COMMONWEALTH OF PENNSYLVANIA

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April 18, 2016

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

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 please find the Office of Consumer Advocate's Reply Exceptions in the above-referenced proceeding.

Copies have been served as indicated on the enclosed Certificate of Service.

Respectfully Submitted,

Christy M. Appleby

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Assistant Consumer Advocate
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Enclosures
cc: Honorable Christopher P. Pell, ALJ
Honorable Marta Guhl, ALJ
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PETITION OF PHILADELPHIA GAS WORKS FOR APPROVAL OF DEMAND SIDE MANAGEMENT PLAN FOR FY 2016-2020	:	
AND	:	Docket No. P-2014-2459362
PHILADELPHIA GAS WORKS UNIVERSAL SERVICE AND ENERGY CONSERVATION PLAN FOR 2014-2016, 52 PA. CODE SECTION 62.4 – REQUEST FOR WAIVERS	:	

REPLY EXCEPTIONS OF THE OFFICE OF CONSUMER ADVOCATE

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Dated: April 18, 2016

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I. INTRODUCTION

On March 18, 2016, the Office of Administrative Law Judge issued the Recommended Decision (R.D.) of Administrative Law Judges Christopher Pell and Marta A. Guhl (ALJs) in the above-captioned proceeding. Relevant to these Reply Exceptions, the ALJs held that: (1) PGW's LIURP program must be "adequately funded and available throughout its service territory" according to the needs of its service territory, and that PGW failed to carry its burden of proof as to why its current LIURP budget should be drastically reduced; (2) PGW's Conservation Adjustment Mechanism (CAM) would constitute single-issue ratemaking, is inconsistent with the public policy of Pennsylvania that revenue erosion due to conservation activities is not recoverable through a surcharge mechanism and that PGW failed to carry its burden of proof as to the need for a CAM; (3) PGW's Performance Incentive (PI) proposal is inconsistent with Pennsylvania law and that PGW failed to carry its burden of proof as to the need for a PI; (4) the Efficient Fuel Switching and Micro CHP program should not be approved as part of PGW's DSM plan because it is more accurately a load growth program and not a conservation or energy efficiency plan; (5) PGW failed to carry its burden of proof that a waiver of the Commission's regulations at Section 58.10 should be granted; (6) PGW has failed to carry its burden of proof that a waiver of the Commission's regulations at Section 58.4 should be granted; and (7) PGW has failed to carry its burden of proof that a waiver of the Commission's regulations at Section 58.14 should be granted.

On April 4, 2016, Philadelphia Gas Works (PGW or Company) submitted Exceptions on each of the seven issues set out above. In these Reply Exceptions, the OCA will summarize its arguments in support of the ALJs' RD and will respond to each of PGW's Exceptions on these issues. A full discussion of these issues is presented in the OCA's Main and Reply Briefs. The

OCA submits that the ALJs' recommendations as to these seven specific areas are well reasoned, consistent with the law and sound public policy, and should be upheld.

II. REPLY EXCEPTIONS

OCA Reply to PGW Exception No. 1: The ALJs Were Correct In Finding That PGW's Proposal To Drastically Reduce Its Current LIURP Budget Should Be Denied. (PGW Exceptions at 9-22; R.D. at 83-109; OCA M.B. at 63-72; OCA R.B. at 21-26).

A. Introduction.

In its Exceptions, PGW argued that the ALJs erroneously concluded that PGW has not satisfied the requirements of Section 2203(8) of the Natural Gas Choice and Competition Act and Section 58.4(c) of the Commission's regulations. 66 Pa. C.S. § 2203(8); 52 Pa. Code § 58.4(c); PGW Exc. at 12-17. PGW argued that the ALJs' interpretation of Section 2203(8) meant that the Company must "fully address all the needs of its entire low income population at the quickest possible pace." PGW Exc. at 14. PGW further argued that its proposed LIURP budget is adequate because it is 0.45% of jurisdictional revenues, above the 0.2% of jurisdictional revenues provided for in Section 58.4(a) of the Public Utility Code. PGW Exc. at 15-17, citing 52 Pa. Code § 58.4(a). PGW also challenged the cost-effectiveness of the LIURP program and argued that its proposal meets the Section 58.4(c) guidelines for revising its LIURP program funding. PGW Exc. at 14, 19-22. Finally, PGW argued that the proposed budget level is sufficient because the most recent historic LIURP budget was developed as part of the Commission approved base rate settlement and not on a needs assessment. PGW Exc. at 17-19.

The OCA submits that the ALJs examined each of these issues in detail in the R.D. and correctly found that PGW's position on these issues must be rejected.

B. The ALJs Were Correct In Finding That PGW Failed To Satisfy The Requirements Of Section 2203(8) And 52 Pa. Code Section 58.4(c) As To A Reduction In PGW's Current LIURP Budget.

The ALJs correctly determined that PGW's proposal to reduce its LIURP budget was inconsistent with the requirements of Section 2203(8). The ALJs reasoned that:

> [w]e are also guided by Section 2203(8) of the Natural Gas Choice and Competition Act, which requires that universal service programs, including the usage reduction program, must be "appropriately funded and available in each natural gas distribution service territory. Again, in the UGI case, the Commission indicated that compliance with this mandate be assessed in light of a "needs assessment" to be periodically prepared by the utility and filed with the Commission in the Company's triennial universal service proceeding. The Commission has previously found that such a needs assessment is necessary to ensure that the programs are adequately directed to meet the greatest need in the community for affordable energy. We would note that PGW could not identify a single utility (gas or electric), or a single year, in which the Commission had approved a LIURP budget at the "regulatory minimum" as being a program that is "appropriately funded and available."

R.D. at 106.

As the ALJs stated, Section 2203(8) of the Natural Gas Choice and Competition Act requires that universal service programs, including the usage reduction program, must be "appropriately funded and available in each natural gas distribution service territory." 66 Pa. C.S. § 2203(8). The OCA submits that in order to be "appropriately funded and available" the Company must provide a LIURP budget that is designed to address the needs of the service territory. OCA witness Colton testified:

> The Commission has made clear from LIURP's inception that what PGW refers to as the "regulatory minimum" is not the touchstone of appropriate investment in low-income usage reduction. Under the statutory dictates, LIURP programs are to be "appropriately funded and available." Compliance with this mandate is to be assessed in light of a "needs assessment" to be periodically prepared by the utility and filed with the Commission in the Company's triennial proceeding. The Commission has previously found that such a needs assessment is necessary to ensure that programs are adequately directed to meet the greatest need in the community for affordable energy. Indeed, PGW could not identify a single utility (gas or electric), or a single year, in which the Commission had approved a budget

at the "regulatory minimum" as being a program that is "appropriately funded and available." (OCA-V-17).

OCA St. 2 at 13-14.

As to Section 58.4(a), the ALJs held that:

> The Commission has previously held that the standard of Section 58.4(a) of the Commission's regulations is not a minimum of 0.2% but the needs of the service territory. In the recent UGI Universal Services and Energy Conservation proceeding, the Commission stated that "the 0.2% of 'jurisdictional revenues' is a starting point or floor for LIURP budgets, rather than a ceiling." As one example, UGI Gas had been funding its program at 0.2% of jurisdictional revenues. After review of this practice, the Commission ordered the Company to address issues with the Needs Assessment for LIURP and the resultant budget for LIURP.

R.D. at 105 (footnotes omitted).

Section 58.4(a) specifically provides:

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

52 Pa. Code § 58.4(a).

As the ALJs correctly found, the Commission has previously held that the standard is not a minimum of 0.2% of jurisdictional revenues but rather the needs of the service territory. See 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, at 70 (January 15, 2015) (UGI USECP Order). UGI Gas had, in fact, been funding its program at

approximately 0.27% of jurisdictional revenues. After review of this practice, the Commission ordered the Company to address issues with the Needs Assessment for LIURP and the resultant budget for LIURP. UGI USECP Order at 70.

The central issue here is whether the Company's proposed reduction in LIURP funding would adequately address the needs within its service territory. The ALJs correctly found that it would not. The ALJs concluded that the historic budget has been fully needed and used in each of the years from 2012 through 2014. R.D. at 107. The ALJs found:

> Moreover, PGW's proposal is contrary to the budget proposed in PGW's most recent USECP. In its USECP 2014-2016 Order, the Commission noted "proposed budget levels for 2014-2016 as follows for LIURP: 2014: $7,600,000; 2015: $7,600,000; and 2016: $7,600,000. PGW's expenditures demonstrate that there is a significant need for the program. Additionally, PGW's annual DSM reports indicate that PGW spends at or near 104% of its total budget ($7.898 million spending vs. $7.600 million budget). Moreover, PGW spent 104% of its LIURP budget in 2013 ($7.538 million spending vs. $7.642 million budget) and 100% of its LIURP budget in 2012 ($6.077 million spending vs. $6.077 million budget).

R.D. at 107.

The ALJs were correct in finding that PGW failed to satisfy the requirements of Section 2203(8) and 52 Pa. Code Section 58.4(c) as to a reduction in PGW's current LIURP Budget.

C. PGW's Arguments As To The Cost Effectiveness Of The LIURP Program Are Without Merit.

The LIURP Program provides cost-effective benefits to both CRP and non-CRP customers. As the ALJs found:

> As noted in the *USECP 2014-2016 Order*, PGW's ELIRP [LIURP] is designed to assist its CRP customers in reducing their energy usage and bills through cost-effective weatherization services and energy conservation education. A secondary goal of the program is to help reduce the overall long-term cost of the CRP program paid by all PGW customers. The total reduction in CRP subsidies paid by CRP non-participants resulting from LIURP investments in Phase I of the DSM Plan reached $54,631,743 (2014$). The reduced LIURP budget proposed by PGW in this proceeding is estimated to result in a reduced CRP subsidy of $1.4 million. We believe that because of this reduction in the amount of CRP

> subsidies, PGW ratepayers would pay higher distribution bills if the LIURP budget proposed in the 5-Year DSM Plan is approved.

R.D. at 108 (footnotes omitted).

Consistent with the ALJs' findings, PGW's own Total Resource Cost (TRC) calculation demonstrated that the LIURP programs are, in fact, cost-effective. See, OCA St. 2 at 12. PGW's LIURP at the historic budget levels have been determined to be a cost-effective program with increasing cost-effectiveness over time. OCA witness Colton testified:

> The January 16, 2015 DSM Annual Report (FY2014 results) reported that LIURP had a benefit-cost ratio of 1.26. That was an increase from the benefit-cost ratio of 1.22 documented the prior year. It was an even greater increase over the benefit-cost ratio of 1.04 documented the prior year. In 2014, PGW's LIURP delivered $5,429,804 in net benefits to ratepayers.

OCA St. 2 at 11. In the Company's 5-Year Plan, the Company represented that through June 2014, LIURP represented 74% of the total DSM expenditures and 79% of the total present benefits. OCA St. 2 at 12.

Contrary to PGW's arguments, the OCA submits that both non-CRP customers and CRP customers will realize benefits from the LIURP weatherization measures. The ALJs correctly identified that "a secondary goal of the program is to help reduce the overall long-term cost of the CRP program paid by all PGW customers." R.D. at 108. The Commission reached the same conclusion in its August 22 Order [1] and identified that one of the goals of LIURP is to reduce the long-term cost of CRP as paid by all firm service customers. August 22 Order at 44.[2] The OCA submits that comprehensive weatherization will reduce the usage levels of CRP participants. That reduction in usage translates into a benefit for non-CRP customers who pay the costs of the

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[1] PGW Universal Service and Energy Conservation Plan for 2014-2016 Submitted in Compliance with 52 Pa. Code § 62.4, Docket No. M-2013-2366301, Order (August 22, 2014).

[2] ELIRP is the historic name for PGW's Low Income Usage Reduction Program. PGW has proposed to change the name of this program to the CRP Home Comfort program in this proceeding.

program. In fact, the Company's responses to interrogatories demonstrate that in 2014 non-CRP participants did pay a reduced CAP shortfall as a direct result of the weatherization measures implemented by LIURP.[3] OCA witness Colton testified:

> PGW reports that the total reduction in CRP subsidies paid by CRP non-participants resulting from LIURP investments in Phase I of the DSM Plan reached $54,631,743 (2014$). (TURN-I-1). In contrast, the reduced LIURP budget proposed by PGW in this proceeding is estimated to result in a reduced CRP subsidy of $1.4 million. (Exh. TML-4, at Table 6, OCA-V-2). Because of this reduction in the amount of reduced CRP subsidies, PGW ratepayers would pay higher distribution bills if the LIURP budget proposed in the 5-Year DSM Plan is approved.

OCA St. 2 at 12-13.

CAUSE-PA witness Miller also identified the benefit provided to non-CRP customers who pay the costs of the program. He testified that "TURN discovery responses I-1(a) reveals that PGW projects that the DSM I programs directed at CRP customers will reduce the CRP subsidy by more than $54 million (PV 2014$) over the lifetime of the measures." CAUSE-PA St. 1 at 9.

PGW's attempts to question the cost effectiveness of the LIURP Program are refuted by the evidence of record in this matter, much of that evidence supplied by PGW itself. Accordingly, PGW's arguments on this issue lack merit and should be rejected.

D. The ALJs Correctly Determined That PGW Failed To Meet The Requirements For Revising Its LIURP Budget Funding Pursuant To Section 58.4(c) Of The Commission's Regulations.

PGW argued that its proposal meets the Section 58.4(c) guidelines for revising its LIURP program funding. PGW Exc. at 19-22. In order to reduce its budget, Section 58.4(a) of the Public Utility Code requires that the Company must file a petition with the factors identified in

[3] The CAP shortfall is the difference between the full residential customer rate and the discounted rate paid by CRP participants. This shortfall is paid for by all other non-CRP customers.

Section 58.4(c). Section 58.4(c) of the Public Utility Code provides that a revision to the LIURP funding levels must be computed based upon the following factors:

> (1) The number of eligible customers that could be provided cost-effective usage reduction services. The calculation shall take into consideration the number of customer dwellings that have already received, or are not otherwise in need of, usage reduction services.
>
> (2) Expected customer participation rates for eligible customers. Expected participation rates for eligible customers. Expected participation rates shall be based on historical participation rates when customers have been solicited through approved personal contact methods.
>
> (3) The total expense of providing usage reduction services, including costs of program measures, conservation education expenses and prorated expenses for program administration.
>
> (4) A plan for providing program services within a reasonable period of time, with consideration given to the contractor capacity necessary for provision of services and the impact on utility rates.

52 Pa. Code § 58.4 (c).

The ALJs correctly concluded that PGW had not met the requirements of Section 58.4(c) of the Commission's regulations for a reduction in its funding. R.D. at 107. The ALJs agreed with OCA witness Colton's assessment of the factors presented. Id. OCA witness Colton reviewed each of the proposed factors and found:

- PGW has not shown, and cannot show, that "the number of eligible customers" that could be provided cost-effective usage reduction services has decreased. Indeed, the demonstration has been quite to the contrary. The need for services has been increasing. Moreover, the Company's own documents demonstrate that the cost-effectiveness of its LIURP services is trending upwards.

- PGW has not shown, and cannot show, that the number of customer dwellings that are "otherwise in need of, usage reduction services" is decreasing. Indeed, the demonstration has been that by program rule, PGW excludes more than half of all of its confirmed low-income customers from its LIURP program. Moreover, the demonstration has been that PGW systematically excludes individually-metered master-metered housing units from its LIURP program. The number of

units in need of usage reduction assistance is greater than PGW has faced in the past.

- PGW has not shown, and cannot show, that the "total expense of providing usage reduction services, including costs of program measures. . .and prorated expenses for program administration" benefits from a reduced budget. Indeed, the demonstration has been that program cost-effectiveness, the costs of program measures, and the prorated expenses for program administration all benefit from the existing LIURP budget as contrasted to the substantially reduced budget now proposed by PGW.

- PGW has not shown, and cannot show, that its contractor capacity is insufficient to manage its existing LIURP budget. Not only does PGW spend at or above its existing LIURP budget on an annual basis, but also the City of Philadelphia provided a substantial one-time appropriation that was seamlessly wrapped into the contractor capacity to deliver.

In short, *none* of the factors upon which a change in the PGW LIURP budget must be based have been shown to exist in this proceeding.

OCA St. 2-S at 14.

In addition to the factors identified in Section 58.4(c), the OCA submits PGW's proposal ignored the budget presented in PGW's most recent USECP. In its August 22 Order, the Commission noted "proposed budget levels for 2014-2016" as follows for LIURP: 2014: $7,600,000; 2015: $7,600,000; and 2016: $7,600,000. August 22 Order at 69. As discussed above, the ALJs identified that in each of the years from 2013-2014, PGW had spent from 99-104% of its LIURP budget. R.D. at 107.

PGW has failed to meet the standards required by Section 58.4(c) for a reduction in its current LIURP funding levels. As discussed in the R.D. and in OCA witness Colton's testimony, PGW did not present *any* factors that reflected a reduced need for LIURP.

E. The Fact That PGW's $7.6 Million Budget Was Established As Part Of A Base Rate Case Settlement Is Immaterial.

The OCA submits that even though the $7.6 million budget was agreed to as part of the Company's last base rate proceeding, that does not mean that the budget is not in fact needed to meet the needs of the service territory. As part of PGW's most recent USECP Plan, PGW presented a needs assessment, as OCA witness Colton testified:

> Ms. Adamucci does not acknowledge that PGW presented a "needs assessment" in its most recent Universal Service and Energy Conservation Plan (June 1, 2013). In that Plan, PGW told the Commission that "assuming that all CRP customers are eligible for ELIRP leads to a substantial ELIRP needs assessment." (PGW USECP Plan: 2014-2016 at 8, 14). Based on this filing, the Commission specifically asked PGW to provide enrollment and budget estimates for the 2015 and 2016 program years. (Tentative Order, Docket No. M-2013-2366301). In its response to that PUC directive, PGW stated: "Below is estimated enrollment and budget for [LIURP] for program fiscal years 2015 and 2016. This budget has been based on an expectation of a continuation of [LIURP] as currently approved at the DSM docket and as described in the most recent fiscal year 2014 Implementation Plan filed on May 7, 2013." ("Response of Philadelphia Gas Works Tentative Order Entered April 3, 2014 Regarding the Enhanced Low-Income Retrofit Program, at 11).

OCA St. 2-S at 12-13.

In its Exceptions, PGW chooses to ignore the fact that the information provided to the Commission in its USECP filing did include the necessary needs assessment information.[4] PGW Exc. at 17-19; OCA M.B. at 67-68; OCA St. 2 at 7. OCA witness Colton testified:

> In its most recent USEC Plan, PGW told the Commission that "as of March 2013, there were 71,151 customers enrolled in CRP…Assuming that all CRP customers are potentially eligible for [LIURP], the estimated number who still need treatment as of March 31, 2013 is 71,625, which is the difference between the number of customers currently enrolled in CRP and the number who received treatment in the prior two years. At an average cost of $2,229 per treatment, the estimated cost to serve these 71,625 customers is $159,652,125." (USEC Plan, at 8, 14). At the time of that USEC Plan, PGW stated that "it projects to treat approximately 2,000 homes per year between 2014 and August 2015." (USEC Plan, at 14).

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[4] PGW also erroneously argued that the $7.6 million was only authorized for the DSM Bridge Plan. PGW Exc. at 20.

OCA St. 2 at 7, citing August 22 Order at 69.[5] The Commission also directed the Company to develop a stakeholder group to increase its CRP outreach. August 22 Order at 47. As OCA witness Colton described:

> These efforts to expand CRP affect the Company's LIURP initiative since LIURP participants are selected from the CRP participant population. A larger population would imply, also, a larger LIURP-eligible population.

OCA St. 2 at 8. The OCA submits that the proposed 75% reduction to the LIURP budget is inconsistent with the needs assessment presented in the Company's most recent USECP. The fact that the current budget was established as part of a base rate case settlement is irrelevant.

F. Conclusion.

The ALJs accurately concluded that PGW's proposed funding level does not meet the requirements of Section 2203(8) of the Natural Gas Choice and Competition Act. Moreover, the ALJs agreed with the OCA, CAUSE-PA, and TURN et al. that Section 58.4(a) required that the historic $7.6 million funding be maintained. The ALJs also correctly determined that the LIURP, funded at the historic $7.6 million level, provides a significant benefit to both CRP participants and the non-CRP ratepayers who pay the costs of the programs. The ALJs also correctly determined that PGW has not demonstrated a decrease in the need for LIURP pursuant to the requirements of Section 58.4(c) of the Commission's regulations. As such, the OCA submits that the ALJs Recommended Decision should be approved.

OCA Reply to PGW Exception No. 2: The ALJs Were Correct In Finding That PGW's CAM Would Constitute Impermissible Single-Issue Ratemaking, Is Inconsistent With The Public Policy Of Pennsylvania That Revenue Erosion Due To Conservation Activities Is Not Recoverable Through A Surcharge Mechanism And That PGW Failed To Carry Its Burden Of

[5] The OCA notes that typically, a Company's LIURP budget is included as an element of its USECP Plan. In its most recent USECP Plan, PGW gave no indication that it intended to decrease the budget by 75% in the future. PGW also provided a budget estimate of $7.6 million per year, sufficient to treat 2,108 homes. See, August 22 Order at 47.

Proof As To The Need For A CAM. (PGW Exceptions at 22-28; R.D. at 30-62; OCA M.B. at 33-54; OCA R.B. at 13-19).

A. Introduction.

PGW proposed to implement a Conservation Adjustment Mechanism (CAM) to recover PGW's lost revenues for its Phase II Plan, including its LIURP program. PGW argued in its Exceptions that lost revenue cost recovery is permissible as a cost of the DSM program under Sections 1307 and 1319 of the Public Utility Code. 66 Pa. C.S. §§ 1307, 1319; PGW Exc. at 22-23. In its Exceptions, PGW argued that the ALJs erred in concluding that PGW's proposed CAM is legally barred. PGW Exc. at 22-28. PGW also argued in its Exceptions that since Act 129 is not directly applicable, that the Act 129 definition of costs does not need to be applied. PGW Exc. at 26.

In the Recommended Decision, the ALJs denied PGW's request for a Conservation Adjustment Mechanism (CAM). R.D. at 58-62. The ALJs correctly held that PGW's CAM proposal constitutes impermissible single-issue ratemaking, is barred by both the Public Utility Code and Commission precedent and is inconsistent with the clear guidance provided by Act 129. R.D. at 58-62. The OCA submits that the ALJs examined each of these issues in detail in the R.D. and correctly found that PGW's position on these issues must be rejected.

B. PGW's Arguments As To The Applicability Of Sections 1307 and 1319 As To Its Decreased Revenues That It Seeks To Collect Through The CAM Are Misplaced.

PGW argues that the ALJs misapplied the concept of single issue ratemaking and that the prohibition against single issue ratemaking does not apply to a surcharge mechanism. PGW Exc. at 23. PGW is incorrect on several levels. The ALJs correctly concluded:

> [e]ssentially, PGW is attempting to ensure that it will generate the revenues established in its 2009 base rate case by implementing an adjustment mechanism to produce its CAM. There are multiple factors that determine the revenue requirement which must be examined in a general base rate filing. However, in

> this proceeding, PGW is isolating one factor that has had an impact on its revenue stream, the reduced number of Ccfs of gas used by ratepayers as a result of PGW's DSM program. Without consideration for any other factors which have an impact on revenues, approval of PGW's proposed CAM on this single factor would constitute impermissible single-issue ratemaking.

R.D. at 58. The ALJs concluded that "the appropriate place to address lost revenues, for both LIURP and Non-LIURP programs, is through a general base rate proceeding" and denied PGW's proposed CAM. R.D. at 62. The ALJs stated that "[w]e also agree that the recovery of lost margins through a reconcilable automatic adjustment clause is barred by both the Public Utility Code and Commission precedent." R.D. at 59.

In its Exceptions, PGW argued that the courts have stated that the doctrine of single issue ratemaking does not apply when a utility is seeking the recovery of costs through an automatic adjustment clause. PGW Exc. at 23. The Company cited to the Popowsky v. Pa. PUC case in support of its position. PGW Exc. at 23; Popowsky v. Pa PUC, 13 A.2d 583, 593 (Pa. Cmwlth. 2011) (Newtown). PGW argued that in Newtown, the Commonwealth Court rejected a "virtually identical" claim by OCA in response to a water company's proposal to establish a "purchased water adjustment clause" pursuant to Section 1307(a) of the Public Utility Code. PGW argued that the Court made clear that "single issue ratemaking" only applies "when recovery for a single cost is attempted in a base rate request and not via a surcharge mechanism." PGW Exc. at 24 (emphasis in original removed).

PGW has misapplied the Newtown case. The flaw in PGW's analysis is that the purchased water *cost* in the Newtown case was just that, a *cost*. In this case, lost margins are not program *costs*. As the ALJs correctly concluded, lost revenues are not DSM program *costs*. R.D. at 60. Accordingly, neither Section 1319 nor Section 1307 are applicable to the lost revenues that PGW seeks to recoup here as lost revenues are not *costs*. The ALJs also cited

recent Commission precedent in the UGI Order[6] as a further basis for their determination, as follows:

> UGI avers that Section 1319(a) provides all of the legal authority necessary for the Commission to approve recovery of lost revenues as part of a voluntary EE&C Plan. However, we concur with IECPA that lost distribution revenues are not "costs" associated with development, management, financing or operation of UGI's program and are not recoverable under Section 1319(a). In addition, the General Assembly made a distinction between the recovery of "costs" and "decreased revenues". 66 Pa. C.S. 2806.1(k)(2). The General Assembly's distinction between "costs" and "decreased revenues" in Act 129 confirms that the term "costs" in Section 1319(a) does not include lost revenue.

R.D. at 60-61. As the ALJs provided, the General Assembly has already clearly spoken to the issue of whether "decreased revenues" are included within the category of recoverable "costs." They are not. As such, PGW's arguments are misplaced.

Further, in its Main Brief I&E addressed the underlying Order that the Commission relied upon in the UGI Order, the Commission's Investigation into Demand Side Management by Electric Utilities Order as follows:

> The fact of the matter is that whether the utility in question is gas or electric, DSM costs are much more easily calculated than lost revenues. Therefore, it seems clear that the Commission has already determined that a base rate proceeding is the proper forum to recover lost revenues. PGW claims it would be "unfair and illogical" to not recognize the negative effects of the program on the Company. The argument presented by PGW is nothing more than a diversion allowing the Company to attempt to circumvent the base rate process despite the fact that the Commission has already stated that the proper forum in which to recover lost revenues for companies that are required to implement a DSM is a base rate proceeding. The voluntary nature of PGW's DSM program does not distinguish it in such a way that it should be exempt from the Commission's stated resolution of this issue.

I&E M.B. at 8-9 (footnotes omitted), citing Investigation into Demand Side Mgt. by Electric Utilities Unif. Cost Recovery Mechanism, Docket No. I-9000005, Order (December 31, 1993) (Investigation into Demand Side Management by Electric Utilities Order).[7]

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[6] Petition of UGI Utilities, Inc. - Electric Division for Approval of its Energy Efficiency and Conservation Plan, Docket No. M-2010-2210316, (Opinion and Order entered Oct. 19, 2011).

The OCA submits that as the ALJs concluded, the CAM costs should not be recovered through the ECRS because lost margins from sales reductions due to energy efficiency are not DSM program costs for purposes of Section 1319. See, R.D. at 60. The CAM is a mechanism to recover the fixed infrastructure costs associated with gas utility service. As OCA witness Crandall testified, "just because the recovery of infrastructure costs is affected by DSM does not make it a DSM cost." OCA St. 1-S at 16. Recovery would be impermissible single issue ratemaking. As such, the appropriate place to address lost revenues is through a general base rate proceeding. See, R.D. at 62.

In addition, National Fuel Gas Distribution Corporation (NFG) and Equitable Gas Company (Equitable) have both previously presented methodologies to the Commission to recover in rates the impact of decreases in usage levels and have not been successful. See, Pa. PUC v. National Fuel Gas Distribution Company, Docket No. R-00061403, Recommended Decision at 2-3, 43 (Oct. 31, 2006). In a strikingly similar situation to PGW's proposed CAM, the Commission has previously determined that adjusting customer billing to account for lost natural gas distribution revenues outside of a base rate proceeding constitutes single issue ratemaking. Equitable Gas Company, LLC Request for Approval of Supplement No. 79 to Tariff Gas Pa. P.U.C. No. 22, Supplement No. 80 to Tariff Gas Pa. P.U.C. No. 22 and

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[7] In 1991, the Commission instituted an Investigation into Demand Side Management by Electric Companies; Uniform Cost Recovery Mechanism at Docket No. I-90005. In that proceeding, the Commission issued an Order requiring the implementation of demand side management programs by major electric utilities to reduce energy usage and provide a method for those utilities to recover from ratepayers the costs of implementing the programs. The Order was appealed to the Commonwealth Court by the Pennsylvania Industrial Energy Coalition. The Commonwealth Court affirmed the majority of the Order of the Commission; however, it overturned the part allowing recovery of incentives and costs of physical facilities through the surcharge mechanism and adopting the calculation for incentives. The Commonwealth Court's decision was further appealed by the Commission to the Supreme Court of Pennsylvania which affirmed the Commonwealth Court's decision. See Pa. Indus. Energy Coalition v. Pa. PUC, 543 Pa. 307 (Pa. 1996) (aff'd Pa. Indus. Energy Coalition v. Pa. PUC, 653 A.2d 1336 (Pa. Commw. Ct. 1995).

Supplement No. 81 to Tariff Gas Pa. P.U.C. No. 22, Docket No. R-2012-2304727, Order (December 20, 2012) (Equitable Order).

As the ALJs provided:

> Similar to the Commission's Order in Equitable, PGW's proposal to recover lost revenues through the CAM constitutes impermissible single issue ratemaking. Accordingly, we agree that PGW's lost revenue resulting from its DSM program is an issue that is more properly addressed in a base rate proceeding.

R.D. at 59.

The OCA submits that the Equitable Order, UGI Order, and the Investigation Order all support the ALJs' determination that the appropriate place to determine lost revenues is within a base rate proceeding. Lost revenues are not program costs which are otherwise recoverable as a DSM program cost through a surcharge mechanism. Moreover, even if the CAM were legally permissible, which it is not, PGW has failed to carry its burden of proof that a CAM is needed. As OSBA witness Mr. Knecht explained, PGW is financially sound. Mr. Knecht testified:

> As shown [in Table IEc-1], PGW has generally been able to materially reduce its long term debt and increase its equity over this period [the Phase I Plan]. In addition, PGW's revenues over expenses totaled some $188 million over this period, and in 2012 began making annual $18 million payments to its shareholder. Thus, in total PGW has earned $242 million over the past five years. In effect, PGW has achieved a return of 100 percent of its equity base over this period. Moreover, despite the purported negative effects of its DSM program, PGW's net returns in 2013 and 2014 ($61 and $67 million respectively) were higher than that in any of the previous three years.
>
> In light of the recent strong performance and growth in book equity, a full cash flow requirement in base rates proceeding may suggest that a rate decrease is in order.[8]

PGW's arguments that it will be financially harmed without a CAM are inconsistent with the facts.[9] The facts demonstrate that PGW has not been financially harmed by Phase I of the

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[8] OSBA St. 1 at 11-12.

DSM Plan and further show that PGW has not filed for a rate increase in five years, this after a decade of filing five successive cases.[10]

PGW's Phase I Plan resulted from PGW's 2008 emergency base rate proceeding. The stated purpose of the Phase I Plan was to drive down the Company's internal operating costs and to help ratepayers to reduce their bills due to the impact of the emergency base rate increase.[11] The Phase I Plan has achieved that objective. The Phase I Plan produced significant savings and benefits for customers and the Company. Similarly, PGW's Phase II Plan programs will provide significant savings and benefits for PGW and its customers. With the exception of the Home Rebates program (with a TRC of 0.95), all of the Phase II Plan programs have a TRC in excess of 1.0. PGW projects that the Phase II Plan TRC net benefits will be $10.8 million (present worth) for the "Base Plan" scenario. See, OCA M.B. at 29; OCA R.B. at 14.

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[9] Consider that, the stay-out in PGW's last base rate settlement was only for two years. 2009 Base Rate Order at 48-52. Accordingly, PGW could have filed a base rate case at any time during the last three years. Pa. PUC v. PGW, Docket Nos. R-2009-2139884, P-20009-2097639, Settlement at ¶ 24(g) (2009 Base Rate Settlement). Under the 2009 base rate settlement, PGW could file a petition to request lost revenues after the two year stay out period. For years three, four and five of the Phase I Plan, PGW could have filed for a distribution base rate increase or to recover lost revenues, but PGW apparently had no financial need to take either of these actions.

[10] Pa. PUC v. PGW, Docket No. R-00005654, Order (November 22, 2000)(extraordinary rate relief/interim rate increase); Pa. PUC v. PGW, Docket No. R-00006042, Order (October 4, 2001); Pa. PUC v. PGW, Docket No. R-00061931, Order (September 28, 2007); Pa. PUC v. PGW, Docket No. R-2008-2073938, Order (December 19, 2008) (Emergency Base Rate Order); 2009 Base Rate Order.

[11] In its Phase I Plan Petition, PGW stated that the "DSM Plan is one of four (4) specific PGW commitments the Company made in the Extraordinary Rate Proceeding to help reduce the Company's future need for rate relief and to mitigate the effect of the extraordinary rate increase on its customers." Philadelphia Gas Works' Petition for Approval of Energy Conservation and Demand-Side Management Plan, Docket Nos. R-2008-2073938, P-2009-2097639 at 1 (Phase I Petition). Two of the stated Phase I Plan goals were to "(i) reduce customer bills...[and] (iv) potentially improve PGW's finances by decreasing cash flow requirements." Phase I Petition at ¶ 5.

From the gas utility administrator perspective (the UCT test),[12] each of the Phase II Plan programs passed with benefit-cost ratios of 1.50 and above, including the whole DSM portfolio. OCA witness Crandall testified:

> [f]rom the gas utility perspective, each of PGW's proposed DSM programs handily passed the benefit-cost ratios of 1.50 and above, as did the overall portfolio. The proposed overall portfolio, from the gas utility perspective, would result in a present value of $32.3 million at a present value cost of $19.1 million. PGW would receive a net benefit of $13.2 million without consideration of either CAM or performance incentive.

OCA St. 1 at 8, Exh. GCC-2; see, PGW St. 3 at Exh. TML-30, Table 22.

C. Conclusion.

The General Assembly has made it clear that "decreased revenues" are not "costs." The Commission has recently concluded in its UGI Order that "decreased distribution revenues" as part of an energy efficiency or DSM plan are not recoverable "costs." PGW is seeking to recover decreased revenues through its proposed CAM. As such, PGW's CAM proposal constitutes impermissible single-issue ratemaking, is barred by both the Public Utility Code and Commission precedent and is inconsistent with the clear guidance provided by Act 129. The ALJs findings as to the CAM are consistent with the law and public policy and should be upheld.

OCA Reply to PGW Exception No. 3: The ALJs Were Correct In Finding That PGW's Performance Incentive (PI) Proposal Is Inconsistent With Pennsylvania Law And That PGW Failed To Carry Its Burden Of Proof As To The Need For A PI. (PGW Exceptions at 28-30; R.D. at 62-79; OCA M.B. at 54-61; OCA R.B. at 19-21).

A. Introduction.

[12] If the UCT test shows a benefit above 1.0, the utility benefits from the DSM programs, "i.e., that the utility cost avoidance due to the program is greater than the utility cost associated with the program." OCA St. 1 at 8; see also, OCA St. 1-S at 11-12.

In its Exceptions, PGW argued that the ALJs erred by recommending that the Commission deny PGW's proposed Performance Incentives (PI). PGW Exc. at 28-30. PGW argued that the ALJs erred in concluding that Section 523(a) of the Public Utility Code bars the Commission from granting the PI. PGW Exc. at 28-29, citing 66 Pa. C.S. § 523. PGW argued that because PGW is not an investor-owned utility and does not have a return on equity, Section 523 does not bar the Commission from adopting PGW's proposed Performance Incentives. PGW Exc. at 29. PGW further argued that the request for its PI is consistent with Sections 1307 and 1319 of the Public Utility Code. PGW Exc. at 28-29. Finally, PGW argues that its PI is no different than allowing NGDCs to keep a portion of their off-system sales or capacity release revenues as an "incentive." Id.

The ALJs correctly denied PGW's request for a PI. R.D. at 78-79. As the ALJs provided "we agree that performance incentives are properly addressed within the context of a base rates proceeding." R.D. at 78. The OCA submits that the law is clear in this area and the ALJs' analyses and recommendation on this issue are correct and should be upheld.

B. The Law As To Performance Incentives Is Clear And PGW's Attempts To Carve Out An Exception Are Without Merit.

In its Main Brief, I&E provided the relevant rule of law on this issue, as follows:

> It has been established that Section 523 of the Public Utility Code does not permit recovery of incentives of this nature outside of a base rate proceeding. While Section 523 of the Code does permit the establishment of both incentive and penalty adjustments for conservation programs it has been established that:
>
> Section 523 only applies to the adjustments being made when rates are determined and based on a utility's claimed cost of service. The section permits incentive adjustments for effective conservation programs and penalty adjustments for the failure to encourage conservation only within a base rate case.[13]

[13] I&E M.B. at 12-13 (emphasis added), citing 66 Pa. C.S. § 523; PIEC at 1353.

It is critical to recognize that Section 523 addresses "conservation programs." In PIEC, the Commonwealth Court was directly addressing the main issue here when it held that "Section 523 of the Code does not permit the recovery of incentives [for conversation programs] outside of a base rate case."[14] The Commonwealth Court explained:

> Section 523 only applies to the adjustments being made when rates are determined and based on a utilities claimed costs of service. The section permits incentive adjustments for effective conservation programs and penalty adjustments for the failure to encourage conservation only within a base rate case. Whether or not incentives are "necessary" to encourage DSM programs is irrelevant, where the agency lacks authority to award those incentives. Because this section permits adjustments within a base rate case, a mechanism permitting incentives through a surcharge is beyond the authority of the PUC.

PIEC at 1351 (footnotes omitted). The proposed PI would operate to provide PGW with an incentive, outside of a rate case, for operating a conservation program – exactly what the Commonwealth Court has held is impermissible.[15]

In general, Performance Incentives have been utilized to reward exemplary performance in the implementation of cost-effective efficiency programs for investor-owned utilities (IOUs) based on the argument that it is not otherwise in the IOUs' interest to implement measures to reduce the wasteful use of energy. OCA St. 1 at 17; see also, OCA M.B. at 56-57. Performance Incentives are not needed for PGW because PGW, as a municipal, publicly owned utility, does not have the same profit motive that investor-owned utilities have. PGW should not need a financial incentive to do what is in the best interests of its ratepayers, as OCA witness Crandall testified:

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[14] Pennsylvania Industrial Energy Coalition v. Pa. PUC, 653 A.2d 1336, 1353 (Pa. Commw. Ct. 1995), *aff'd*, 542 Pa. 307, 670 A.2d 1152 (Pa. 1996) (PIEC); 66 Pa. C.S. §§ 1307, 1319.

[15] In its Exceptions PGW also argues that Sections 1307 and 1319 provide further justification for its PI mechanism. PGW Exc. at 28-29. The OCA addressed that issue in detail in the CAM section as to why PGW cannot recover "decreased distribution revenues" under the guise of "costs", and will not repeat those arguments here.

> Doing what is in the best interests of its customers should be all the incentive necessary for a publicly owned municipal utility to implement energy efficiency and to take the steps necessary to reasonably cover the fixed costs when sales are declining, since there are no competing shareholder profit interests to balance.

OCA St. 1 at 20. It is important to note that PGW has completed its Phase I programs without Performance Incentives, without a CAM and without a base rate proceeding.

In addition, PGW's argument that its PI is similar to off-system sales or capacity release revenue sharing mechanisms must be rejected. It is a well-accepted tenet of statutory construction that the specific controls the general. The statute at issue here, Section 523, is directly on point and thus controls the PI issue, unlike various revenue sharing mechanisms that the Commission may, from time to time, entertain.[16]

C. Conclusion.

Section 523 and the PIEC case both bar determination of performance incentives for operating a conservation program outside of a base rate proceeding and support the ALJs' determination in this proceeding. PGW's proposal is contrary to the requirements of the law, and it is also contrary to the interests of its ratepayers. The OCA submits that the Performance Incentives would result in more costs being paid for the DSM programs without any resulting benefit. The Performance Incentives would only benefit PGW. The ALJs' analysis of this issue is well reasoned, consistent with the law and should be upheld.

OCA Reply to PGW Exception No. 4: The ALJs Were Correct In Finding That PGW's Efficient Fuel Switching and Micro CHP Program Is A Load Growth Program And Accordingly Is Not Appropriate For Inclusion In PGW's DSM II Plan. (PGW Exceptions at 31-38; R.D. at 116-127; OCA M.B. at 17-21; OCA R.B. at 6-8).

A. Introduction.

[16] Also on a similar note to the CAM section, PGW has failed to carry its burden of proof that a PI is needed as PGW's current financial condition, after five years of DSM Phase I, is sound. See OSBA St. 1 at 11-12.

PGW proposed as part of its Phase II Demand Side Management Plan to implement a new Efficient Fuel Switching and Micro CHP Program (Fuel Switching). PGW St. 3 at Exh. TML-4 at 2. For the Fuel Switching program, PGW proposed to switch electric, oil, or propane heating customers to natural gas heating. Under the Micro-CHP program, PGW proposed to offer "prescriptive incentives for customers to invest in micro-combined heat and power (CHP) applications that provide onsite generation of electricity and heat for hot water or space heating." PGW St. 3 at Exh. TML-4 at 2. PGW proposed to report and track the programs separate from the DSM programs but to recover the costs of the program through the ECRS.

The ALJs denied PGW's proposal to implement an "Efficient Fuel Switching Program" as an energy efficiency measure, but rather agreed with OCA that this Program is really a load growth program and as such is not appropriate for inclusion within an energy conservation program. R.D. at 126-127. The ALJs directed that the $2.29 million budget for the "Efficient Fuel Switching Program" be re-directed to PGW's CRP Home Comfort Program. R.D. at 127.

In its Exceptions, PGW argued that the Fuel Switching and MicroCHP program is not solely a load growth program, and there are no legislative, statutory, or policy directives that prohibit the implementation of a Fuel Switching program. PGW Exc. at 31, 34-37. Finally, PGW argued that its Efficient Fuel Switching program supports the Commission's recently announced policy initiatives to encourage utilities, including NGDCs, to make CHP systems an integral part of their energy efficiency plans. PGW Exc. at 37-38.

To be clear, the OCA is not opposed to an Efficient Fuel Switching program. As OCA witness Crandall testified, however, this proposed program is out of place in this filing because it is not a DSM program that should be subject to the special cost recovery afforded for a DSM program. See, OCA St. 1 at 27. PGW has proposed to recover the costs of the program through

the ECRS, but PGW does not propose to include the results of the program with its energy savings. OCA St. 1 at 29. If it cannot offer savings towards the energy efficiency standards, then it should not be included within PGW's DSM program and cost recovery.

PGW readily admits that the Fuel Switching Program is indeed a load growth program and provides no other purpose for this program. PGW Exc. at 33. This is the basis for the ALJs' decision on this issue – that a load growth program is not proper for inclusion within an energy conservation program, and especially when PGW seeks to recover the costs of the program through PGW's ECRS. R.D. at 126. PGW is free to pursue this initiative through other channels, but the ALJs were correct here that a load growth program has no place in this proceeding.

B. PGW's Load Growth Program Is Inappropriate For Inclusion In This Case.

The ALJs found that the Fuel Switching and Micro CHP programs do not reduce existing natural gas usage and should not be treated the same as DSM. See, R.D. at 126-127; OCA M.B. at 17-21; OCA R.B. at 6-8. The ALJs determined that:

> [w]e agree with OCA that the stated purpose of energy efficiency, even as it relates to PGW, should be to reduce the utility's own energy demand and consumption. Since PGW's proposal will only have the effect on PGW of increasing gas demand and consumption, it will not meet the objective of reducing gas demand and consumption within PGW's service territory. Moreover, we agree that funding for such a program should not come from a cost recovery mechanism for programs designed to reduce natural gas consumption.

R.D. at 126. The ALJs also adopted the OCA's recommendation that the $2.29 million Fuel Switching budget be re-directed to the Company's LIURP program. R.D. at 126-127.[17]

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[17] The OCA submits that PGW's proposal is particularly incongruous with the Company's proposed CAM where the Company proposes to recover lost revenues but also proposes to implement a load growth program. OCA witness Crandall testified:

> [u]nderestimation of sales volumes from other causes (e.g., load building programs and abnormally cold weather) would result in over collection of fixed costs, especially with CAM

As the evidence of record shows, PGW has designed its proposed Fuel Switching Program as a load growth program and thus would not serve to assist PGW's customers in reducing their natural gas usage. On the electric side, fuel switching has been considered an acceptable part of a conservation program because the fuel switching, in that case, moves electric usage off of the electric grid as that usage is replaced with natural gas. Here, PGW has proposed instead to grow its own load by switching electric, propane, and oil customers to natural gas. OCA witness Crandall explained that:

> In the plan filing, PGW indicated that it expects this program to result in an increase in natural gas consumption. This activity would be different in nature than other proposed DSM programs included in the Plan which is why, in part, that PGW is proposing to track and report results separate and apart from the DSM programs (should the pilot be authorized by the Commission.)

OCA St. 1-S at 6. As further support that this is not a demand side management program, PGW proposed to separately calculate the results of the program from its energy savings. OCA witness Crandall testified:

> PGW expects that that Efficient Fuel Switching Load Management program (if successful) would increase new gas sales. It does not want to mix those results in with the energy saved by the Phase II DSM Plan activities. PGW is seeking authorization to have its ratepayers fund load promotion activities in this Demand Side Management Plan filings to collect funding through the Energy Conservation surcharge (ECRS) mechanism to ensure cost recovery. The Efficient Fuel Switching Load Management plan should be funded (if at all) through a mechanism designed to recover costs of programs, which increase gas

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> because CAM is based on the premise that the DSM programs reduce energy consumption so that sales volumes are less than needed to fully recover costs...
>
> [the CAM] is in fact a rate adjustment done ostensibly to recover lost margins on fixed costs due to sales reductions due to energy efficiency programs. It is based solely on sales reductions due to energy efficiency (the single issue) and will recover those "lost" margins irrespective of the overall sales volumes and whether those result in over collection of fixed costs. It is based on a single issue (reduced sales due to energy efficiency programs) irrespective of all other factors considered in setting a revenue requirement. The CAM does not look back to the overall financial health of the utility, or other factors other than asserted sales reductions from energy efficiency programs, to set the rates.

OCA St. 1-S at 15-16.

> consumption, not a mechanism for programs designed to reduce natural gas consumption.

OCA St. 1 at 29.

The OCA submits that the ALJs correctly concluded that PGW's proposed Fuel Switching program is a load growth program. It is uncontroverted in the record that PGW's proposal would serve to increase natural gas usage in PGW service territory. The Fuel Switching program is solely designed as a load growth program and does not meet the requirements for a DSM program.

C. Act 129 Provides Significant Guidance And Direction As To The Purpose Of An Energy Efficiency Or Conservation Program.

PGW argues that 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. PGW Exc. at 34. The ALJs correctly dismissed PGW's expansive reading of Act 129, and held that:

> The General Assembly established that the purpose of an electric utility's energy efficiency program is "to reduce energy demand and consumption within the service territory of each electric distribution company in this Commonwealth." 66 Pa.C.S.A. § 2806.1(a). Although PGW is an NGDG rather than an EDC, we agree with OCA that the stated purpose of energy efficiency, even as it relates to PGW, should be to reduce the utility's own energy demand and consumption.

R.D. at 126. In its Exceptions, PGW argues that while Act 129 requires an "energy efficiency and conservation plan to reduce "energy demand and consumption within the service territory," Act 129 is designed to promote the efficient use of energy and does not simply mandate reductions. PGW Exc. at 34, citing 66 Pa. C.S. § 2806.1(a). The OCA submits that PGW's arguments mischaracterize Act 129. PGW's interpretation of the statute as encompassing all fuel sources within the service territory is inconsistent with the language of the statute itself.

For example, within Act 129 the references to the reductions to energy demand and consumption specifically relate to *electric* demand and consumption because they reference the Company's own load. Section 2806.1(c) and (d) provide specific electric consumption and electric demand reductions. 66 Pa. C.S. §§ 2806.1(c),(d). Such reductions in consumption are measured "against the electric distribution company's expected load as forecasted by the commission for June 1, 2009, through May 31, 2020, with provisions made for weather and extraordinary loads that the electric distribution company must serve." 66 Pa. C.S. § 2806.1(c). The language specifically identifies the load that the electric distribution company serves (*i.e.* electric load), and not all load within the electric distribution company's service territory, including another natural gas distribution utility's load. Similarly, the demand reductions reference "the weather-normalized demand of the retail customers of each electric distribution company" and a reduction to the electric distribution company's "annual system peak demand." See, 66 Pa. C.S. 2806.1(d)(1).

PGW argued that the statute allows for such measures because it includes in the definition of energy efficiency and conservation measures "heating and cooling equipment or systems and energy efficient applications." PGW Exc. at 34, citing 66 Pa. C.S. § 2806.1(m). The OCA submits that the language must be read within the full context of the definition and within the requirements of Act 129. The full definition provides that energy efficiency and conservation measures include:

> (1) Technologies, management practices or other measures employed by retail customers that reduce *electricity* consumption or demand if all of the following apply:
>
> (i) The technology, practice or other measure is installed on or after the effective date of this section at the location of a retail customer.
> (ii) The technology, practice or other measure reduces consumption of energy or peak load by the retail customer.

> (iii) The cost of the acquisition or installation of the measure is directly incurred in whole or in part by the electric distribution company.
>
> (2) Energy efficiency and conservation measures shall include solar or solar photovoltaic panels, energy efficient windows and doors, energy efficient lighting, including exit sign retrofit, high bay fluorescent retrofit and pedestrian and traffic signal conversion, geothermal heating, insulation, air sealing, reflective roof coatings, energy efficient heating and cooling equipment or systems and energy efficient appliances and other technologies, practices or measures approved by the commission.

66 Pa. C.S. § 2806.1(m) (emphasis added.) Section 2806.1(a) of the Public Utility Code requires that energy efficiency and conservation plans be designed "to reduce energy demand and consumption within the service territory." 66 Pa. C.S. § 2806.1(a). The Commission's regulations also define "program measures" in the electric utility context for LIURP as "measures designed to reduce energy consumption." 52 Pa. Code § 58.2. PGW's proposed broader interpretation of the statute does not fit within the plain language requirements of the statute.

By definition a load management program is designed to reduce the load for the utility, which cannot be accomplished if the Company is switching customers to its own fuel source. PGW also cited to PECO's fuel switching program and UGI's voluntary electric energy efficiency program as further support for its Fuel Switching program. PGW Exc. at 35-36. As to the PECO and UGI plans, the ALJs correctly concluded that:

> Unlike UGI Electric or PECO Electric, who shifted load off of themselves to natural gas as part of their energy efficiency plans, the end result of PGW's proposal will be to shift load away from PECO electric (the EDC in PGW's service territory) to itself. Clearly, this is a load growth program.

R.D. at 126.

As the ALJs found, the purpose of the UGI Electric and PECO Electric programs are the opposite of PGW's program. Instead of shifting load to itself, UGI Electric shifted load to

natural gas and propane companies. UGI Electric's Home Energy Efficiency Incentives Program offered "rebate incentives for residential (including low-income) customers to replace their electric water heaters, space heating system and clothes dryers with gas and propane appliances."[18]

The ALJs correctly found that PGW's proposed Fuel Switching program is a load growth program, and as such, not only should it not be included in PGW's DSM II Plan but there also should be no cost recovery for such a program through the special recovery mechanism of the ECRS. R.D. at 126.

As to the cost recovery issue, PGW argued that the ALJs erred by their failure to provide statutory support for the conclusion that funding for PGW's Fuel Switching program "should not come from a cost recovery mechanism for programs designed to reduce natural gas consumption." PGW Exc. at 36, citing R.D. at 126. PGW argued that Section 1319(a)(1) specifically ties together conservation and load management programs for cost recovery, and that PGW's proposed program is a "load management program." PGW Exc. 36-37, citing 66 Pa. C.S. § 1319(a)(1). Section 1319(a)(1) states:

> **(a) Recovery of certain additional expenses.** – If:
>
> (1) a natural gas or electric public utility elects to establish a conservation or load management program and that program is approved by the commission after a determination by the commission that the program is prudent and cost-effective, or;

66 Pa. C.S. § 1319(a)(1). Section 1319(a)(2), however, specifically provides that "Nothing in this section shall permit the recovery of the cost of producing, generating, transmitting, *distributing* or *furnishing* electricity or natural gas." 66 Pa. C.S. § 1319(a)(2) (emphasis added.) Cost recovery for PGW's Fuel Switching program is prohibited under Section 1319(a)(2)

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[18] UGI Order at 24 (emphasis added).

because PGW's proposal is designed to recover the costs to distribute and to furnish natural gas. 66 Pa. C.S. § 1319(a)(2).

The OCA submits that the ALJs correctly determined that PGW's Fuel Switching program is solely designed as a load growth program and does not meet the requirements for a DSM program. The costs of such a program could not be collected through the ECRS.

D. PGW's Reliance On A Proposed Policy Statement As Support For Its Current Fuel Switching Program Is Misplaced.

PGW argued that its Efficient Fuel Switching program is consistent with the Commission's recently announced proposed policy initiatives to encourage utilities, including NGDCs, to make Combined Heat and Power (CHP) systems an integral part of their energy efficiency plans. PGW Exc. at 37-38.[19] In support of its argument, PGW cites to the Joint Motion of Chairman Brown and Commissioner Powelson. PGW Exc. at 37-38, citing Proposed Policy Statement on Combined Heat and Power, Joint Motion of Chairman Gladys M. Brown and Commissioner Robert F. Powelson, Agenda No. 2530484-CMR (docket number pending) (February 25, 2016) (Joint Motion).[20] PGW cites to the language of the Joint Motion which stated that "[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." Joint Motion at 3.

The OCA submits that the issue here is not whether the Fuel Switching program supports a CHP initiative. The issue is whether PGW's Fuel Switching program, a load growth program, can be considered a part of the energy efficiency and conservation program before the

[19] The OCA notes that the Joint Motion discussed by PGW was issued on February 25, 2016, over four months after the record has closed in this matter. As this material was never introduced in the case, the ALJs have not addressed this issue in the R.D. In addition, to date, the Commission has not issued a Tentative Order. At this time, the Joint Motion is just a proposal to address the issue. The OCA anticipates that the Commission will seek Comments from interested stakeholders when it issues a Tentative Order in the matter.

[20] The OCA notes that to date a Tentative Order has not yet been issued in the matter.

Commission for review. Neither the Recommended Decision in this case nor the Office of Consumer Advocate has stated that PGW should not implement a Fuel Switching or Micro CHP program. The issue here is that the Fuel Switching proposal does not meet the requirements for a natural gas energy efficiency and conservation program and should not be included within these programs and special cost recovery mechanisms. If PGW wishes to implement a load growth initiative, the OCA submits that the program should be filed as a separate petition and the Company should propose a cost recovery mechanism other than the energy efficiency and conservation surcharge.

The ALJs recommendation to deny PGW's requested Fuel Switching and Micro CHP program was the correct decision, supported by the record evidence in this case, and should be upheld.

E. Conclusion.

The ALJs were correct in finding that PGW's Fuel Switching program is actually a load growth program and has no place within a DSM plan. Accordingly, PGW's proposal to recover the costs of such a program through the ECRS is equally inappropriate and the ALJs were correct in recommending denial of cost recovery in this DSM plan. Further, PGW's attempted reliance on a Proposed Policy Statement that has yet to be issued, the details of which are not included anywhere in the record evidence of this case and as such is an issue that was not properly presented to the ALJs for consideration is also completely off target. Accordingly, PGW's arguments as to the effect of the Joint Motion should be disregarded and the ALJs decision on this matter upheld in its entirety.

OCA Reply to PGW Exception No. 5: The ALJs Were Correct In Finding That PGW Failed To Carry Its Burden Of Proof That A Waiver Of The Commission's Regulations At Section 58.10 Should Be Granted. (PGW Exceptions at 39-45; R.D. at 156-175; OCA M.B. at 82-83; OCA R.B. at 32-37).

A. Introduction.

PGW sought a waiver of Sections 58.10(a)(2) and (3), primarily on the basis that PGW's own internal practices and procedures are more effective than the Commission's Regulations in this area. See R.D. at 160. Section 58.10(a) provides that prioritization for LIURP program services is determined first by the customers with the largest usage and greatest opportunities for bill reductions. 52 Pa. Code § 58.10(a). Among those customers with the same standing, the LIURP regulations then prioritize those customers with the greatest arrearages, and in particular, the customers with the largest arrears in relation to the lowest percentage of income. 52 Pa. Code § 58.10(a)(2). In the Recommended Decision, the ALJs denied PGW's request for waivers of Sections 58.10(a)(2) and (3). R.D. at 174. PGW submitted Exceptions.

PGW argued that since PGW's program is a Percentage of Income Payment Plan (PIPP), LIURP participation does not provide a financial benefit to CRP customers. PGW, therefore, does not prioritize customers based on arrearages and income. PGW Exc. at 39. PGW argued that its current prioritization strategies for LIURP weatherization fully satisfy the universal service objectives and that adoption of the ALJs' "new" prioritization recommendations would erode the universal services benefits. PGW Exc. 40-42. PGW argues that its existing prioritization method accomplishes its purposes to provide universal services benefits and adopting the "ALJs' misguided recommendation to impose new prioritization requirements on PGW will only erode PGW's program." PGW Exc. at 40.

The ALJs were correct in denying PGW's requested waiver as the Company failed to carry its burden of proof as to why the waiver was necessary, reasonable or in the best interests of PGW's customers.

B. The ALJs Were Correct In Denying PGW's Request For A Waiver Of Commission Regulations That Serve As Important Safeguards For Universal Service Programs.

The OCA, CAUSE-PA and TURN *et al.* all opposed PGW's requested waiver of 58.10(a)(2) and (3). R.D. at 161. After a thorough review of all sides of the issue, the ALJs concluded:

> However, we agree with OCA that, within the pool of CRP customers who are eligible for LIURP services, it would be helpful to prioritize based on arrears and also income deficit. We would note that even in a percentage of income based program, such as CRP, their payments are based in part on their pre-existing arrears and income deficit and would help PGW to meet their universal service objectives. Therefore, we recommend that the Commission deny PGW's request for a waiver of Section 58.10 of the Commission's regulations.

R.D. at 174. The ALJs' decision on this issue is sound and consistent with the Commission's prior discussions on this issue.

Contrary to PGW's arguments, the OCA submits that PGW's PIPP design should not impact the prioritization for LIURP and would not negatively impact the program. Most of the other electric and natural gas companies in Pennsylvania operate a form of a PIPP and are able to comply with Section 58.10(a) of the Commission's regulations. OCA witness Colton testified:

> The Commission has repeatedly made clear in its review of gas and electric universal service programs that establishing eligibility for LIURP is a different task than prioritizing investments within the eligible population. While high energy usage relates to the eligibility for LIURP programs, it is entirely appropriate to use arrearages and income deficits to prioritize amongst customers who are equally eligible.

OCA St. 2 at 53. Moreover, as CAUSE-PA notes, the Commission has already weighed in on this issue and stated that "[a]thought the PGW ELIRP is operating within the DSM portfolio of programs, the selection method for customers should not change from what it would be if ELIRP were part of PGW's USECP." CAUSE-PA M.B. at 29, citing August 22 Order at 55.

PGW also argued that it is not factually accurate that the CRP customer payments "are based in part on their pre-existing arrears and income deficit." PGW Exc. at 42. PGW calculates an asked-to-pay amount that is not based on usage, and if there are arrearages, customers pay an additional $5 toward that arrearage. OCA witness Colton, however, testified regarding how this does not justify a departure from Section 58.10(a). Mr. Colton stated:

> Even within the population served by CRP, which is a percentage of income-based program, the ability of CRP participants to maintain their payments is based, in part, on their pre-existing level of arrearages and on their income deficits. Whether or not prioritizing LIURP investments based on arrearages and income deficit helps the Company to achieve its DSM-related objectives, using such a prioritization within those customers who are equally eligible would help the Company meet its universal service objectives.

OCA St. 2 at 53-54. As Mr. Colton testified, maintaining the requirements and procedures as set out in the regulations will aid PGW in meeting its universal service obligations, which will in turn provide a benefit to those PGW customers participating in the programs.

Further, a waiver of Commission Regulations is not intended to be the blanket approach that PGW has requested, as the R.D. provided:

> The Commission set forth the standard for PGW to request a waiver of the LIURP regulations in its *USECP 2014-2016 Order*. The Commission stated:
>
> > Waivers of Commission regulations are not granted implicitly or of unlimited duration. Waivers are temporary and narrowly crafted. Further, the Commission expects utilities to report all program benefits and detriments over the temporary waiver period and to expressly request any renewal.

R.D. at 164. The OCA submits that PGW's waiver request here is neither supported by the record nor narrowly crafted as to scope or duration. See OCA M.B. at 80.

C. Conclusion.

A waiver of Commission Regulations should not be granted without sufficient and compelling record evidence to support such a request. Here, PGW has failed to carry its burden

of proof as to the need for such a waiver, or that such a waiver would be in the best interest of PGW's customers. The ALJs were correct in denying PGW's requested waiver based on the evidence of record.

OCA Reply to PGW Exception No. 6: The ALJs Were Correct In Finding That PGW Failed To Carry Its Burden Of Proof That A Waiver Of The Commission's Regulations At Section 58.4 Should Be Granted. (PGW Exceptions at 45-48; R.D. at 156-175; OCA M.B. at 80-82; OCA R.B. at 32-34).

A. Introduction.

PGW argued for a waiver of Section 58.4(a) primarily on the grounds that the factual situation presented by PGW's current DSM filing does not trigger the requirements as set out in the regulation. R.D. at 159-160. Section 58.4(a) provides in relevant part: "[p]roposed funding revisions that would involve a reduction in program funding shall include public notice found acceptable by the Commission's Bureau of Consumer Services, and the opportunity for public input from affected persons or entities." 52 Pa. Code § 58.4(a). The ALJs denied PGW's request for waiver of the public notice requirements of Section 58.4(a). R.D. at 173-174. PGW submitted Exceptions.

In its Exceptions, PGW argued that the Commission should reject or clarify the ALJs' recommendation regarding the public notice requirement of 52 Pa. Code Section 58.4(a). PGW Exc. at 43-45. PGW argued that the Commission's public notice requirements of 52 Pa. Code Section 58.4(a) do not apply for two reasons: (1) there is no currently approved LIURP budget beyond the expiration of the DSM Bridge Plan and therefore, no reduction of any approved budget and (2) the level for the LIURP budget is in excess of the required 0.2% minimum. PGW Exc. at 45-48.

The OCA submits that PGW's purely semantic argument on this issue stands in stark contrast to the reality of what PGW is seeking in this matter – a drastic reduction to its LIURP funding.

B. PGW's Attempts To Mischaracterize The Reality Of Its Proposal To Significantly Reduce The Level Of LIURP Funding And Thereby Deny The Due Process Of Law To Its Customers Must Be Disregarded.

There can be no reasonable disagreement that PGW seeks to put in place a LIURP budget going forward that would be significantly less than what is has been spending for about the last six years. In relevant part, the Commission's Regulations provide:

> **§ 58.4. Program funding.**
>
> (a) *General guidelines for gas utilities.* Annual funding for a covered natural gas utility's usage reduction program shall be at least .2% of a covered utility's jurisdictional revenues. Covered gas utilities shall submit annual program budgets to the Commission. A covered gas utility will continue to fund its usage reduction program at this level until the Commission acts upon a petition from the utility for a different funding level, or until the Commission reviews the need for program services and revises the funding level through a Commission order that addresses the recovery of program costs in utility rates. *Proposed funding revisions that would involve a reduction in program funding shall include public notice found acceptable by the Commission's Bureau of Consumer Services, and the opportunity for public input from affected persons or entities.*

52 Pa. Code § 58.4(a) (emphasis added.) In light of these facts, the ALJs correctly determined that:

> [w]hile we agree that this proceeding has presented a full and open opportunity for any party or affected persons to become involved, we also agree with OCA that the public has a need and an interest to provide comment on such reductions in the program funding. We believe that notice and opportunity to be heard is a fundamental principle of the law and should not be waived.

R.D. at 174. The evidence of record on this issue is clear and convincing as to why PGW's request for a waiver of this important public protection must be denied.

PGW's further argument that no reduction in funding is proposed is based solely on semantics. PGW proposed a 75% reduction for the LIURP program funding from 2015 to 2016. As OCA witness Colton testified:

> Moreover, in light of the 75% reduction in LIURP funding proposed by PGW, the assertion that since there is no currently-approved 5-YEAR DSM Plan, there is "thus no reduction in funding proposed for those years" is completely incorrect. The Company states that PGW's CRP Home Comfort program "rebranded from the Enhanced Low Income Retrofit Program in Phase I *has funding levels reduced* and is designed to remain static in nominal terms, excluding evaluation costs." (5-Year DSM Plan, December 2014, at 4). (emphasis added).

OCA St. 2 at 52. The OCA submits that changing the name of the program and Plan Phases does not change the fact that under PGW's proposal in this case the LIURP budget would be significantly reduced for Phase II of the program.

PGW also attempts to argue that public notice has been provided, and therefore, a waiver on a going-forward basis is warranted. PGW Exc. at 46. As to this issue, the ALJs correctly concluded that:

> we do not believe that the Company is entitled to a waiver of this section of Chapter 58 as the notice and due process requirements are fundamental and the Company has not established that there are any special circumstances which would entitle PGW to a waiver of this particular section. As such, we recommend that the Commission deny PGW's request for a waiver of Section 58.4(a) of the Commission's regulations.

R.D. at 174.

C. Conclusion.

The facts in this case demonstrate that PGW is proposing a drastic reduction in its current level of LIURP spending. The Commission Regulation here is clear as to the need for public notice and input in such a situation. The ALJs recommendation to deny PGW's waiver request is thus well grounded in the facts and the law and should be upheld.

OCA Reply to PGW Exception No. 6: The ALJs Were Correct In Finding That PGW Failed To Carry Its Burden Of Proof That A Waiver Of The Commission's Regulations At Section 58.14(c) Should Be Granted. (PGW Exceptions at 48-49; R.D. at 156-175; OCA M.B. at 83-84; OCA R.B. at 36-37).

A. Introduction.

Section 58.14(c)(1) specifically requires that electric and natural gas utilities "shall have coordinated their provision of comprehensive program services." 52 Pa. Code § 58.14(c). PGW sought a waiver of Section 58.14(c) mainly due to the fact that it was not addressing or identifying any electric energy efficiency or conservation measures within its DSM plan. R.D. at 74-75. In the Recommended Decision, the ALJs denied PGW's request for waiver of Section 58.14(c). R.D. at 175. PGW submitted Exceptions.

In its Exceptions, PGW argued that 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. PGW Exc. at 48-49. PGW argues that because of the complexity involved in inter-utility coordination for electric usage reduction activities and the fact that PECO is already taking extensive measures as part of its Act 129 Energy Efficiency and Conservation program, PGW has no need to address or participate in this area. PGW Exc. at 48-49. The OCA submits that PGW provides no reasonable justification for a waiver of the regulation, especially when compliance could bring additional benefits to customers.

B. The Commission's Regulations In This Area Are Not Discretionary, And The Fact That Another Public Utility Is Already Engaged In The Same Area Is Actually Further Justification For Why PGW Should Be Required To Engage In Coordination Efforts.

The ALJs concluded that PGW's program should be coordinated 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." R.D. at 175. Specifically, Section 58.14(c)(1) provides that such coordination shall occur:

> (1) When providing program services a covered gas utility shall address usage of electricity provided by a covered utility through the provision of electric usage reduction education, the installation of efficient lightbulbs, where appropriate, the installation of electric water heater and hot water pipe insulation where the equipment is in unheated areas and the installation of devices to reduce the flow of hot water in showers and faucets.

52 Pa. Code § 58.14(c)(1). PGW should have every incentive to engage in collaborative efforts in order to create synergies that would otherwise not exist. PGW's Exceptions on this issue acknowledge the possibility of such savings and synergies, and yet still argue for a position where PGW is not required to do anything in this regard. PGW Exc. at 49.

PGW's position, especially considering PGW's unique demographics, should not be allowed to stand. As OCA witness Colton testified:

> Non-compliance with a regulatory requirement, standing alone, is no justification for granting a waiver of the requirement. In particular, as a natural gas utility, PGW can address the "usage of electricity" through LIURP investments directed toward the prevention of a need to use electricity as a de facto heating source. When natural gas systems as inoperable, or otherwise unavailable, because low-income customers do not have the resources to make repairs or replacements, those low-income customers frequently turn to portable space heaters as de facto primary heating sources. Not only is this use of de facto electric space heating extraordinarily expensive, but the use of portable electric space heating equipment is extremely dangerous as well.

OCA St. 2 at 55. The OCA submits that if no coordination efforts are required of the utility, none is likely to exist, and the benefits will be foregone. The Commission has encouraged such utility coordination efforts in order to leverage the benefits for low-income customers, and PGW should not be exempted from these efforts.[21]

To the extent that there are opportunities to coordinate with PECO's LIURP or the Act 129 programs, the OCA submits that it makes sense to do so. Coordination provides PGW's

[21] See, Universal Service Coordination Group Order, Docket No. M-2009-2107153 (December 10, 2010).

conservation service provider with the opportunity to coordinate efforts and to address potentially dangerous instances where the customer is using *de facto* space heating. While PGW is correct that the regulation does not specifically identify *de facto* space heating situations, the OCA's concern is that if the Section is waived, PGW will not have any need to identify or to address inter-utility coordination efforts.

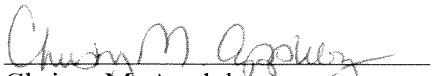
C. Conclusion.

The ALJs were correct in finding that PGW's requested waiver should be denied. PGW has presented no reasonable basis for a waiver, has presented no "special circumstances" to justify a waiver, and has essentially failed to carry its burden of proof on this issue. The OCA submits that the ALJs' well-reasoned decision on this issue should be upheld.

III. CONCLUSION

For the reasons set forth above, and for the reasons set forth in the OCA's Briefs, the OCA submits that the ALJ's Recommended Decision should be adopted and PGW's Exceptions should be rejected in their entirety.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

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

I hereby certify that I have this day served a true copy of the foregoing document, the Office of Consumer Advocate's Reply Exceptions, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

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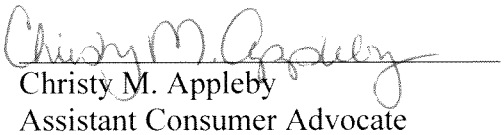

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