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PULP

PENNSYLVANIA
UTILITY LAW PROJECT

March 20, 2017

Via Electronic Filing

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

Re: Philadelphia Gas Works Universal Service Plan for 2017-2020 Submitted in Compliance with 52 Pa. Code § 62.4, Docket No. M-2016-2542415

Response to PGW's March 9, 2017 Letter Regarding Objections to CAUSE-PA Request for Information

Dear Secretary Chiavetta,

This letter is in response to PGW's March 9, 2017 Letter, filed at this docket, in which PGW informally objected to the March 2, 2017 Request for Information and Data of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) (hereinafter Request for Information).¹

As explained more thoroughly below, CAUSE-PA asserts that the information sought was appropriately targeted, reasonably calculated to be admissible, and relevant to the Commission's determination in this formal proceeding. This letter therefore serves as CAUSE-PA's objection to PGW's refusal to submit to reasonable requests for relevant information and data. Given PGW has not filed formal objections to CAUSE-PA's Request for Information pursuant to 52 Pa. Code § 5.345(c), CAUSE-PA is not filing a Motion to Compel at this time but reserves the right to do so in the future and specifically notes that it has not withdrawn any of its requests for information² CAUSE-PA urges the Commission to require PGW to produce this information or, at the very least, direct it to file specific objections pursuant to section 5.345(c)

¹ See Attachment A, which contains a copy of CAUSE-PA's March 2, 2017 Discovery Request, and the Certificate of Service, which was filed separately with the Commission.

² See PGW March 9 Letter at n.2; see also 52 Pa. Code § 5.345(c) (Objections) & (g) (Motion to compel).

such that CAUSE-PA can properly respond through a motion to compel. CAUSE-PA further urges that the Commission refer this matter to the Office of Administrative Law Judge to resolve this discovery dispute and to further oversee the full exchange of all relevant information and data. As CAUSE-PA asserted in its March 7 Comments at this docket, it is critical that the Commission refer the proceeding to the Office of Administrative Law Judge to resolve the many open issues of material fact in this proceeding.³ At a minimum, the Commission should provide for an additional period for stakeholder comment after PGW submits answers to CAUSE-PA's Request for Information.

Background

On January 26, 2017, the Commission issued a Tentative Order (TO) in this proceeding, which identified a number of "issues that require further attention on the record" before issuing approval of PGW's Universal Service and Energy Conservation Plan (USECP) for 2017-2020.⁴ In its TO, the Commission ordered PGW to provide supplemental information within 20 days. It further provided for comments from interested parties within 20 days of PGW's filing of supplemental information, and reply comments 15 days thereafter. In setting forth PGW's USECP for comment, the Commission urged parties to cooperate in the exchange of information: **"We urge the parties to be cooperative in the exchange of information and data relative to this formal proceeding."**⁵

On February 15, 2017, PGW filed Supplemental Information with the Commission in response to a number of substantive issues identified in the TO. And, 15 days later, on March 2, 2017, CAUSE-PA sent its Request for Information, seeking information and data relevant to PGW's USECP, as further clarified in its Supplemental Information.⁶ CAUSE-PA served a copy of its Request for Information on counsel for PGW and on all interested parties which had previously been served with PGW's USECP, Amended USECP, and Supplemental Information. A Certificate of Service attesting to this service was separately filed with the Commission.⁷

³ CAUSE-PA strongly asserted in its March 7 Comments that this proceeding should be fully litigated, subject to extended discovery, sworn testimony, cross-examination, and briefing by the parties. PGW's refusal to reply to a single set of basic questions about its Amended USECP further underscores the need for a full litigation schedule in this proceeding. See, e.g., Comments of CAUSE-PA at 16 - 17, 20, 25, 28, 30, 45, 48.

⁴ TO at 1.

⁵ TO at 1 (emphasis added).

⁶ See Attachment A.

⁷ See Attachment A.

On March 7, 2017, CAUSE-PA filed Comments with the Commission pursuant to the Commission's TO. In its Comments, CAUSE-PA explained that it submitted a number of questions to PGW, and reserved the right to provide further analysis and recommendations on several issues in its reply comments – presumably after reviewing PGW's answers to its Discovery Request.⁸

On March 9, 2017, PGW filed a letter with the Commission (March 9 Letter) in response to CAUSE-PA's Request for Information, raising general objections to CAUSE-PA's request, and explaining that it would not reply to any of CAUSE-PA's questions.

Rather than identify specific objections to each question posed, PGW's March 9 Letter claimed generally that CAUSE-PA's Request for Information was "far beyond the scope of the issues identified by the Commission in its Tentative Order" and was "not consistent with the Commission's discovery rules or the process established in this case for the Commission to review PGW's USECP."⁹ PGW's March 9 Letter preserved its right to later submit "formal objections," asserting generally – without any support or explanation – that CAUSE-PA was acting in bad faith by requesting information relevant to its USECP, and that the request posed an unreasonable burden and/or would require unreasonable investigation.¹⁰

CAUSE-PA's Request for Information was Procedurally Appropriate

CAUSE-PA's Request for Information was consistent with the Commission's discovery rules, as well as the process the Commission established in this proceeding. Discovery in proceedings before the Commission is governed by Title 52, Chapter 5 (Formal Proceedings), Subchapter D (Discovery). Section 5.321, which PGW cited in its March 9 Letter, provides that the Commission's rules for discovery attach in the following proceedings:

- (a) Applicability. This subchapter applies to a proceeding in which:
 - (1) A complaint, protest or other adverse pleading has been filed.
 - (2) The Commission institutes an investigation.
 - (3) The Commission institutes an on-the-record proceeding.¹¹

⁸ See, e.g., Comments of CAUSE-PA at 16 - 17, 20, 25, 28, 30, 45, 48

⁹ PGW March 9 Letter at 1.

¹⁰ PGW March 9 Letter at n.2.

¹¹ 52 Pa. Code § 5.321(a).

While this is not currently a *fully litigated proceeding*, the Commission definitively stated in its TO that this proceeding is a formal, on-the-record, investigatory proceeding. In its Tentative Order, the Commission explicitly refers to this proceeding as an “on the record” proceeding, and ordered further investigation of PGW’s USECP: “By this Tentative Order, we indicate issues that require further attention **on the record** before approving a USECP for 2017-2020.”¹² And, in encouraging the parties to exchange relative information and data, the Commission referred to this as a “formal proceeding”: “We urge the parties to be cooperative in the exchange of information and data relative to this **formal proceeding**.”¹³ As such, CAUSE-PA’s requests were procedurally appropriate, and consistent with both the procedure outlined by the Commission in this proceeding and Commission’s discovery rules.

CAUSE-PA’s Request for Information was Substantively Appropriate

Once the right to discovery attaches, as discussed above, section 5.321 provides that the scope of discovery may encompass “any matter, not privileged, which is relevant to the subject matter involved in the pending action. ...”¹⁴

CAUSE-PA’s questions are clearly within the scope of discovery, as they are singularly focused on and relevant to the subject matter at hand: PGW’s USECP. Put simply, there are four Universal Service programs in PGW’s USECP: CRP (CAP), LIURP, CARES, and Hardship Fund. Non-coincidentally, the headings in CAUSE-PA’s Request for Information match the four programs in PGW’s USECP. Indeed, the headings match because the questions CAUSE-PA asked pertain only to the programs contained in PGW’s USECP. Even the most cursory review of CAUSE-PA’s Request for Information reveals that each and every question is, on its face, related directly to the terms, conditions, funding, and/or performance of PGW’s four universal service programs.

In an attempt to circumvent the plain relevancy of CAUSE-PA’s Request for Information, PGW contorts the standard for relevance – arguing that the request sought information and data that was “far beyond the scope of the issues *identified by the Commission in*

¹² TO at 1 (emphasis added)

¹³ TO at 1 (emphasis added).

¹⁴ 52 Pa. Code § 5.321(c).

the Tentative Order ...”¹⁵ But – even if it were an appropriate standard (which it is not)¹⁶ – this argument also fails. The questions in CAUSE-PA’s request are all directly related to the information (or the lack thereof) contained in PGW’s Supplemental Information, which it filed with the Commission on February 15, 2017 in response to the issues the Commission raised in its Tentative Order (just 15 days before CAUSE-PA submitted its Discovery Request.

Finally, PGW’s assertion that CAUSE-PA was acting in bad faith by requesting information about its USECP is misplaced hyperbole. CAUSE-PA is an unincorporated association of low-income individuals who are dedicated to ensuring the health, safety and welfare of low income households across Pennsylvania, and who are committed to ensuring that low income households have access to affordable, safe, and stable utility services. CAUSE-PA’s sole purpose in submitting its Request for Information was to ensure that PGW’s universal service programs are delivering affordable utility service to economically vulnerable Pennsylvanians. Indeed, CAUSE-PA worked diligently and in good faith to identify questions and request information as soon as possible after reviewing PGW’s Supplemental Information. CAUSE-PA was also careful to set forth a fair and equitable time-frame for PGW to provide responses – requesting a response within 15 days of making its request and just 4 days before the due date for Reply Comments. CAUSE-PA acted in good faith, consistent with its mission, and requested limited information that was narrowly tailored to the proceeding in question. PGW’s naked assertion to the contrary is incorrect and should be ignored.

Conclusion

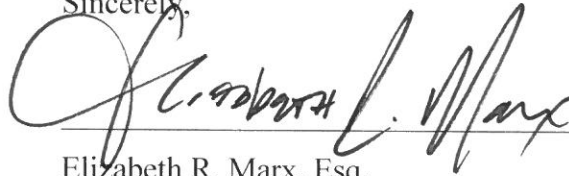
As explained above, CAUSE-PA’s Request for Information was both procedurally and substantively appropriate, and was sought in good faith. As such, PGW should be ordered to either produce the requested information or file specific objections thereto pursuant to 52 Pa. Code § 5.342(c). In turn, CAUSE-PA respectfully renews its request that this matter be referred to the Office of Administrative Law Judge for a fully litigated proceeding or – at the minimum –

¹⁵ PGW March 9 Letter at 1.

¹⁶ The issues in this proceeding are in no way limited to the issues that were explicitly identified in the Commission’s Tentative Order. Indeed, the entirety of PGW’s USECP is at issue in this proceeding and subject to comments and reply comments by interested stakeholders – with the possibility of more extensive litigation if material issues of fact are raised. *See* TO at 41-42. As such, anything relevant to PGW’s USECP should be discoverable pursuant to 52 Pa. Code § 5.321 – not simply those issues which were identified in the Commission’s Tentative Order.

that interested stakeholders be afforded an additional time-frame with which to file comments after the exchange of this and other relevant information and data. Indeed, PGW's refusal to answer a single question that CAUSE-PA asked about its USECP raises larger questions about its plan, and underscores the need for further evidentiary proceedings in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Elizabeth R. Marx". The signature is written in a cursive style and is positioned above a horizontal line.

Elizabeth R. Marx, Esq.
Patrick M. Cicero, Esq.
The Pennsylvania Utility Law Project
Counsel for CAUSE-PA

CC: Certificate of Service
Sarah Dewey, sdewey@pa.gov
Joseph Magee, jmagee@pa.gov
Louise Fink-Smith, Esq., finksmith@pa.gov

Enclosures: Attachment A, CAUSE-PA March 7 Discovery Request and Certificate of Service



March 2, 2017

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Re: Philadelphia Gas Works Universal Service Plan for 2017-2020 Submitted in Compliance with 52 Pa. Code § 62.4, Docket No. M-2016-2542415

Request for Information and Data

Dear Counsel,

As you know, in the Tentative Order dated January 26, 2017, the Commission urged parties “to be cooperative in the exchange of information and data relative to this formal proceeding.” (TO at 1). In furtherance of the Commission’s Tentative Order, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) submits the following questions regarding PGW’s pending Universal Service and Energy Conservation Plan for 2017-2020. We respectfully request that answers to these questions be provided in a timely manner, and that reasonable efforts be made to respond to all questions on or before Friday, March 17, 2017 (15 days from the date of this request) to allow time for us to review the information provided prior to the March 22, 2017 deadline for reply comments in this

proceeding. We believe this timeframe is fair, given the timeframe for discovery in most litigated proceedings is modified to allow just 10 days for discovery responses.

If there are any questions, concerns, or objections to the below requests for information, please contact us at your earliest convenience to discuss.

REQUESTS FOR INFORMATION AND DATA

CRP

1. How and when are customers informed of CRP? Please identify each circumstance in which a CRP referral is triggered in the course of contact with a customer, and provide a copy of any call scripts, call center policies or procedures, memoranda, letters, marketing materials, or other correspondence which is used to inform customers of their option to apply for CRP.
2. Reference page 8 of PGW's Supplemental Information. PGW explains: "[C]ustomers may elect to enter a payment agreement instead of apply for CRP and there could be a number of reasons why customers would want to do so." Aside from having a lower budget payment than CRP payment, please identify the reasons that PGW believes customers would enter a payment agreement rather than CRP.
3. When PGW offers a customer a payment agreement, do they also solicit the customer to apply for CRP? Please provide all supporting documentation, including call scripts, call center policies or procedures, memoranda, letters, marketing materials, or other correspondence.
4. Is PGW's CRP cure policy available to customers seeking restoration after a termination for non-payment?
5. Is PGW's CRP cure policy available to customers seeking restoration after a second or subsequent termination for non-payment?
6. When and how does PGW inform customers about the CRP Cure? Please identify each type of customer contact, and provide a copy of any call scripts, letters, or other correspondence with the customer that explain CRP Cure.
7. If a CRP customer is subject to a one-year stay-out, are they also required to pay a "CRP Cure" amount to reenroll in CRP?
8. How many CRP customers have voluntarily withdrawn from CRP in the past three (3) years, disaggregated by month?

9. How many CRP customers have been removed from CRP for nonpayment in the past three (3) years, disaggregated by month?
10. How many CRP customers have been removed from CRP for failure to recertify in the past three (3) years, disaggregated by month?
11. At the time of removal, what is the average pre-program arrearage of CRP customers who voluntarily remove themselves from CRP?
12. What is the average pre-program arrearage of CRP customers who are removed from CRP for failure to recertify? Please separately indicate the number of customers with zero arrearages, and do not include these customers in calculating the average.
13. What is the average pre-program arrearage of CRP customers who are removed from CRP for nonpayment?
14. See PGW Supplemental Information at 16-17: “PGW proposes to continue allocating administrative costs using the same method that has been approved by the Commission previously which calculates the administrative cost contribution for each program based on program’s proportion of the budget.” Please identify the location within PGW’s approved DSM Plan which sets forth the proration of PGW’s administrative costs between individual programs.
15. As of March 1, 2017, what are the total arrearages for CRP eligible customers who have been placed on a payment arrangement or budget bill due to the more beneficial arrangement policy?

LIURP

16. What is the basis for PGW’s conclusion that its health and safety pilot is capable of producing energy savings in excess of 25%?
17. Will PGW’s proposed health and safety pilot program address de facto heating? Please explain why or why not.
18. Over the past three years, disaggregated by year and month, how many of PGW’s completed LIURP jobs exceeded 25% savings?
19. Over the past three years, disaggregated by year and month, how many LIURP jobs were deferred due to the inability to address health and safety issues? Please also provide a list of the specific issues identified by PGW or its contractors for deferral of the program, and any cost estimates associated with the repairs.

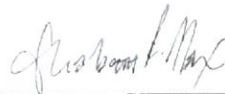
HARDSHIP FUND

20. Does PGW actively solicit donations for its hardship fund from its customers? If yes, please identify all of the points of contact, marketing efforts, and fundraising events that PGW engages in to solicit donations. If not, please explain why not.
21. Since the 2009-2010 program year, the total benefits distributed through PGW's Hardship Fund have decreased by \$1,029,049. What are the reason(s) for this decline?
22. Why has PGW only collected a combined total of \$2,032 in voluntary ratepayer contributions to its Hardship Fund since its 2012-2013 program year?
23. For the 2010-2011, 2011-2012, 2012-2013, 2013-2014, and 2014-2015 program years, what was the dollar amount of UESF grants contributed to the Hardship Fund and matched by PGW?
24. Since the 2009-2010 program year, the number of Hardship Fund grants awarded to PGW ratepayers decreased from 2,257 to just 992 in the 2014-2015 program year. What are the reason(s) for this decline?

CARES

25. How many staff are currently employed in PGW's CARES unit?
26. Provide the name(s) and job title(s) of any staff currently employed in PGW's CARES unit.
27. Please identify the total number of LIHEAP Crisis grants that PGW denied during the 2015-2016 and the 2016-2017 LIHEAP seasons (disaggregated by program year) because the grant amount was not enough to satisfy the balance needed to maintain or restore service.

Sincerely,



Elizabeth R. Marx, Esq.
Patrick M. Cicero, Esq.
Joline Price, Esq.
The Pennsylvania Utility Law Project
On behalf of CAUSE-PA

CC: Pursuant to Attached Certificate of Service

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Philadelphia Gas Works Universal Service and :
Energy Conservation Plan for 2017-2020 :
Submitted in Compliance with : Docket No. M-2016-2542415
52 Pa. Code § 62.4 :
:

Certificate of Service

I hereby certify that I have this day served copies of the **Letter of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) Requesting Information and Data** in accordance with the requirements of 52 Pa. Code § 1.54 in the manner and upon the persons listed below.

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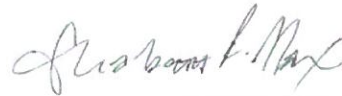
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March 2, 2017



PENNSYLVANIA

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BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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Energy Conservation Plan for 2017-2020 :
Submitted in Compliance with : Docket No. M-2016-2542415
52 Pa. Code § 62.4 :
:

Certificate of Service

I hereby certify that I have this day served copies of the **Response of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) to PGW's March 9, 2017 Letter Regarding Objections to CAUSE-PA Request for Information** in accordance with the requirements of 52 Pa. Code § 1.54 in the manner and upon the persons listed below.

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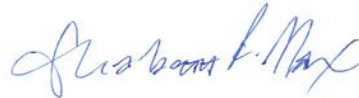
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March 20, 2017