



COMMONWEALTH OF PENNSYLVANIA

April 18, 2016

**E-mail and First Class Mail**

The Honorable Christopher P. Pell  
Administrative Law Judge  
PA Public Utility Commission  
801 Market Street, Suite 4063  
Philadelphia, PA 19107

The Honorable Judge Marta Guhl  
Administrative Law Judge  
PA Public Utility Commission  
801 Market Street, Suite 4063  
Philadelphia, PA 19107

**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 Judge Guhl and Judge Pell:

Enclosed please find the Replies to Exceptions, on behalf of the Office of Small Business Advocate, in the above-captioned proceeding.

Copies have been served today on all known parties in this proceeding. A Certificate of Service to that effect is enclosed.

If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sharon E. Webb'.

Sharon E. Webb  
Assistant Small Business Advocate  
Attorney ID No. 73995

*Enclosures*

cc: Parties of Record  
Robert D. Knecht

**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 §62.4 – Request for Waivers :**

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**REPLY EXCEPTIONS  
ON BEHALF OF THE  
OFFICE OF SMALL BUSINESS ADVOCATE**

**Sharon E. Webb  
Assistant Small Business Advocate  
Attorney ID No. 73995**

**For: John R. Evans  
Small Business Advocate**

**Office of Small Business Advocate  
Suite 202, Commerce Building  
300 North Second Street  
Harrisburg, PA 17101**

**Dated: April 18, 2016**

## **I. INTRODUCTION AND PROCEDURAL HISTORY**

On December 23, 2014, Philadelphia Gas Works (“PGW” or “Company”) filed a “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” with the Pennsylvania Public Utility Commission (“Commission”). The OSBA intervened in this case to evaluate reasonableness and cost of PGW’s Demand Side Management Plan (“DSM”) and its impact on small business customers.

PGW filed the above referenced Petition on or about December 23, 2014. The OSBA filed a Notice of Intervention on January 13, 2015. On January 12, 2015, Answers to PGW’s Petition were filed by the Office of Consumer Advocate (“OCA”), the Commission’s Bureau of Investigation and Enforcement (“I&E), and the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”). The Philadelphia Industrial and Commercial Gas Users Group (“PICGUG”), and the Tenant Union Representative Network (“TURN”) and Alliance of Senior Citizens of Greater Philadelphia (“Action Alliance”) (collectively “TURN *et al.*”) filed Petitions to Intervene on January 13, 2015. The Clean Air Council (“CAC”) filed a Petition to Intervene on January 16, 2015.

The filing was assigned to the Office of Administrative Law Judge (“OALJ”) with Administrative Law Judges (“ALJs”) Marta Guhl and Christopher P. Pell. The ALJs issued Prehearing Notice scheduling a pre-hearing conference for February 17, 2015. In accordance with the Prehearing Order, the OSBA, and other parties filed prehearing memoranda.

On April 10, 2015, the Company filed its Petition for Philadelphia Gas Works to Extend Demand Side Management Plan (“Bridge Plan”) and requested an extension of its Phase I Plan

until August 31, 2016, or the effective date of the Phase II compliance plan filed in response to a Commission Order in the Phase II proceeding, whichever was earlier. The Commission subsequently approved the Bridge Plan in an Order entered May 7, 2015.<sup>1</sup>

In accordance with the procedural schedule established at the prehearing conference, the OSBA filed the Direct Testimony of OSBA witness Robert D. Knecht on June 23, 2015.

On July 21, 2015, the OSBA filed the Rebuttal Testimony of Mr. Knecht.

Subsequently, on August 5, 2015, the OSBA filed the Surrebuttal Testimony of Mr. Knecht.

On August 11, 2015, ALJs Guhl and Pell issued a Prehearing Order indicating that, due to settlement negotiations, the hearings, originally scheduled for August 18-20, 2015 and August 25, 2015, would be rescheduled to October 27-30, 2015.

Subsequently the Company filed rejoinder testimony on October 22, 2015. After reviewing the rejoinder testimony all parties agreed to waive cross examination and as such, a telephonic hearing was held on October 28, 2015 to enter the testimony and exhibits of the OSBA and other parties into the record via stipulation.

On November 20, 2015, the OSBA and other parties submitted Main Briefs. On December 8, the OSBA and other parties submitted Reply Briefs.

On March 18, 2016, ALJs Pell and Guhl issued a Recommended Decision (“RD”) approving PGW’s petition, in part and with modification. PGW filed Exceptions to the R.D. The OSBA submits these Reply Exceptions in accordance with the litigation schedule established by ALJs Guhl and Pell and in response to PGW’s Exceptions.

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<sup>1</sup> Pennsylvania Public Utility Commission v. Philadelphia Gas Works, Docket Nos. P-2009-2097639 and R-2009-2139884, Order entered May 7, 2015 (“Bridge Plan Order”).

## II. REPLY EXCEPTIONS

### A. **REPLY TO PGW EXCEPTION NO. 2: The ALJs properly recommended denial of PGW's proposed CAM . (R.D. at 58-62; PGW Exception No. 2)**

In its exceptions, PGW argues that its proposed CAM is neither single issue ratemaking nor is it barred by Act 129.<sup>2</sup> The Company is wrong in both instances.

The ALJs properly concluded that Act 129 bars the implementation of PGW's proposed CAM.

As to the specifics of the proposed CAM, the proposal is wholly inconsistent with Commission policy for EE&C programs, as Act 129 of 2008 ("Act 129") provides that it is the public policy of the Commonwealth *not* to allow a utility to implement a surcharge mechanism for recovery of lost revenues due to the implementation of DSM programs.<sup>3</sup>

As noted by the ALJs, the Commission has already addressed the issue of recovery of lost revenue as it relates to DSM programs by stating that lost revenue should be addressed in a base rate proceeding. In its *Investigation into Demand Side Management by Electric Utilities*, the Commission found:

[i]n considering this issue, we concur with the ALJ's recommendation to not permit the recovery of lost revenues through the DSM surcharge mechanism, but rather in rate base proceedings. We are sympathetic to the arguments of the utilities that prompt recovery through a surcharge mechanism would serve to promote more extensive DSM implementation. However, lost revenues are, by their nature, much more difficult to measure than DSM program costs. Therefore, we feel it necessary to require that they be recovered through a base rate proceeding so that they are based on actual program results, as verified through the ratemaking process.<sup>4</sup>

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<sup>2</sup> PGW Exceptions at 23.

<sup>3</sup> See 66 Pa. C.S. §2806.1(k) (*emphasis added*).

<sup>4</sup> R.D. at 36, citing *Investigation into Demand Side Management by Electric Utilities Unif. Cost Recovery Mechanism*. I-900005, 1993 WL 855893, at 37 (Pa. PUC December 13, 1993).

PGW must therefore demonstrate why it should be treated differently than other Pennsylvania utilities. In this respect, none of the Company's arguments are credible. PGW's status as a cash-flow regulated utility is irrelevant, as the other utilities EE&C programs are essentially managed on a cash flow basis.<sup>5</sup> Although PGW is a gas utility and not an electrical utility, it does not change the fact that lost revenues are more difficult to measure than DSM program costs.

Additionally, program fails for the basic reason that it is improper single-issue ratemaking. Implementing a rate mechanism in between base rates proceedings that allows for adjustments of one type of load change while ignoring all other factors affecting load, as well as all other facts affecting costs, is improper. Second, the CAM proposals fail simply because it is based on a calculation of savings which may or may not actually occur. For example, if we were to believe PGW's calculations, it would have experienced very substantial reductions in CRP customer load, for which it would be entitled to recompense under the CAM. However, as demonstrated by PGW's own data, the Company has actually achieved zero reductions in CRP customer load, and it has therefore not lost any margin at all.<sup>6</sup>

**B. REPLY TO PGW EXCEPTION NO. 3: The ALJs properly denied PGW's proposed Performance Incentives as Inconsistent with Pennsylvania Law. (R.D. at 78; PGW Exception No. 3)**

In its exceptions, PGW argues that the ALJs erred in recommending denial of its proposed Performance Incentives.<sup>7</sup>

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<sup>5</sup> OSBA Main Brief at 8.

<sup>6</sup> OSBA Main Brief 8-9.

<sup>7</sup> PGW Exceptions at 28-30.

As to the performance incentive mechanism (“PIM”), PGW proposes that it be given a reward if it achieves any more than 70 percent of its target reductions. Approval of the proposed program should fail for two reasons. First, the program appears to be yet one more attempt by PGW’s shareholder to increase its equity stake in the Company by raising rates. The OSBA respectfully submits that the issue of “how much is enough” with respect to city equity should be evaluated in base rates proceeding, not an EE&C petition. Second, Act 129 is very clear that the incentive mechanism to encourage utilities to meet their load reduction goals is a penalty for non-compliance, not a supplement to utility earnings.<sup>8</sup>

The ALJs properly denied the Company’s request for a PIM outside of the context of a base rates proceeding.<sup>9</sup> Further, the Commonwealth Court has previously addressed this specific issue relative to electric distribution companies in *Pennsylvania Industrial Energy Coalition v. PA PUC* (“*PIEC*”) when it held that Section 523 of the Pennsylvania Code does not permit the recovery of incentives for conservation programs outside the context of a base rates proceeding.<sup>10</sup> In *PIEC*, the Commonwealth Court specifically 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

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<sup>8</sup> OSBA Main Brief at 9.

<sup>9</sup> R.D. at 78

<sup>10</sup> *Pennsylvania Industrial Energy Coalition v. PA PUC* 653 A.2d 1336, 1353 (Pa. Cmwlth Ct. 1995), *aff’d* 542 Pa. 307, 670 A.2d 1152 (Pa. 1996).

permitting incentives through a surcharge is beyond the authority of the PUC.<sup>11</sup>

Contrary to the Commonwealth Court's ruling on the issue, PGW, relying on its status as a cash-flow utility, excepts that it is exempt from Section 523, and alternatively seeks authority pursuant to Sections 1307 and 1319 of the Public Utility Code.<sup>12</sup> However, PGW offers no legal basis for recovery of its proposed PIM under these sections of the Public Utility Code. The OSBA respectfully submits that PGW's status as a cash-flow regulated utility is irrelevant, as the other utilities EE&C programs are essentially managed on a cash flow basis.<sup>13</sup>

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<sup>11</sup> Id. at 1351. (footnotes omitted).

<sup>12</sup> 66 Pa. C.S. §1307; 66 Pa. C.S. §1319.

<sup>13</sup> OSBA Main Brief at 8.

**III. CONCLUSION**

**WHEREFORE**, The OSBA respectfully requests that the Pennsylvania Public Utility Commission adjudicate this proceeding in accordance with the arguments presented herein and deny PGW's Exceptions Nos 2 and 3.

Respectfully Submitted,



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Sharon E. Webb  
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Attorney I.D. No. 73995

For: John R. Evans  
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**Office of Small Business Advocate  
300 North Second Street, Suite 202  
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**Dated: April 18, 2016**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Petition of Philadelphia Gas Works for :  
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And : 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 :**

**CERTIFICATE OF SERVICE**

I certify that true and correct copies of the foregoing, have been served via email and/or First-class Mail (unless otherwise indicated below), on all known parties in this matter, on behalf of the Office of Small Business Advocate.

The Honorable Christopher P. Pell  
Administrative Law Judge  
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Dated: April 18, 2016

  
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