



COMMONWEALTH OF PENNSYLVANIA

April 10, 2020

**E-FILED**

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

**Re: Philadelphia Gas Works Universal Service and Energy Conservation Plan for 2017-2022 / Docket No. M-2016-2542415**

Dear Secretary Chiavetta:

Enclosed for filing today please find the Petition for Reconsideration, on behalf of the Office of Small Business Advocate (“OSBA”), in the above-captioned proceeding. As evidenced by the enclosed Certificate of Service, copies will be served on all known parties in this proceeding.

If you have any questions, please contact me.

Sincerely,

/s/ Sharon E. Webb

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

*Enclosures*

cc: The Honorable Charles E. Rainey Jr.  
Parties of Record  
Mr. Robert D. Knecht

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>Philadelphia Gas Works Universal Service and Energy Conservation Plan for 2017-2022</b>	: : : :	<b>Docket No. M-2016-2542415</b>
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**PETITION FOR RECONSIDERATION  
ON BEHALF OF THE  
OFFICE OF SMALL BUSINESS ADVOCATE**

Pursuant to 52 Pa. Code § 5.572, the Office of Small Business Advocate (“OSBA”) files this Petition for Reconsideration of the Opinion and Order (“Order”) of the Pennsylvania Public Utility Commission (“Commission”) entered in the above-captioned proceeding on March 26, 2020.

**I. Procedural History**

1. On January 6, 2020, Philadelphia Gas Works (“PGW”) filed its 2020 Addendum and Cover Letter to its 2017-2022 Universal Service and Energy Conservation Plan (“2017 USECP”). The 2020 Addendum, filed on February 21, 2020, did not reflect the proposed language to incorporate the changes to PGW’s 2017 USECP delineated in the January 6<sup>th</sup> Cover Letter.

2. Subsequently on February 21, 2020, PGW filed a Petition seeking expedited review of the January 6<sup>th</sup> filing and cover letter.

3. After receiving PGW’s Petition for Expedited Approval of its January 6, 2020 Cover Letter, the Commission re-docketed the January 6<sup>th</sup> Cover Letter as a Petition to Amend PGW’s current USECP.

4. On March 2, 2020, the Tenant Union Representative Network (“TURN”), Action Alliance of Senior Citizens of Greater Philadelphia (“Action Alliance”) and the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”) filed a letter in support of expedited review of the January 6, 2020 filing, and approval of the proposed changes to PGW’s 2017 USECP.

5. On March 2, 2020, the Office of Consumer Advocate filed its Answer opposing expedited review and approval of both the January 6, 2020 filing and any changes to PGW’s existing USECP.

6. The OSBA filed a Notice of Intervention on March 19, 2020.

7. On March 26, 2020 the Commission entered an order approving PGW’s Cover Letter and Addendum as a “Pilot Program” for the Company’s Universal Service and Energy Conservation Plan for 2017-2022.

8. A petition to amend a universal service plan requires due process.<sup>1</sup>

9. The OSBA and other parties have not been afforded adequate notice and a meaningful opportunity to be heard on the changes proposed in PGW’s January 6, 2020 Cover Letter and February 26, 2020 Petition for Expedited Approval.

10. The Commission in a recent order acknowledged that “[t]he typical USECP review process can take up to eight months from start to finish, depending on the complexity of the issues raised in the proceeding. (...) We find that a systematic review of utility universal service programs, through the comprehensive and collaborative process...is necessary and appropriate.”<sup>2</sup>

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<sup>1</sup> 66 Pa. C.S. §703(g)

<sup>2</sup> Universal Service and Energy Conservation Plan (USECP) Filing Schedule and Independent Evaluation Filing Schedule, Docket No. M-2019-3012601, p. 8-9. (Order entered October 3, 2019)

11. PGW's proposed changes to its USECP (only partially detailed in its January 6, 2020, Cover Letter), and seemingly converted it to a "petition to modify its USECP" by a February 21, 2020 Petition requesting expedited review. This resulted in the Commission re-docketing PGW's January 6, 2020, Cover Letter as a Petition, one which will increase the costs to PGW's ratepayers, including small business ratepayers, by approximately \$27.5 million.<sup>3</sup>

12. On February 28, 2020, PGW made a filing to increase its distribution rates by approximately \$70 million.

13. On March 6, 2020, the Governor of the Commonwealth of Pennsylvania, Tom Wolf ("Governor Wolf") issued a Proclamation of Disaster Emergency wherein it provides: "WHEREAS, a novel coronavirus (now known and commonly referred to as "COVID-19") emerged in Wuhan, China, began affection humans in December 2019, and has since spread to 89 countries, including the United States..."

14. Further, the Proclamation provides: "...NOW THEREFORE, pursuant to the provisions of Subsection 7301(c) of the Emergency Management Services Code, 35 Pa. C.S. §7101, *et seq* I do hereby proclaim the existence of a disaster emergency throughout the Commonwealth."

15. The Proclamation also provides: "FURTHER, I hereby suspend the provisions of any regulatory statute prescribing the procedures for conduct of Commonwealth business, or the orders, rules or regulations of any Commonwealth agency, if strict compliance, with any provision of any statute, order, rule or regulation would in any way prevent, hinder, or delay necessary action in coping with this emergency."

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<sup>3</sup> See, PGW Amended USECP 2017-22 at App. A.

16. On March 19, 2020 Governor Wolf ordered the closure of the physical location of non-essential businesses within the Commonwealth of Pennsylvania.

17. Subsequently on April 1, 2020, Governor Wolf announced Commonwealth-wide stay-at-home orders effective at 8pm on April 1, 2020 and continuing through April 30, 2020 effectively extending the business closures from 2 to 6 weeks.

## **II. Legal Requirements for Granting Reconsideration Under 52 Pa. Code §5.592.**

18. In *Philip Duick et al. v. Pennsylvania Gas and Water Company*, Docket No. C-R0597001 (Order entered December 17, 1982), 1982 Pa. PUC LEXIS 4, 56 Pa. PUC 553 (1982), the Commission explained the basis for rescinding or amending a prior order:

A petition for reconsideration, under the provisions of 66 Pa. C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part. . . . What we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission.

*Duick*, 1982 Pa. PUC LEXIS 4, at \*11-\*13.

19. In *Pennsylvania Public Utility Commission v. Jackson Sewer Corporation*, 2001 Pa. PUC LEXIS 44, the Commission also stated:

Additionally, a Petition for Reconsideration is properly before the Commission where it pleads newly discovered evidence, alleges errors of law, or a change in circumstances.

*Jackson Sewer*, 2001 Pa. PUC LEXIS 44, at \*6.

20. This Petition for Reconsideration satisfies *Duick* and *Jackson Sewer*, in that the Petition raises issues “which appear to have been overlooked or not addressed by the Commission” (the financial devastation resulting from COVID-19) and “alleges errors of law.” Specifically, the violation of the due process rights of the OSBA and other parties representing

the ratepayers of PGW by not allowing any meaningful opportunity to review and comment on the proposal.

### **III. Argument**

21. The issue on which the OSBA seeks reconsideration is the approval of PGW's January 6<sup>th</sup> Cover Letter and February 21 Petition for Expedited Review and approval.

22. In re-docketing and approving the changes to PGW's USECP in less than a month, the Commission has violated the due process rights of the OSBA and the small business ratepayers it represents by not allowing adequate notice and an opportunity to be heard.

23. Without relief on reconsideration, PGW's ratepayers, including small business customers, would be subjected to the increase in costs associated with PGW's CAP program estimated at \$27 million in 2021, and \$29 million in 2022. This is in addition to increased rates proposed by PGW's rate request for an additional \$70 million in distribution rates.

24. As succinctly set forth in the dissenting Joint Statement of Commissioners Yanora and Coleman to the March 26<sup>th</sup> Order in this case, "careful review of cost impact has always been important for PGW's CAP, even without economic uncertainty."<sup>4</sup>

25. As no discovery has been conducted, the OSBA respectfully submits that there remain substantial uncertainties regarding the cost impact of the amendments. While the Commission appears to rely on an annual impact of \$27-\$29 million for 2021, the table at paragraph 11 of the February 21 petition shows a CRP total cost of \$45.6 million in 2021, while Table 4 of the amended plan shows a total 2021 CRP cost of \$87.0 million, an increase of \$41.4 million. Expedited approval of a petition with such significant uncertainties about the magnitude of the impact would be irresponsible. Moreover, even if this difference can be explained, the

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<sup>4</sup> Joint Statement at 5.

OSBA respectfully submits that the Company's cost impacts have not been subject to any rigorous review by the parties, and may contain significant errors and omissions.

26. According to information submitted in the Company's recent base rates case, Commercial customers are responsible for 22.5 percent of USEC revenues in FY 2021, which translates into an impact of \$6.0 to \$6.5 million under the Commission's cost impact, or \$9.3 million under the cost impact from the Company's tables cited above.

27. The Commission appears to dismiss concerns about cost impacts because the Company's proposal is purportedly a "pilot program." The Commission states that "Because we have approved the proposed changes as a Pilot Program, the Commission will further examine and explore the impact of the increased costs on ratepayers in PGW's 2023-2027 USECP filing to determine if further cost control measures or other changes are appropriate or required." The OSBA respectfully submits that the proposal is in no way a pilot program. Common understanding of a pilot program is one in which a small scale test is run to determine the feasibility of expanding the program to the entire population or entity.<sup>5</sup> The Company's program simply does not qualify as a pilot program, as it applies to the entire population of PGW ratepayers. It is a full-blown implementation of the proposed changes to the USECP. Moreover, it is naïve to think that, having established significantly higher benefits for CRP participants, the Commission will subsequently be able to roll those benefits back at some future date, should the costs prove prohibitive. Thus, the OSBA respectfully observes that the Commission did not fully consider whether the proposed changes were, in fact, a "pilot program," nor whether there is any

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<sup>5</sup> A simple internet search on "pilot program" suggests the following description, which OSBA respectfully submits is consistent with a layman's understanding of the term: "A pilot program, also called a feasibility study or experimental trial, is a small-scale, short-term experiment that helps an organization learn how a large-scale project might work in practice. A good pilot program provides a platform for the organization to test logistics, prove value and reveal deficiencies before spending a significant amount of time, energy or money on a large-scale project." <https://searchcio.techtarget.com/definition/pilot-program-pilot-study> reviewed April 10, 2020.

realistic possibility that the increased benefits to low-income customers can realistically be rolled back once awarded.

28. The OSBA respectfully submits that given the continuing economic devastation and loss of small business income resulting from the COVID-19 closures, combined with PGW's February 26<sup>th</sup>, \$70 million request for increase in distribution rates, and the Commission's rushed approval of a deficient request to modify PGW's USECP which at least two of the Commissioners acknowledge was "marked by procedural anomalies," this case is ripe for reconsideration.

#### IV. Conclusion

WHEREFORE, the OSBA respectfully requests that the Commission reverse its decision that approves PGW's January 6, 2020, Cover Letter and February 21, 2020, Petition for Expedited Review of changes to its USECP.

Respectfully submitted,

/s/ Sharon E. Webb

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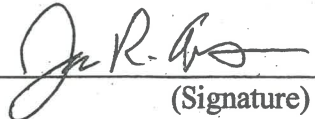
Dated: April 10, 2020



**VERIFICATION**

I, John R. Evans, hereby state that the facts set forth herein above are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Date: 4/10/20

  
(Signature)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Philadelphia Gas Works Universal Service and  
Energy Conservation Plan for 2017-2022** : **Docket No. M-2016-2542415**  
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**CERTIFICATE OF SERVICE**

I hereby certify that true and correct copies of the foregoing have been served via email (*unless other noted below*) upon the following persons, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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/s/ Sharon E. Webb

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DATE: April 10, 2020