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October 25, 2021

Via Electronic Filing

Rosemary Chiavetta, Secretary
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Addendum to Philadelphia Gas works Universal Service and Energy Conservation Plan
for 2017-2020 – Docket No. M-2016-2542415 and

Petition to Amend Philadelphia Gas Works Universal Service and Energy Conservation
Plan for 2017-2022 – Docket No. P-2020-3018867

Dear Secretary Chiavetta:

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

Sincerely,

/s/ Lauren M. Burge

Lauren M. Burge

cc: Cert. of Service w/enc. via email only

CERTIFICATE OF SERVICE

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

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/s/ Lauren M. Burge

Dated: October 25, 2021

Lauren M. Burge, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Addendum to Philadelphia Gas Works	:	
Universal Service and Energy Conservation	:	Docket No. M-2016-2542415
Plan for 2017-2020	:	
	:	
Petition to Amend Philadelphia Gas Works	:	
Universal Service and Energy Conservation	:	Docket No. P-2020-3018867
Plan for 2017-2022	:	
	:	

**PETITION OF PHILADELPHIA GAS WORKS
FOR COMMISSION ACTION**

Pursuant to 52 Pa. Code § 5.41, Philadelphia Gas Works (“PGW”) hereby petitions the Pennsylvania Public Utility Commission (“Commission”) for an order providing an expedited proceeding to address PGW’s revised energy burdens on remand from the Commonwealth Court of Pennsylvania, and to remove uncertainty about the status of PGW’s program in the interim. Specifically, PGW requests that the Commission: (1) issue an order directing PGW to maintain its existing energy burden Pilot Program as part of its Customer Responsibility Program (“CRP Pilot Program”) on a temporary basis until a final Commission order is issued in the proceeding on remand; (2) set a schedule for an expedited proceeding on remand in order to provide for the evidentiary proceedings and issuance of a new decision required by the Commonwealth Court’s decision; and (3) direct the Office of Administrative Law Judge (“OALJ”) to develop a certified record to be submitted to the Commission for decision.

The expedited proceeding on remand will determine whether any modifications to the current energy burdens are necessary while also avoiding the significant confusion, expense, and waste of resources that would likely occur if any immediate changes were made in the energy

burden or the Universal Service Charge paid by remaining customers. PGW requests expedited review of this Petition in order to provide clarity on the status of PGW's CRP Pilot Program, as well as direction on the proceeding on remand to provide important context for PGW's next Universal Service and Energy Conservation Plan filing which will be filed on or before November 1, 2021. This proposal is reasonable and in the public interest while at the same time preserving the parties' due process rights.

In support of this Petition, PGW submits as follows:

I. BACKGROUND

1. PGW is a city natural gas distribution operation as defined in Section 2212 of the Public Utility Code. 66 Pa. C.S. § 2212. As such, PGW is subject to the same requirements, policies and provisions regarding universal service and energy conservation programs as applicable to any other natural gas distribution company ("NGDC").

2. PGW's Universal Service and Energy Conservation Plan ("USECP") for 2017 to 2020 was originally approved by Commission Order entered on October 5, 2017.¹

3. On October 3, 2019, the Commission entered an Order at Docket No. M-2019-3012601 ("October 2019 Order") that extended the duration of existing or proposed USECPs from three to five years, and established pilot filing schedules for future plans and impact evaluations. This Order required electric distribution companies ("EDCs") and NGDCs to submit enrollment and budgetary projections for the years added to the current or proposed USECPs. October 2019 Order at Ordering ¶ 3.

4. Additionally, on November 5, 2019, the Commission entered a Final Policy Statement and Order at Docket No. M-2019-3012599 ("Final Policy Statement and Order")

¹ Docket No. M-2016-3012601.

adopting certain CAP policy changes and amending its CAP Policy Statement at 52 Pa. Code §§ 69.261-69.267. The Final Policy Statement and Order, in conjunction with the October 2019 Order, required EDCs and NGDCs to submit addendums to their existing or proposed USECPs indicating how they planned to implement the policy changes specified in the amended CAP Policy Statement. Final Policy Statement and Order at Ordering ¶ 6.

5. In particular, the Commission’s amended CAP Policy Statement states that utilities should establish new maximum tiered CAP energy burdens of 6% for natural gas heating customers in Federal Poverty Income Guidelines (“FPIG”) tiers 51%-100% and 101%-150%, and 4% for natural gas heating customers in FPIG tier 0%-50%. 52 Pa. Code § 69.265(2).

6. On January 6, 2020, PGW filed the required cover letter and addendum to its USECP. Through this filing, PGW amended its 2017-2020 USECP to extend the plan through 2022, and provided enrollment and budgetary projections for 2021 and 2022. PGW’s cover letter also addressed the CAP energy burden changes specified in the amended CAP Policy Statement that it proposed to implement via a pilot program.

7. Specifically, PGW’s January 6, 2020 filing proposed to implement the maximum energy burdens consistent with the amended CAP Policy Statement and to remove the obligation to pay \$5 per month towards pre-program arrears. These modifications were proposed to be implemented as a pilot program through the term of PGW’s Amended USECP. PGW requested that the Commission approve the CRP Pilot Program within 30 days to allow the Company adequate time to implement the change prior to an upcoming replacement of its customer information system (“CIS”).

8. On February 6, 2020, the Commission entered two separate Orders on Reconsideration and Clarification in response to Petitions filed by the Energy Association of

Pennsylvania (“EAP”) and the Office of Consumer Advocate (“OCA”) for Reconsideration/Clarification of the November 5, 2019 Final CAP Policy Statement and Order at Docket No. M-2019-3012599 (“EAP Reconsideration Order”).² The EAP Reconsideration Order clarified that utility compliance with the amended CAP Policy Statement is not mandatory, but was strongly encouraged.³ The EAP Reconsideration Order also indicated, *inter alia*, that utilities proposing to voluntarily modify their USECPs pursuant to the amended CAP Policy Statement must submit a cover letter, a Petition to Amend an existing USECP, and an addendum reflecting proposed CAP changes to an existing USECP including enrollment and budgetary projections.⁴ The EAP Reconsideration Order indicated that utilities should endeavor to implement the amended CAP Policy Statement “as quickly as possible” and ideally by January 1, 2021.⁵

9. In compliance, on February 21, 2020, PGW filed a Petition for Expedited Approval requesting that the Commission approve the CRP Pilot Program and other modifications as described in PGW’s January 6, 2020 filing, consistent with the EAP Order. PGW explicitly incorporated its January 6, 2020 cover letter and addendum by reference. Through its Petition, PGW requested expedited Commission review and approval of its CRP Pilot Program in order to have time to implement the pilot program prior to the filing of PGW’s next USECP for 2023-2027 (due November 1, 2021). PGW had already begun its planned CIS

² 2019 Amendments to Policy Statement on Customer Assistance Program, 52 Pa. Code § 69.261-69.267, Docket No. M-2019-3012599, Order on EAP Reconsideration and Clarification (entered Feb. 6, 2020) (“EAP Reconsideration Order”).

³ *Id.* at 11-12.

⁴ *Id.* at 12, Ordering Paragraphs 3-5.

⁵ *Id.* at 8-10.

replacement project and as a part of that project needed to cease implementing new system enhancements in order to ensure successful testing and implementation of the CIS. As a result, PGW requested approval of the CRP Pilot Program by March 31, 2020.

10. On March 2, 2020, OCA filed a Notice of Intervention and Answer opposing PGW's Petition for Expedited Approval. Also 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") (collectively, the "Low Income Advocates") filed a Letter in Lieu of Answer in support of PGW's Petition. The Office of Small Business Advocate ("OSBA") did not submit an Answer or other response but subsequently filed a Notice of Intervention on March 19, 2020.

11. On March 26, 2020, the Commission issued an Order granting PGW's Petition for Expedited Approval and approving PGW's Addendum and CRP Pilot Program ("March 26, 2020 Order").

12. On April 10, 2020, OCA and OSBA each filed Petitions for Reconsideration of this Order. The Petitions for Reconsideration were not granted.

13. On May 4, 2020, OCA and OSBA filed Petitions for Review with the Commonwealth Court of Pennsylvania seeking review and reversal of the Commission's March 26, 2020 Order.⁶ Neither OCA nor OSBA requested a stay of the March 26, 2020 Order.

14. PGW implemented the CRP Pilot Program as of September 12, 2020. Pursuant to the March 26, 2020 Order, PGW filed quarterly reports with the Commission on the CRP Pilot

⁶ *John R. Evans v. Pa. Public Utility Commission and Tanya J. McCloskey v. Pa. Public Utility Commission*, 421 and 422 C.D. 2020 (consolidated).

Program's implementation, and subsequently on costs. The quarterly reports have been served on all parties, including OCA and OSBA. No party took any action to stay the implementation of the CRP Pilot Program, and PGW implemented the program in good faith as directed by the Commission's March 26, 2020 Order.

15. While the CRP Pilot Program has been in place, the additional costs associated with the revised energy burdens have been charged to PGW's firm rate customers through PGW's Universal Service and Energy Conservation Surcharge,⁷ and additional benefits were provided to low income customers enrolled in CRP.

16. On September 29, 2021, the Commonwealth Court entered an Opinion holding that the Commission erred in granting PGW's Petition for Expedited Approval without providing interested parties adequate notice of the grant of expedited consideration and a meaningful opportunity to respond to the particular facts of the proposed changes to PGW's USECP. As a result, the Court vacated the March 26, 2020 Order and remanded to the Commission for further proceedings. The Court directed the Commission to provide evidentiary proceedings and issue a new decision consistent with its Opinion.⁸

II. PETITION

17. PGW now files this Petition requesting that the Commission issue an order directing PGW to maintain its existing CRP Pilot Program, including the revised energy burdens, on a temporary basis until a final Commission order is issued in the proceeding on remand. Further, PGW requests that the Commission move forward with the proceeding on remand on an

⁷ See PGW's Supplement No. 145 to Gas Service Tariff – Pa. P.U.C. No. 2, Ninetieth Revised Page No. 81.

⁸ *John R. Evans v. Pa. Public Utility Commission* and *Tanya J. McCloskey v. Pa. Public Utility Commission*, 421 and 422 C.D. 2020 (consolidated), slip copy 2021 WL 4451007.

expedited basis in order to provide for the evidentiary proceedings and issuance of a new decision required by the Commonwealth Court's decision. The proceeding on remand will determine whether any modifications to the current energy burdens are necessary while also avoiding the confusion, expense, and waste of resources that would likely occur if PGW were directed to make immediate changes in the energy burden and its Universal Service Charge pending the outcome of the remand proceeding. In order to expedite a final Commission decision, PGW requests that the OALJ be directed to develop a certified record to be submitted to the Commission to make a final determination (without the issuance of an initial decision).

18. Pursuant to Section 501 of the Public Utility Code, 66 Pa. C.S. § 501, the Commission has broad authority to carry out the provisions of the Public Utility Code and its regulations and orders. Additionally, Section 331 of the Public Utility Code, 66 Pa. C.S. § 331, gives the Commission and presiding officers broad authority to conduct the course of a proceeding. In remanding this matter to the Commission, the Commonwealth Court did not specify the exact process the Commission must use, but rather generally directed that the Commission “provide evidentiary proceedings and issue a new decision consistent with this Opinion” in order to provide due process to the interested parties regarding the revised energy burdens.⁹ Notably, the Court's Order did not direct any action with respect to PGW's existing USECP or rebilling of CRP participants. Therefore, it is within the Commission's authority to determine the process on remand consistent with the Commonwealth Court's direction.¹⁰

⁹ *John R. Evans v. Pa. Public Utility Commission and Tanya J. McCloskey v. Pa. Public Utility Commission*, 421 and 422 C.D. 2020 (consolidated), slip copy 2021 WL 4451007, at 31.

¹⁰ *See, e.g., Petition of PPL Electric Utilities Corp. for Approval of a New Pilot Time-of-Use Program*, Docket Nos. P-2013-2389572 and M-2016-2578051, and *Petition of PPL Electric Utilities Corp. for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2017 through May 31, 2021*, Docket No. P-2016-2526627, Secretarial Letter dated April 6, 2017 (describing procedures on remand from Commonwealth Court).

19. Because the Commonwealth Court’s decision vacated the Commission’s March 26, 2020 Order, there is uncertainty about the current status of the revised energy burdens that were implemented as a pilot program and which were the sole focus of OCA and OSBA appeals. In vacating and remanding the March 26, 2020 Order, the Court did not specify how this would affect the current CRP energy burdens in the interim before a final Commission order is issued on remand.

20. Importantly, at no time did any party request a stay or supersedeas of the March 26, 2020 Order. This is true even though the parties were served with PGW’s filings that provided detailed updates on implementation, and subsequently on the costs of the CRP Pilot Program.¹¹ As such, PGW was obligated to comply with the March 26, 2020 Order and implement the CRP Pilot Program despite the pending appeal.¹² PGW implemented the CRP Pilot Program in good faith on September 12, 2020 and low income CRP customers have benefitted from the reduced energy burdens since that time. All parties were well aware that the Pilot Program was being implemented as PGW filed monthly updates leading up to

¹¹ PGW filed six (6) monthly Status Updates on implementation of the CRP Pilot Program on May 22, 2020; June 26, 2020; July 24, 2020; August 26, 2020; September 25, 2020; and October 2, 2020 describing its progress toward implementation and confirming that the CRP Pilot Program was implemented on September 12, 2020. Subsequently, PGW filed four (4) quarterly Status Reports on January 15, 2021; April 16, 2021; July 15, 2021; and September 15 2021 (corrected on October 8, 2021) describing the monthly and cumulative costs associated with the CRP Pilot Program. Each of these reports was served on the parties and filed with the Commission.

¹² The filing of an appeal does not automatically result in a stay. *See Application of Artesian Water Pennsylvania, Inc. Pursuant to Chapter 21 of the Public Utility Code, for Approval of Affiliated Interest Agreement*, Docket No. G-2019-3013770 *et al.*, Opinion and Order entered May 21, 2020, at 5 (“There is no...automatic stay or supersedeas for appeals from agencies. Stays of determinations by governmental units such as the Commission are governed by Pa.R.A.P. 1781 and are not automatic, but instead must be sought by Petition, ordinarily submitted to the agency in the first instance.”)

implementation of the Pilot Program and has since filed quarterly status reports regarding program costs.¹³

21. Any reversion to the *status quo ante* that existed prior to the Commission's March 26, 2020 Order would affect the bills of low income CRP customers prior to the Court's decision. While the CRP Pilot Program has been in place, the additional costs associated with the revised energy burdens were charged to PGW's firm customers through the Universal Service and Energy Conservation Surcharge.¹⁴ Issuing the requested order would clarify that PGW is not required to modify the energy burdens at this time to reflect the prior energy burdens in place before the CRP Pilot Program was implemented, pending the Commission's determination on remand. Requiring PGW to make these changes prior to a decision on remand would be administratively burdensome and costly (costs which would have to be recovered from PGW ratepayers) and would result in confusion and higher bills (that are inconsistent with current Commission policy) for CRP customers. Given the ongoing COVID-19 pandemic, such results are inadvisable. Those additional charges could be very difficult for CAP customers to pay and may lead to significant confusion since this may eventually be reversed again once the Commission makes its decision on remand.

22. Additionally, PGW is required to file its next USECP for 2023-2027 on or before November 1, 2021. Direction from the Commission on how the remand proceeding on the energy burdens will be addressed as well as clarification on the current status of PGW's program will be important considerations for that filing, which will be submitted within a week.

¹³ See *supra*, footnote 11 describing the ten (10) different status reports PGW has filed in compliance with the March 26, 2020 Order. Additionally, PGW's September 2021 Corrected Quarterly Status Update providing monthly and cumulative Pilot Program cost information is available at: <https://www.puc.pa.gov/pdocs/1721921.pdf>.

¹⁴ See PGW's Supplement No. 145 to Gas Service Tariff – Pa. P.U.C. No. 2, Ninetieth Revised Page No. 81.

23. PGW's request is in the public interest and is consistent with the Commonwealth Court's direction. This proposal provides a path to ensuring that the parties' due process rights are respected while preventing a waste of resources as well as potential harm and confusion to low income CRP customers prior to the Commission issuing a final order on remand. If any changes to the CRP energy burdens are required, this proposal allows PGW to make only one set of changes as necessary and maintain the status quo until those changes are decided by the Commission. Under this proposed approach, any changes to the energy burdens only need be made if the Commission, after considering the evidence submitted in the expedited proceeding, determines to modify its original decision in whole or in part.

24. The Low Income Advocates have indicated that they do not oppose this Petition. OCA and OSBA have indicated that they will file Answers stating their positions regarding this Petition.

III. CONCLUSION

For the reasons discussed herein, PGW respectfully requests that the Commission issue an order directing PGW to maintain its existing CRP Pilot Program, including the revised energy burdens that were implemented as a pilot program pursuant to the March 26, 2020 Order, on a temporary basis until a final Commission order is issued in the proceeding on remand from the Commonwealth Court. Further, PGW requests that the Commission move forward with this proceeding on remand by establishing an expedited schedule for the evidentiary proceedings and issuance of a new decision required by the Commonwealth Court's decision. OALJ should be directed to develop a certified record to be submitted to the Commission for a final determination. The proceeding on remand will determine whether any modifications to the

current energy burdens are necessary while also avoiding the significant confusion, expense, and waste of resources that would likely occur without such direction from the Commission.

WHEREFORE, Philadelphia Gas Works respectfully requests that the Commission: (1) grant this Petition; (2) issue an order directing PGW to maintain the revised energy burdens that were implemented as the CRP Pilot Program, on a temporary basis until a final Commission order is issued in the proceeding on remand; (3) establish a procedural schedule for the evidentiary proceeding on remand on an expedited basis; (4) direct the OALJ to develop a certified record to be submitted to the Commission for decision; and (5) grant any other relief deemed to be in the public interest.

Respectfully submitted,

/s/ Lauren M. Burge

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October 25, 2021

Counsel for:
Philadelphia Gas Works

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Addendum to Philadelphia Gas Works Universal Service and Energy Conservation Plan for 2017-2020	:	Docket No. M-2016-2542415
	:	
	:	
Petition to Amend Philadelphia Gas Works Universal Service and Energy Conservation Plan for 2017-2022	:	Docket No. P-2020-3018867
	:	
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VERIFICATION

I, Denise Adamucci, hereby state that the facts set forth in the Petition of Philadelphia Gas Works for Commission Action 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).

October 25, 2021

Dated

/s/ Denise Adamucci

Denise Adamucci, Vice President
Regulatory Compliance & Customer Programs
Philadelphia Gas Works