was approved on October 15, 2008 and became effective on November 14, 2016.

<sup>61</sup> For example, the Natural Gas Choice and Competition Act was amended by Act 155 of 2014 to add a provision authorizing the Commission to establish fees to be charged for annual activities related to the oversight of natural gas suppliers. 66 Pa. C.S. § 2208. At the same time, a similar amendment was made to the Electricity Generation Customer Choice and Competition Act to apply to electric generation suppliers. 66 Pa. C.S. § 2809(g).

<sup>62</sup> PGW Main Brief at 50-51.

of statute contains a given provision, the omission of that provision from a similar section shows that a different intention existed.<sup>63</sup> Since the sole basis upon which the ALJs concluded that lost revenues resulting from a conservation program were not “costs” was their improper reliance on the definition in Act 129, the ALJs’ conclusion about what is a “cost” for Section 1319 purposes is similarly misplaced.

With no requirement to apply the Act 129 definition, the Commission has the authority to reasonably define the term lost revenues for an NGDC’s energy conservation program as a “cost” of the program. A common definition of “cost” is “loss or penalty incurred, especially in gaining something.”<sup>64</sup> Seen in this way, the millions of dollars that PGW will lose directly due to implementing the energy efficiency and conservation programs to end users is clearly a “cost” of the program and recoverable pursuant to Section 1319 of the Public Utility Code.

### **3. Commission Precedent Regarding UGI Does Not Preclude Adopting CAM**

The final reason the ALJs rejected PGW’s CAM recovery mechanism was because the Commission, in a 2011 order involving UGI, had “declined to allow for the recovery of lost revenue through a surcharge.”<sup>65</sup> But the Commission’s decision there was based on two factors: (1) the fact that lost revenue recovery mechanism was governed by the “guidance” provided by Act 129, a reason that has been shown to actually support the opposite result; and, (2) UGI’s method of lost revenues “lack[ed] the precision necessary for a dollar-for-dollar recovery

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<sup>63</sup> *Com v. Bigelow*, 484 Pa. 476, 399 A.2d 392 (Pa. 1979). *Accord, Fletcher v. Pa. Prop. & Cas. Ins. Guar. Ass’n*, 985 A.2d 678 (Pa. 2009) (Legislature’s failure to include a parallel provision regarding appeals involving MCARE Fund determinations other than assessment appeals implies that the legislature intended to leave intact the Commonwealth Court’s original jurisdiction over such appeals.)

<sup>64</sup> See <http://www.merriam-webster.com/dictionary/cost>

<sup>65</sup> RD at 61-62.

through the postponed [lost revenue recovery] rider or as a regulatory asset.”<sup>66</sup> But here, the ALJs did not find that PGW’s lost revenue recovery calculation mechanism was imprecise or unreasonable in any way. Moreover, PGW’s calculation is different – and inherently simpler – from UGI’s in that because it is a cash flow regulated company, PGW’s lost margin does not contain any return on equity, a much more difficult element to measure.

Furthermore, UGI’s proposal for lost revenue recovery was for a new and untested DSM program. PGW’s current proposal is based on five years of experience in implementing programs, including actual activities and third-party evaluations and gas usage analyses.<sup>67</sup> These actual experiences and evaluations to date have resulted in a number of program updates, including revisions to savings calculations. Furthermore, PGW is proposing to continue regular third-party evaluations going forward to ensure the lost revenue calculations are continually monitored and adjusted as needed in order to reflect direct and proven impacts of the DSM programming. This is the same approach used across the country by the many other jurisdictions that have already approved DSM lost revenue recovery mechanisms similar to PGW’s proposed CAM,<sup>68</sup> and will similarly provide the necessary level of precision and verification needed to ensure PGW’s CAM recoveries are appropriate.

Accordingly, the ALJs’ suggestions of “illegality” and inconsistency with “precedent” were either wrong or misplaced. Indeed, permitting PGW’s CAM on a pilot basis would advance immeasurably the Commission’s understanding and knowledge about lost revenue and decoupling mechanisms with no risk that utility “shareholders” will exact a windfall (since PGW

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<sup>66</sup> RD at 62.

<sup>67</sup> PGW Main Brief at 51-52; PGW Reply Brief at 36-38.

<sup>68</sup> PGW Reply Brief at 49 (at least 22 gas utilities offering energy efficiency programs have mechanisms similar to what PGW is proposing).

has no shareholders and all dollars it collects are “above the line” and go to mitigate future revenue requirement needs). The Commission should recognize this golden opportunity to encourage utility conservation efforts (especially given the recent alternative ratemaking *En Banc* hearing, during which the Commission clearly communicated an interest in learning more on these topics)<sup>69</sup> and reject the ALJs’ recommendations to deny PGW’s pilot CAM proposal.

**C. Exception No. 3: The ALJs Erred By Recommending That The Commission Deny PGW’s Proposed Performance Incentives (RD at 78-79; COL #9, #11)**

PGW proposes to include, as a DSM cost, an additional amount that would be paid to PGW if it meets and exceeds certain DSM performance goals in order to align the Company’s business interest with the program impacts to customers, allowing PGW and its customers to share in the success of the program.<sup>70</sup> While the ALJs recognize the value of PGW’s proposed performance incentives, they recommend that the proposal be denied on the basis that the issue is “properly addressed within the context of a base rates proceeding.”<sup>71</sup> The ALJs, however, erred in concluding that Section 523(a) of the Public Utility Code<sup>72</sup> bars the Commission from granting PGW’s proposed performance incentives in this proceeding.

PGW is seeking authority to implement its proposal pursuant to Section 1307 and 1319 of the Public Utility Code which permit all prudent and reasonable costs for developing, managing,

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<sup>69</sup> Notice of En Banc Hearing on Alternative Ratemaking Methodologies, Docket No.: M-2015-2518883, Secretarial Letter dated December 31, 2015 (“The purpose of this hearing is to permit participants to inform the Commission on the following rate issues: (1) whether revenue decoupling or other similar rate mechanisms encourage energy utilities to better implement energy efficiency and conservation programs; (2) whether such rate mechanisms are just and reasonable and in the public interest; and (3) whether the benefits of implementing such rate mechanisms outweigh any costs associated with implementing the rate mechanisms.”)

<sup>70</sup> PGW Main Brief at 55-59.

<sup>71</sup> RD at 78-79.

<sup>72</sup> 66 Pa. C.S. § 523.

financing and operating DSM programs to be recovered through an automatic adjustment clause.<sup>73</sup> The ALJs' recommendation to reject PGW's proposal does not address the specific circumstances applicable to PGW – as a municipally owned utility with its rates set based on the cash flow method. This is an important fact because it means that PGW's distribution rates do not include any amount for a return on equity.<sup>74</sup> However, by its plain terms, the purpose of Section 523 is to reward or sanction performance by adjusting specific components of the utility's claimed cost of service.<sup>75</sup> Exercising this discretion in a base rate case for a traditional investor owned utility would result in increasing the allowed return on equity. Because PGW's distribution rates do not include any component for an allowed return on equity, exercising the discretion permitted by Section 523 for PGW in a base rate case would mean that any such "award" would be used toward the cost of providing service and, therefore, would not provide a return on investment. Thus, because PGW does not have a return on equity and does not have any shareholders, Section 523 does not bar the Commission from adopting PGW's proposed performance incentives as the ALJs erroneously recommend.

Also worth noting, though it was not addressed by the ALJs, is that PGW's proposed performance incentives are no different in concept than the current rule that permits PGW (and all major NGDCs) to retain 25% of any net revenues from natural gas capacity release and off-system sales.<sup>76</sup> Both of these recognize that providing the utility an incentive to maximize ratepayer benefit by taking every possible step to reduce net natural gas costs is entirely legal and

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<sup>73</sup> 66 Pa. C.S. § 1307(f) and 1319. PGW Main Brief at 55.

<sup>74</sup> PGW Main Brief at 58, PGW Reply Brief at 41-42.

<sup>75</sup> 66 Pa. C.S. § 523(a)(emphasis added).

<sup>76</sup> PGW Reply Brief at 38-39.

good public policy. As discussed previously, implementing energy efficiency and conservation plans that result in customers using less natural gas means that the company receives less revenue. As a municipal utility with rates regulated on the cash flow methodology, these lost dollars decrease the amount of money available to PGW to fund its core operations. This inherent conflict requires companies, like PGW, to ensure that it is striking a reasonable balance between these two competing concerns.<sup>77</sup>

As addressed previously, PGW's CAM proposal would eliminate the disincentive currently discouraging PGW (and likely all gas utilities in the Commonwealth) from pursuing voluntary conservation. However, the removal of the stick is not the same as introducing a carrot. It represents lifting a punishment, but not a positive incentive for encouragement. Permitting PGW's proposed performance incentives is a way that the Commission could help incentivize the greatest program results, beyond requirements and even beyond targets, by aligning PGW's business interests with program outcomes for customers. Notably, this is a nationally recognized method for incenting utilities.<sup>78</sup> The fact that this concept is already widely used in the context of capacity release and off-system sales provides additional support for rejecting the ALJs' recommendation to deny PGW's performance incentives proposal.

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<sup>77</sup> This is evidenced in this proceeding by comparing PGW's proposed "base scenario" which does not factor in CAM recovery with its "expanded scenario" which does include CAM recovery. The DSM program that could be offered under the expanded scenario includes expanded budgets and expanded programs. Compare PGW Exh. TML-4 at 81-120 (base scenario) with PGW Exh. TML-4 at 130-134 (expanded scenario).

<sup>78</sup> PGW Exh. TML-4 at 41 (PGW's proposal is based on best practices from Vermont and Rhode Island).

**D. Exception No. 4: The ALJs Erred By Recommending That the Commission Deny PGW's Proposed Efficient Fuel Switching Pilot (RD at 126-127; FOF #35; COL #16)**

PGW requests approval of an Efficient Fuel-Switching load management pilot program to help small and mid-sized commercial and industrial customers cost-effectively improve the overall net energy efficiency of their buildings.<sup>79</sup> Based on initial analysis, PGW is proposing to target cost-effective Micro-Combined Heat and Power (“CHP”) projects that achieve greater overall efficiencies by making use of the waste heat from on-site electricity production, as well as a path for custom measures that meet program cost-effectiveness and net energy reduction criteria.<sup>80</sup>

Relying on the objections of OCA (the only party to oppose the pilot proposal), the ALJs recommend that PGW’s pilot program be rejected.<sup>81</sup> The ALJs disparage PGW’s proposal as simply “a load growth program” and, based on that, erroneously conclude that PGW’s proposed program would “not meet the objective of reducing gas demand and consumption within PGW’s service territory” and “funding for such a program should not come from a cost recovery mechanism for programs designed to reduce natural gas consumption.”<sup>82</sup>

However, as explained further below, a more broad and reasonable assessment of PGW’s proposed pilot program shows that it is designed to provide PGW’s customers greater overall energy and emissions reductions consistent with the core purpose of PGW’s DSM program. furthermore, there are no statutory, legislative or policy directives requiring that a utility engaging in a DSM program can only offer programs that reduce the customer’s usage of the

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<sup>79</sup> PGW Main Brief at 38-40.

<sup>80</sup> *Id.* at 39.

<sup>81</sup> RD at 126.

<sup>82</sup> *Id.* at 126-127.

type of energy provided by the utility.<sup>83</sup> Regarding cost recovery, Section 1319(a) of the Public Utility Code specifically ties together conservation and load management programs<sup>84</sup> and, therefore, provides the necessary authority to allow cost recovery for PGW's pilot within the DSM plan. Finally, approving PGW's Efficient Fuel-Switching pilot program supports the Commission's recently stated policy to encourage utilities (including NGDCs) to make CHP systems an integral part of their energy efficiency plans. Thus, for all these reasons, the ALJs' recommendation that the Commission reject PGW's proposed Efficient Fuel-Switching pilot program should be rejected.

**1. A More Broad And Reasonable Assessment Of PGW's Proposed Pilot Program Shows That It Is Designed To Provide PGW's Customers Greater Overall Energy And Emissions Reductions Consistent With The Core Purpose Of PGW's DSM Program**

The underlying reason for the ALJs' recommendation to reject PGW's Efficient Fuel-Switching pilot program is the ALJs' agreement with OCA that PGW is proposing "a load growth program."<sup>85</sup> This narrowly focused description of PGW's proposed pilot program, however, ignores the fact that PGW's proposal would offer a holistic approach to overall energy savings. The Efficient Fuel-Switching pilot program is a load management program that requires selected equipment: (1) to be more efficient than the existing market baseline; (2) to be cost-

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<sup>83</sup> PGW Reply Brief at 12-14.

<sup>84</sup> 66 Pa. C.S. § 1319(a)(1).

<sup>85</sup> RD at 126.

effective on a Total Resource Cost (“TRC”) basis,<sup>86</sup> and, (3) to reduce total energy usage.<sup>87</sup> Thus, PGW’s proposal is much more than just a load growth program. These additional requirements ensure that the Efficient Fuel-Switching pilot results in the greatest overall energy reductions through full fuel cycle usage analysis, including all fuel types, rather than strictly on-site natural gas reductions.<sup>88</sup> Consistent with the core purpose of PGW’s DSM program, the Efficient Fuel-Switching pilot program is projected to: (1) lead to a 42.6 BBtu reduction in net primary usage; (2) avoid the emission of 5,285 tons of carbon dioxide; and, (3) provide net total resource benefits of \$5,685,095 with a TRC benefit-cost ratio (“BCR”) of 2.07.<sup>89</sup> While there may be some load growth present in the Efficient Fuel-Switching pilot, such load growth can only occur if the program ensures overall reductions in energy consumption and TRC cost-effectiveness. By focusing on only the load growth aspect, as the ALJs do, and not giving any consideration to the overall cost-effectiveness and reduction in total energy usage requirements, an unreasonable mischaracterization of the program results.

Viewing PGW’s Efficient Fuel-Switching pilot so simplistically ignores the forest for a tree. The load growth aspect of PGW’s pilot does not transform the proposal into just a load growth program because the program must also satisfy the overall cost-effectiveness and energy usage reduction requirements. Even though (as explained further below ) mischaracterizing PGW’s program as just a “load growth program” still does not mean that PGW’s proposal is

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<sup>86</sup> PGW’s primary screen of portfolio performance is the TRC test which measures the gain in economic welfare from making the investment by comparing the present worth of resource benefits with the present worth of resources costs of the plan. The TRC test considers all resources impacted by the energy efficiency investments and is similar to the metric used by the electric industry pursuant to Act 129. PGW Exh. TML-4 at 21, 27, 48.

<sup>87</sup> PGW Main Brief at 38-40.

<sup>88</sup> PGW Main Brief at 38; PGW Reply Brief at 10-11.

<sup>89</sup> PGW Main Brief at 39-40.

unlawful or inconsistent with legislative or policy directives, mischaracterizing it in such way is unreasonable and must be rejected.

**2. There Are No Statutory, Legislative Or Policy Directives Requiring That A Utility Engaging In A DSM Program Can Only Offer Programs That Reduce The Customer's Usage Of The Type Of Energy Provided By The Utility**

**(a) Act 129 (which does not apply to PGW) does not restrict the demand and consumption reduction requirements to the type of energy provided by the utility**

While the ALJs correctly acknowledge that Act 129 does not apply to PGW, they still rely on the language in Act 129 to support their erroneous view that PGW's Efficient Fuel-Switching pilot must reduce natural gas demand and consumption to qualify as an appropriate program for the DSM plan.<sup>90</sup> However, even if Act 129 did govern PGW's proposal, the overall context of the statute is not as restrictive as the ALJs conclude.<sup>91</sup> For example, Act 129 requires an "energy efficiency and conservation plan" to reduce "energy demand and consumption within the service territory."<sup>92</sup> Act 129 seeks to encourage and promote the efficient use of energy and does not simply mandate reduction targets.<sup>93</sup> The statute also requires that plans encouraging efficient "heating and cooling equipment or systems and energy efficient applications" should be available to all (existing and new) utility customers.<sup>94</sup> Thus, the plain language of Act 129 supports a broader interpretation than the one posited by the ALJs (even if Act 129 applied to

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<sup>90</sup> 66 Pa. C.S. §1 2806.1(a); RD at 126.

<sup>91</sup> 66 Pa. C.S. § 2806.1(a).

<sup>92</sup> *Id.*(emphasis added).

<sup>93</sup> 66 Pa. C.S. § 2806.1(m)(definition of "energy efficiency conservation measures"). The use of solar or solar photovoltaic panels means that the home will consume less electricity from the grid. But, it does not necessarily mean that the home will use less electricity than it did before the panels were installed.

<sup>94</sup> *Id.* (definition of "energy efficiency and conservation measures"). New customers can result from construction or fuel switching.

PGW, which it does not).<sup>95</sup> Therefore, the Commission must reject this erroneous statutory interpretation.

The approved Act 129 plans of the electric utilities further support the conclusion that the ALJs too narrowly define requirements of Act 129 (even if they applied to PGW). This is because the 2016 Act 129 TRC counts all resource energy savings and costs (regardless of source) toward calculating the total resource cost-effectiveness of the electric Act 129 programs.<sup>96</sup> As a result, electric Act 129 projects that result in conversions to the most efficient fuel source are included with the Act 129 cost effectiveness measures. Such result could not occur if the Commission interpreted Act 129 as creating some type of limitation on the type of energy that must be reduced to be included within an energy efficiency program as the ALJs propose.<sup>97</sup>

In addition, the ALJs improperly dismiss the significance of the Commission approved fuel-switching programs of UGI Utilities, Inc. – Electric Division (“UGI”) and PECO Energy Company (“PECO”). According to the ALJs’ reasoning, these two electric utilities are shifting electric load off of themselves to natural gas whereas any load shifting resulting from PGW’s program would shift electric load away from PECO to PGW’s natural gas.<sup>98</sup> Implicit in this reasoning is the ALJs’ view that a utility cannot implement a fuel-switching program that shifts load to itself and still have that program considered an energy efficiency program. If, however, this statutory interpretation of the ALJs was shared by the Commission, then the fuel-switching

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<sup>95</sup> RD at 126.

<sup>96</sup> 2016 Total Resource Cost (TRC) Test, Docket No. M-2015-2468992, Order entered June 22, 2015 at 14-16.

<sup>97</sup> PGW Reply Brief at 11-12.

<sup>98</sup> RD at 126.

programs of both UGI and PECO could not have been approved because both UGI and PECO offer service to electricity and natural gas customers so that any fuel-switching program of UGI and PECO benefit the NGDC of the same company. To the contrary, the Commission's approval of these two programs shows that such programs (identical to what PGW is proposing here) offered by an electric utility also serving natural gas are not impermissible fuel-switching programs. Thus, the ALJs' restrictive definition of what elements are requirement for a fuel-switching program to be considered an energy efficiency program must be rejected.

In sum, even if Act 129 applied to PGW (which it does not), the ALJs' interpretation of the requirements for energy efficiency programs is not consistent with the plain language of the statute or the Commission's approval of the Act 129 plans of the EDCs. Thus, the Commission must reject the ALJs recommendation and approve PGW's Efficient Fuel-Switching pilot.

**(b) Section 1319(a)(1) of the Public Utility Code specifically ties together conservation and load management programs for the purposes of cost recovery**

According to the ALJs, funding for PGW's pilot Efficient Fuel-Switching program "should not come from a cost recovery mechanism for programs designed to reduce natural gas consumption."<sup>99</sup> The ALJs do not reference any statutory support for this conclusion. This oversight is significant given that the governing statute – Section 1319(a) of the Public Utility Code – specifically ties together conservation and load management programs for purposes of cost recovery for energy supply alternatives.<sup>100</sup> As discussed above in Section II.D.1, PGW's Efficient Fuel-Switching pilot program is a load management program and PGW proposes to

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<sup>99</sup> RD at 126.

<sup>100</sup> 66 Pa. C.S. § 1319(a)(1).

recover the costs of the program through Section 1319(a) just as it recovers the costs of its current DSM programs. This proposal is completely consistent with the applicable governing statutory authority and, therefore, the ALJs' recommendation to deny PGW cost recovery for its Efficient Fuel-Switching pilot program must be rejected.

**(c) Approving PGW's Efficient Fuel-Switching Pilot Program supports the Commission's recently stated policy to encourage utilities (including NGDCs) to make Combined Heat and Power (CHP) systems an integral part of their energy efficiency plans**

At its February 25, 2016 Public Meeting, the Commission approved a Joint Motion directing the issuance of a tentative order to implement a policy statement intended to: (1) promote CHP investments; (2) encourage EDCs and NGDCs to make CHP an integral part of their energy efficiency and resiliency plans, as well as their marketing and outreach efforts; (3) encourage EDCs and NGDCs to design interconnection and standby rates for owners and operators of CHP facilities; and, (4) promote consideration of special natural gas rates for owners and operators of CHP facilities.<sup>101</sup> In the Joint Motion, Chairman Brown and Commissioner Powelson stated: “[w]e believe the Commission should facilitate efforts to make Pennsylvania a leader in CHP deployment to more fully realize the benefits provided by CHP and the enhanced utilization of our indigenous shale gas resources.”<sup>102</sup> The Commissioners also referenced a study of the American Council for an Energy Efficiency Economy (“ACEEE”) as confirmation “that

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<sup>101</sup> *Proposed Policy Statement on Combined Heat and Power*, Joint Motion of Chairman Gladys M. Brown and Commissioner Robert F. Powelson, dated February 25, 2016, Agenda No. 2530484-CMR (docket number and tentative order still pending).

<sup>102</sup> *Id.* at 3.

Pennsylvania can improve in. . . the presence of a program designed to acquire CHP resources” and “Pennsylvania has only begun to realize the myriad of benefits that CHP can offer.”<sup>103</sup>

PGW’s Efficient Fuel-Switching pilot program is consistent with the Commission’s stated objectives.<sup>104</sup> Based on initial analyses, PGW is proposing to target cost-effective Micro-CHP projects that achieve greater overall efficiencies by making use of the waste heat from on-site electricity production, as well as a path for custom measures that meet program cost-effectiveness and net energy reduction criteria.<sup>105</sup> One of the stated purposes of the proposed policy statement is to encourage NGDCs to make CHP “an integral part of their energy efficiency” plans, which is exactly what PGW is proposing here. Adopting the ALJs’ recommendation to not permit PGW to implement its Efficient Fuel-Switching pilot program and to not allow the costs of the pilot to be recovered consistent with the cost recovery mechanism for the other DSM programs would directly contravene the objectives stated by the Commission in the proposed policy statement. For the reasons detailed previously, the ALJs’ unfairly mischaracterize PGW’s proposed pilot program and there are no statutory, legislative or policy directives requiring rejection of PGW’s Efficient Fuel-Switching pilot program. On the contrary, approving the pilot program – which is focused, in part, on micro-CHP projects – is a great opportunity to enable the Commission to further advance its stated goals regarding CHP development in Pennsylvania. Thus, the ALJs’ recommendation to reject PGW’s Efficient Fuel-Switching pilot program must be rejected.

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<sup>103</sup> *Id.* at 4, citing The 2015 State Energy Efficiency Scorecard, October 2015, October 2015, Report U1509 available at: <http://database.aceee.org/state/pennsylvania>

<sup>104</sup> PGW Main Brief at 38-40.

<sup>105</sup> PGW Main Brief at 39.

**E. Exception No. 5: The ALJ Erred By Recommending The Commission Deny PGW's Requested Waiver of 52 Pa Code Section 58.10(a)(2) And (3) Regarding Prioritization of Customers Based On Arrearages And Income Deficit (RD at 174; COL #19)**

Section 58.10(a) addresses how eligible customers should be prioritized to receive LIURP weatherization services.<sup>106</sup> Among eligible customers the regulations require priority to “those with the largest usage and greatest opportunities for bill reductions relative to the cost of providing program services.”<sup>107</sup> For all customers with the same standing pursuant to this criteria, the regulations focus on further prioritizing benefits to those customers based on the greatest arrearages.<sup>108</sup> For all customers with the same standing pursuant to the greatest arrearage, the regulations focus on prioritizing benefits to those customers based on incomes that place them farthest below the maximum eligibility level.<sup>109</sup> PGW 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. However, since CRP customers do not receive a financial benefit from the weatherization treatments (because PGW’s CRP is a percentage of income program) and PGW’s method provides a more effective and valuable impact, PGW does not prioritize customers based on arrearages and income. Therefore, PGW requests a waiver of the requirements of Section 58.10(a)(2) and (3).<sup>110</sup>

While the ALJs correctly recognize that the receipt of LIURP treatments generally do not have a financial impact for the CRP customer who receives the treatment, the ALJs still

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<sup>106</sup> 52 Pa. Code § 58.10(a).

<sup>107</sup> 52 Pa. Code § 58.10(a)(1).

<sup>108</sup> 52 Pa. Code § 58.10(a)(2).

<sup>109</sup> 52 Pa. Code § 58.10(a)(3).

<sup>110</sup> 52 Pa. Code § 58.10(a)(2) and (3). PGW Main Brief at 69-70; PGW Reply Brief at 77-82.

recommend rejection of PGW’s waiver request.<sup>111</sup> According to the ALJs, the prioritization requirements of Section 58.10(a)(2) and (3) “would help PGW to meet [its] universal service objectives.”<sup>112</sup> Thus, the RD recommends that PGW “further” prioritize “within the pool of CRP customer who are eligible for LIURP services” based on arrears and income deficit.<sup>113</sup> This recommendation must be rejected as adopting it would erode the effectiveness of the LIURP program with no resultant greater financial benefit for the CRP customers receiving the LIURP services.

**1. PGW’s Current Prioritization Strategies For LIURP Weatherization Treatments Fully Satisfy Universal Service Objectives**

In support of their recommendation, the ALJs focus only on PGW’s universal service objectives, without providing an explanation of their interpretation of what these objectives specifically require.<sup>114</sup> The stated purposes of LIURP programs, as set forth in Section 58.1, are to “assist low income customers conserve energy and reduce residential energy bills” and to “result in improved health, safety and comfort levels for program recipients.”<sup>115</sup> PGW’s program already successfully accomplishes these purposes, and adopting the ALJs’ misguided recommendation to impose new prioritization requirements on PGW will only erode PGW’s program without providing any additional “universal service” benefits (which is the stated reason why the ALJs recommend rejecting PGW’s requested waiver.)

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<sup>111</sup> RD at 174.

<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

<sup>114</sup> *Id.* at 174. The ALJs also never address the fact that the Commission has already acknowledged that “performing extensive and costly weatherization services on a premise with questionable bill payment history is likely not a prudent investment of funds.” *USECP 2014-2016 Order* at 55.

<sup>115</sup> 52 Pa. Code § 58.1.

First, those customers who receive LIURP weatherization services benefit from the services and, as a result of the services, are able to conserve energy. Based on PGW's experience, the best predictor of energy savings is pre-treatment usage and PGW has a rigorous and time-tested prioritization system in place to identify these eligible customers.<sup>116</sup> By ensuring that those who can receive the greatest benefit from weatherization services (based on PGW's real-world experience effectively identifying those customers), PGW is fully satisfying the regulatory mandated universal service objectives of assisting low income customers to conserve energy and providing them services that result in improved health, safety and comfort levels.

Second, PGW satisfies the regulatory mandated universal service objective of reducing residential low income energy bills because it ensures that its LIURP program is managed in a cost-effective way to provide the greatest financial benefit to PGW's non-CRP customers low income (and other) customers who pay for the LIURP treatments and subsidize CRP customers' usage (through the "Universal Service subsidy").<sup>117</sup> The ALJs failed to acknowledge the fact that a significant number of PGW's non-CRP customers are low income, as defined in the regulation. The stated purpose in the regulation does not limit the required reduction in residential energy bills resulting from LIURP weatherization services to only those customers participating in CRP. Thus, and consistent with the regulatory mandated purpose of LIURP, PGW's program reduces the "residential energy bills" of the non-CRP customers, low income

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<sup>116</sup> PGW Reply Brief at 79 (Individual selection assignments begin with screening for primary eligibility criteria, and then a statistical analysis of eligible customers' weather-normalized usage. Usage thresholds are customized for each assignment based on population, their usage, and the number of participants in each quintile, as well as program contractors' capacity to assume a set number of assignments. PGW allows its contractors to prioritize their work independently based on the cost effectiveness and savings outcomes that PGW demands. PGW's contractors pursue accounts based on their own practices in order to maximize the number of properties that are treated and to ensure that their budgets are fully utilized.)

<sup>117</sup> PGW Reply Brief at 77.

customers, and does not (because it cannot) reduce the bills of the CRP customers because a CRP customer's asked-to-pay amount is not tied to usage.

Although the ALJs correctly recognize that PGW's percentage of income CRP program means that reduced energy usage as a result of LIURP weatherization treatments do not directly affect the amount that a CRP customer pays or the amount of arrears that a CRP customer may have,<sup>118</sup> they still incorrectly state that CRP customer payments "are based in part on their pre-existing arrears and income deficit."<sup>119</sup> This is not factually accurate. PGW calculates an asked-to-pay amount which is not based on usage and, if there are any pre-existing arrearages, the CRP customer is required to pay an additional \$5 per month toward that arrearage.<sup>120</sup> Thus, providing LIURP weatherization services to an existing CRP customer who has a pre-existing arrearage and is required to pay the additional \$5 per month on that pre-existing arrearage will not result in any financial change to the \$5 a month the customer is required to pay. In other words, the LIURP weatherization service has no impact on the CRP payment notwithstanding the ALJs' statement to the contrary.

In sum, PGW's is already satisfying the universal service objectives as set forth in the Commission's regulations. There is no support for the view that denying PGW's requested waiver of Section 58.10(2) and (3) is necessary or appropriate for the sake of meeting universal service objections and the Commission must reject the ALJs' recommendation on this issue.

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<sup>118</sup> RD at 186, 192.

<sup>119</sup> RD at 174.

<sup>120</sup> PGW Reply Brief at 79.

**2. Adopting The ALJs' Recommendation Will Erode The Effectiveness Of The LIURP Program With No Resultant Greater Financial Benefit For The CRP Customers Receiving The LIURP Services**

While there is no reason to reject PGW's requested waiver of Section 58.10(a)(2) and (3) on the basis that doing so is somehow necessary to help PGW meet its universal service objectives, the impact of adopting the ALJs' recommendation would be to negatively impact PGW's LIURP program. As the record clearly establishes (without any dispute), high usage is the greatest predictor of energy savings.<sup>121</sup> There is also no dispute that PGW has a time-tested and rigorous process to identify those with the highest usage that are eligible for LIURP weatherization projects. Nor is there any dispute that one of the reasons to keep PGW's LIURP within the DSM plan is to enable PGW to customize better updated approaches to conservation than is currently contemplated in the currently static LIURP regulations.<sup>122</sup> While further prioritizing these identified customers based on arrearage or income deficit would have no impact on the eligible customers' finances, requiring such further prioritization of these customers will distract from the current primary prioritization objectives which are based on gas savings and cost-effectiveness. In this way, the only result of adopting the ALJs' recommendation would be to negatively impact the finances of non-CRP customers who pay for weatherization services. Such result would be unwarranted and unreasonable.

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<sup>121</sup> PGW Main Brief at 80, PGW St. 1 at 10; PGW St. 1-R at 25-27. This is also consistent with the fact that the Commission's regulations focus first on prioritizing eligible customers with the largest usage. 52 Pa. Code § 58.10(a)(1).

<sup>122</sup> The ALJs implicitly agree with this point by recommending that PGW's LIURP remain in the DSM plan. RD at 132-133. An example is how PGW's LIURP utilizes TRC cost-effectiveness to determine what measure to include in a project rather than a 12-year simple payback criteria as identified in Section 58.11(a). 52 Pa. Code § 58.11(a). The result of this can allow more weatherization work to be performed than contemplated by the regulations. PGW Main Brief at 77.

PGW allows its contractors to prioritize their LIURP weatherization work independently based on greatest energy savings opportunities and program cost-effectiveness. This allows contractors to differentiate their performance. PGW evaluates how well the projects meet the energy savings opportunities and cost-effectiveness targets to evaluate the contractors and then reallocate funding based on performance.<sup>123</sup> Forcing contractors to prioritize based on arrearages and income of only CRP customers would distract from current approaches – honed over five years of program implementation – which are focused on energy savings and cost-effectiveness and could lead to underutilized budgets and/or an erosion in overall cost-effectiveness of LIURP.<sup>124</sup> In this way, the contractors would lose their ability to prioritize based on actual program impact metrics, thereby negating a significant portion of the program evaluation purposes. The program as a whole would be shifted to focusing on other metrics (arrearage and income) which provide no direct benefits themselves and are not directly tied to whether or not the proposed LIURP weatherization treatment will result in the greatest energy savings opportunity and program cost-effectiveness. Thus, requiring contractors to prioritize based on factors that do not impact energy savings and cost-effectiveness means that the most cost-effective projects with the best potential energy savings may not be undertaken. Such a result will erode the cost-effectiveness of the entire program.

Such erosion of the LIURP program will not benefit CRP customers because CRP customers do not receive a financial benefit as a result of receiving LIURP weatherization services (because PGW's CRP is a percentage of income program). On the contrary, though, non-CRP customers will be financially harmed if the LIURP program is made less cost-effective.

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<sup>123</sup> The ALJs cited the effectiveness of this methodology as a way to control administrative costs. RD at 108.

<sup>124</sup> PGW Reply Brief at 79.

This is because the non-CRP customers (many of who are just above poverty level) pay for the LIURP weatherization service provided to the CRP customers. If the LIURP weatherization projects are not providing the greatest energy savings and are not cost-effective, then non-CRP customers will not see a resulting reduction in the amount they are required to pay for LIURP (i.e. the Universal Service subsidy).<sup>125</sup> Thus, adopting the ALJs' recommendation to reject PGW's requested waiver of Section 58.10(a)(2) and (3) will provide no benefits and offers negative financial consequences for PGW's customers. In addition, doing so would be contrary to the Commission's recent conclusion that "performing extensive and costly weatherization services on a premise with questionable bill payment history is likely not a prudent investment of funds."<sup>126</sup>

For these reasons, the ALJs' recommendation that the Commission reject PGW's requested waiver of Section 58.10(a)(2) and (3) must be rejected.

**F. Exception No. 6: The Commission Should Reject Or Clarify The ALJs' Recommendation Regarding The Public Notice Requirement of 52 Pa Code Section 58.4(a) (RD at 173-174; COL #19)**

PGW's position is that the public notice requirements of 52 Pa Code Section 58.4(a) do not apply for two reasons. First, there is no currently approved LIURP budget beyond the expiration of the DSM Bridge Plan; and, therefore, PGW is not seeking a reduction of any already approved budget for the upcoming plan period.<sup>127</sup> Second, PGW's proposed funding

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<sup>125</sup> PGW Reply Brief at 80.

<sup>126</sup> *USECP 2014-2016 Order* at 55.

<sup>127</sup> As discussed in Exception Number 1, the currently in effect budget for LIURP was initially developed as part of a base rate case settlement and has only been continued on an interim basis subject to the resolution of this proceeding. *See, supra* at 8.

level for LIURP is far in excess of the required 0.2% minimum.<sup>128</sup> Because PGW is not seeking a reduction of an already approved budget and is not seeking funding below the required 0.2% minimum, PGW's position is that this regulation does not apply. In an abundance of caution,<sup>129</sup> however, and to the extent the Commission disagrees, PGW sought a limited waiver of the just the public notice requirements of Section 58.4 and committed to working with BCS going forward in implementing an appropriate public notice process as may be directed by the Commission.<sup>130</sup> PGW did not, as the RD incorrectly states, seek a waiver of the entire regulation.<sup>131</sup>

Even though the ALJs correctly acknowledge: (1) the full and open opportunity presented by this proceeding for any party or affected persons to become involved; and, (2) that the public advocates could have (but did not) request public input hearings, they still recommend that the Commission deny PGW's limited waiver request.<sup>132</sup> This recommendation relies on due process principles and the ALJs' conclusion that PGW did not establish "any special circumstances which would entitle PGW to a waiver of this particular section."<sup>133</sup> PGW respectfully disagrees.

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<sup>128</sup> PGW Main Brief at 79-80; PGW Reply Brief at 75-77.

<sup>129</sup> In particular, the Commission specifically concluded in the *USECP 2014-2016 Order* that PGW "has never explicitly or implicitly [been] granted a waiver of the LIURP requirements," and PGW was specifically directed to seek waivers as deemed appropriate. *USECP 2014-2016 Order* at 48. Given this directive, PGW reviewed each LIURP regulation with the specific intent of identifying any such regulations that could possibly be implicated by its proposed program and for which one could conclude that a waiver was necessary.

<sup>130</sup> PGW Main Brief at 79-80; PGW Reply Brief at 75-76.

<sup>131</sup> RD at 107, 173. PGW's proposed LIURP budget is 0.45% of PGW's forecasted revenue. PGW Main Brief at 63 citing PGW St. 1-RJ at 2. As such PGW did not seek nor does it require a waiver of this Section's requirement of a minimum 0.2% funding level.

<sup>132</sup> RD at 173-174.

<sup>133</sup> *Id.* at 174.

As the ALJs state, this has been a fully litigated proceeding which has been pending since PGW filed its petition in December 2014 proposing, in part, its budget for LIURP. Five public interest advocacy groups – OCA, CAUSE-PA, TURN, et. al., CAC, and OSBA – have been active participants in this proceeding fully representing the interests of their particular constituencies. Moreover, PGW provided notice in its USECP 2014-2016 proceeding that it was in the process of developing a budget for the LIURP and would provide its proposal in this proceeding,<sup>134</sup> which it did. BCS was served with a copy of the DSM Phase II Petition and subsequent documents filed by PGW, and was invited to participate in settlement discussions.<sup>135</sup> At no time have interested members of the public been prohibited from participating. Thus, the ALJs' concerns regarding notice and due process have been fully addressed by the manner in which this proceeding has unfolded and their recommendation to deny PGW's limited waiver request should be rejected.

Notwithstanding this, if the Commission chooses to adopt the ALJs' recommendation and direct some type public notice opportunity before reaching a final Commission decision on the approved LIURP budget, PGW respectfully requests that sufficient time be allocated to ensure that a final decision from the Commission on the budget is entered on or before June 1, 2016. As

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<sup>134</sup> PGW Main Brief at 65. Response of Philadelphia Gas Works to Tentative Order entered April 3, 2014 Regarding the Enhanced Low Income Retrofit Program, Docket No. M-2013-2366301, dated April 23, 2014 at 11. PGW's 2014-2016 Plan dated June 1, 2013, as amended September 22, 2014 clearly states that LIURP changes and budgets will be addressed in this proceeding. *Philadelphia Gas Works Universal Service and Energy Conservation Plan 2014-2016* Docket No. M-2013-2366301, Philadelphia Gas Works Universal Service and Energy Conservation Plan dated June 1, 2013 as amended September 22, 2014. The Commission approved PGW's final USECP 2014-2016 Plan on November 13, 2014. *See 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 Re Compliance Filing entered November 13, 2014.

<sup>135</sup> In the *USECP 2014-2016 Order*, the Commission specifically required PGW to provide BCS a copy of its LIURP proposal so that it could be "expressly reviewed by BCS" and directed that any proposed settlement or stipulation related to LIURP "be vetted by BCS." *USECP 2014-2016 Order* at 49.

set forth in detail in PGW's Main Brief, final Commission resolution of the issues in this proceeding (including all the programs and all the budgets) is necessary to inform the subsequent implementation actions required to ensure a smooth transition.<sup>136</sup> The current programs of the DSM plan (including the LIURP and non-LIURP programs) are currently set to expire at the end of FY 2016 (August 31, 2016) and PGW needs approximately three months after final resolution of this proceeding to smoothly transition to the new plan.

**G. Exception No. 7: The Commission Should Reject Or Clarify The ALJs' Recommendation Regarding PGW's Requested Waiver of 52 Pa Code Section 58.14(c) Addressing Inter-Utility Coordination (RD at 175; COL #19)**

Given the complexity involved in intra-utility coordination for electric usage reduction activities and in light of the extensive program steps that PECO is already taking as part of its Act 129 Energy Efficiency and Conservation program (and not with any coordination with PGW for this or its LIURP<sup>137</sup>), PGW does not propose to address or identify energy efficiency or conservation measures regarding electricity usage and sought a waiver of Section 58.14(c)(1).<sup>138</sup> While the ALJs correctly conclude that this Section does not require adoption of CAUSE-PA's proposed *de facto* heating program, the ALJs do recommend that the requested waiver be denied.<sup>139</sup> Although no specific directive to PGW is suggested, the ALJs endorse coordination

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<sup>136</sup> PGW Main Brief at 28-32. PGW set forth a conceptual process and timeline to implement: (1) DSM Phase II with the base scenario (including PGW's proposed LIURP budget); (2) DSM Phase II with the expanded scenario (increased budgets for DSM and LIURP programs); and, (3) only LIURP (with the DSM programs phased out).

<sup>137</sup> PGW Reply Brief at 82, fnote, 295 (describes some of the programs of PECO's plan regarding Smart Home Rebates, Smart Lighting Discounts, Low Income Energy Efficiency Program, and Smart House Call Program.)

<sup>138</sup> PGW Main Brief at 80-81; PGW Reply Brief at 82-83. As explained in footnote 48, based on the *USECP 2014-2016 Order*, PGW reviewed each LIURP regulation with the specific intent of identifying any such regulations that could possibly be implicated by its proposed program and for which one could conclude a waiver was necessary.

<sup>139</sup> RD at 175.

with PECO's LIURP or Act 129 programs "to address potentially dangerous instances where the customer is using alternative heating and other energy saving areas, such as lighting, water heaters, and gas ranges."<sup>140</sup>

PGW does not oppose inter-utility coordination where there is an opportunity for significant enough energy savings and bill reductions to warrant comprehensive coordination consistent with the intent of this regulation.<sup>141</sup> However, and consistent with the ALJs' decision not to impose any specific recommendations regarding *de facto* heating, energy savings and bill reductions are not the same as requiring PGW to undertake an effort to ensure that PECO customers are removed from *de facto* heating situations pursuant to PGW's LIURP program. Moreover, given the extensive program PECO is already taking as part of its Act 129 Energy Efficiency and Conservation program, PGW respectfully requests that if it chooses to adopt the ALJs' recommendation to deny this requested waiver that no additional requirements are placed on PGW in this regard. Such additional requirements are not necessary given the totality of PGW's DSM program as well as the Act 129 program of PECO.

**H. Exception No. 8: The Commission Should Correct The Erroneous Findings of Fact Regarding of PGW's LIME Program And Either Modify Or Revise The USECP 2014-2016 Order To Permit The Proposed LIME Cost Recovery Mechanisms To Be Implemented (FOF #62, #64)**

While PGW does not object to the ALJs' recommendations regarding the proposed Low-Income Multifamily ("LIME") program, two findings of fact erroneously characterize the program and PGW respectfully requests that they be corrected. In addition, though the ALJs

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<sup>140</sup> RD at 175.

<sup>141</sup> *Residential Low Income Usage Reduction Programs*, Docket No. L-00960118, Final Rulemaking Order adopted August 28, 1997, 28 Pa.B. 25.

rightly recommend approving the LIME cost recovery provisions set forth in the PGW/I&E Stipulation, they do not specifically recommend that the Commission modify or revise the *USECP 2014-2016 Order* to authorize implementation of the proposed cost recovery provisions and PGW respectfully requests that the Commission do so in its final order.

Regarding the Findings of Fact, Finding of Fact Number 62 states that there would be no direct benefit of the LIME program for PGW's residential low-income customers.<sup>142</sup> Finding of Fact Number 64 states that the selection criteria for the properties selected for the LIME program will be based only on income status of the residents not billed for gas service and building usage criteria.<sup>143</sup> Pursuant to the Stipulation entered into between PGW and I&E, the initial proposal was modified to treat only those properties that qualify as publicly subsidized housing in which the residents include at least 75% that are confirmed low income.<sup>144</sup> Thus, the LIME program will target low-income customers. While some buildings may be mastered metered, others may be individually metered with non-CRP customers who would receive energy savings benefit from treatment. In addition the inclusion of master metered and individually metered programs means that there is no reason to believe that only the residents not billed for gas service will be included in the review of properties for eligibility. Likewise the use of publicly subsidized housing such as Low Income Housing Tax Credits or Section 8 housing ensures that the selection criteria will be based on income status of all residents in the building.<sup>145</sup> Thus, PGW respectfully requests that Finding of Fact Numbers 62 ad 64 be modified.

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<sup>142</sup> RD at 14.

<sup>143</sup> *Id.*

<sup>144</sup> PGW Reply Brief at 70 and Attachment A, PGW/I&E Stipulation at ¶1(B).

<sup>145</sup> PGW St. 2-R at 30.

Regarding the proposed LIME cost recovery provisions set forth in the PGW/I&E Stipulation which the ALJs rightly recommend the Commission approve, both PGW and I&E specifically noted that the proposal is not consistent with the Commission's *USECP 2014-2016 Order* and requested that the Commission modify or revise its prior directive to the extent necessary to approve the proposed resolution.<sup>146</sup> While the ALJs recommend approval of the PGW/I&E Stipulation modifying PGW's initial LIME proposal, they do not make any recommendation regarding the Commission's prior *USECP 2014-2016 Order*. The Commission's *USECP 2014-2016 Order* required a portion of the LIURP budget to be allocated to LIME program and recognized that the LIURP budget is funded through the USC.<sup>147</sup> Because the PGW/I&E Stipulation would allocate some of the costs through the USC and some of the costs through the ECRS and the property owners, PGW respectfully requests that the Commission modify or revise its prior directive to the extent necessary to approve the proposed resolution.

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<sup>146</sup> PGW Reply Brief at 71-72 and Attachment A, PGW/I&E Stipulation at ¶1(d).

<sup>147</sup> *USECP 2014-2016 Order* at 57; PGW Reply Brief at 72.

### III. CONCLUSION

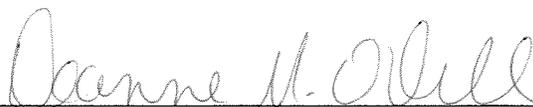
While the ALJs reached reasonable and sound decisions on many of the issues in this proceeding, PGW respectfully urges the Commission to modify the RD as follows:

- Reject the ALJs' recommendation that PGW be directed to increase its proposed LIURP budget by nearly 140% over the budget PGW has proposed (as explained in Exception Number 1)
- Reject the ALJs' recommendation to deny PGW's proposed CAM (which is intended to enable PGW to offer robust DSM programs by allowing for the full recovery of all costs incurred as a direct result of the programs) (as explained in Exception Number 2)
- Reject the ALJs' recommendation to deny PGW's proposed Performance Incentives (which would create positive incentives to reward and encourage superior program designs and implementation approaches leading to greater savings and greater benefits at lower costs) (as explained in Exception Number 3)
- Reject the ALJs' recommendation to deny PGW's proposed Efficient Fuel-Switching pilot program (which would provide a cost-effective overall net energy reduction pilot program and foster the development of CHP programs for the benefit of small and mid-sized commercial and industrial customers) (as explained in Exception Number 4).
- Reject the ALJs' recommendation to deny PGW's requested waiver of 52 Pa Code Section 58.10(a)(2) and (3) regarding prioritization of customers for LIURP services based on arrearages and income (because requiring this prioritization would erode the cost-effectiveness of PGW's LIURP without any resulting benefit to CRP customers) (as explained in Exception Number 5).
- Reject or clarify the ALJs' recommendation to deny PGW's limited waiver regarding the public notice requirement of 52 Pa Code Section 58.4(a) (as explained in Exception Number 6).
- Reject or clarify the ALJs' recommendation to deny PGW's requested waiver of 52 Pa Code Section 58.14(c) addressing inter-utility coordination (as explained in Exception Number 7)
- Correct the erroneous findings of the ALJs regarding PGW's LIME program and either modify or revise the *USECP 2014-2016 Order* to permit the proposed LIME cost recovery mechanisms to be implemented

PGW also respectfully requests that upon final resolution of this proceeding, the Commission direct PGW to submit a compliance filing to proposed the appropriate transition process necessary to implement the Commission's decision. Directing these modifications to the

RD (along with approval of the ALJs' recommendations on the issues to which PGW does not except) would enable PGW's ratepayers to benefit from the continuation of PGW's cost-effective energy efficiency and conservation programs.

Respectfully submitted,



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