

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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December 20, 2021

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
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Re: 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

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Prehearing Memorandum in the above-referenced proceedings.

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

Respectfully submitted,

/s/ Christy M. Appleby
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Enclosures:

cc: The Honorable Mark A. Hoyer (**email only**)
The Honorable Emily I. DeVoe (**email only**)
Certificate of Service

*321243

CERTIFICATE OF SERVICE

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

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

Dated this 20th day of December 2021.

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Dated: December 20, 2021
*321242

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

PREHEARING MEMORANDUM
OF THE
OFFICE OF CONSUMER ADVOCATE

Pursuant to Section 333 of the Public Utility Code, 66 Pa. C.S. Section 333, and in response to the December 12, 2021 Prehearing Conference Order issued in the above-captioned proceeding, the Office of Consumer Advocate (OCA) provides the following information:

I. INTRODUCTION

A. Overview.

On October 25, 2021, pursuant to Section 5.41 of the Commission’s regulations (52 Pa. Code § 5.41), PGW filed a Petition for Commission Action to request that the Commission schedule an expedited proceeding in order to address PGW’s revised energy affordability burdens that were remanded from the Commonwealth Court’s determination in the above-referenced dockets.¹ In its Petition, PGW requests that the Commission:

(1) issue an order directing PGW to maintain the 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

¹ See, 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 op., 2021 Pa. Commw. Unpub. LEXIS 519 (Sept. 29, 2021) (Remand Order).

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.

Petition at 1; see also, Petition at ¶¶ 17-24.

PGW's Petition is pursuant to the Commonwealth Court's Remand Order of the Commission March 26, 2020 Order in this proceeding.² In its Remand Order, the Commonwealth Court determined that the OCA and Office of Small Business Advocate had been denied adequate notice and opportunity to be heard by the 30-day paper pleadings process provided in the Commission's Order below. The Remand Order provided that:

The process provided by the Commission here to review and approve the Petition was truncated and limited, effectively, to the pleadings, despite there being factual questions about the proposed Pilot Program, the increased costs of which would be automatically collected from PGW's non-CAP ratepayers through a USECP surcharge. (Cover Letter at 7, R.R. at 9a (stating the Pilot Program would increase PGW's USECP surcharge).) This limited and truncated process did not provide OCA or OSBA a real and meaningful opportunity to be heard on PGW's Petition. Nor did OCA's and OSBA's participation in the general proceedings on the CAP Policy Statement Amendments provide them with a real and meaningful opportunity to challenge this Petition, notwithstanding the Commission's reference in the Reconsideration Order to utility-specific proceedings. Finally, the Commission's past approval of USECP modifications without a hearing and based only on the filings in situations where there were no factual disputes does not mean that hearings are not required to satisfy due process in the face of such disputes. Accordingly, we agree with OCA and OSBA, as well as Commissioners Coleman and Yanora, that the process provided by the Commission in approving the Petition did not comport with the requirements of due process.

Remand Order at *37-38. The Commonwealth Court directed the Commission "to provide evidentiary proceedings and issue a new decision consistent with this Opinion." Remand Order at

*44.

² Remand Order at *37-38, 44.

On November 15, 2021, the OCA filed its Answer to the PGW Petition for Commission Action. As the OCA indicated in its Answer, the OCA does not oppose continuation of the current program during the pendency of the remand proceeding, but the OCA reserves the right to seek refunds to the date of the Commonwealth Court Order. OCA Answer at 3. The OCA agrees that it will unnecessarily confuse consumers and be a waste of resources if the energy burdens are changed prior to a final Commission decision here during the pendency of this proceeding. Id.

As the OCA also identified in its Answer, the OCA believes a reasonable schedule should be established for this proceeding. OCA Answer at 4-5.³ The OCA, however, opposes PGW's proposal to certify the record to the Commission for the decision. See, OCA Answer at 5. The purpose of the remand of this proceeding is to allow for the opportunity to develop a full and complete factual record. The Commonwealth Court's decision specifically called for "evidentiary proceedings" and found the paper pleading process employed below inadequate. Remand Order at *37-38. The remand proceeding will include mixed issues of fact, law, and policy, and it will be important to have an Initial Decision from the Administrative Law Judge in order to recommend to the Commission how this matter should be resolved. An Initial Decision from the Administrative Law Judge is an important component to the fact-finding of this proceeding and should not be removed from the evidentiary proceeding process.

On November 4, 2021, the Coalition for Affordable Utility Energy Services in Pennsylvania (CAUSE-PA) and the Tenant Union Representative Network (TURN) filed their respective Petitions to Intervene. CAUSE-PA and TURN filed a Joint Answer to the Petition for Commission Action on November 15, 2021.

³ The OCA notes that PGW and OCA have agreed upon a proposed schedule as set forth below.

On October 29, 2021, PGW also filed its 2023-2027 Universal Service and Energy Conservation Plan (2023-2027 USECP) which has been docketed at M-2021-3029323. The OCA will file its Notice of Intervention in the proceeding on December 20, 2021. For the reasons set forth below, the OCA does not believe that the 2023-2027 USECP should be consolidated with the instant docket.

The matter was referred to the Office of Administrative Law Judges (OALJ) and Deputy Chief Administrative Law Judge Mark A. Hoyer and Emily I. DeVoe were assigned. A Prehearing Conference Order was issued on December 12, 2021 and scheduled a Prehearing Conference for Monday, December 20, 2021 at 11 a.m.

B. Background.

The Prehearing Conference Order requested that the parties provide a history of the case. Prehearing Conference Order at 2. On November 5, 2019, the Commission entered a Final Opinion and Order in the 2019 Amendments to Policy Statement on Customer Assistance Program, 52 Pa. Code Sections 69.261-69.267 at Docket No. M-2019-3012599 (Nov. 5 CAP Policy Statement Order). The Opinion and Order incorporates issues raised in the proceedings, Energy Affordability for Low-Income Customers, Docket No. M-2017-258711, and Review of Universal Service and Energy Conservation Programs, Docket No. M-2017-2596907. The Commission's Nov. 5 CAP Policy Statement Order identified 17 changes to the CAP Policy Statement, including, among other things, new energy affordability burdens for customers enrolled in the natural gas and electric distribution companies' Customer Assistance Programs (CAP). Nov. 5 CAP Policy Statement Order at 28-34. The Commission's Nov. 5 CAP Policy Statement Order also identified potential costs relating to the proposed energy affordability burdens. Nov. 5 CAP Policy Statement Order

at 24-28. The Nov. 5 CAP Policy Statement Order directed the utilities to file compliance plans within 60 days of the Order.

On November 20, 2019, the Office of Consumer Advocate filed a Petition for Reconsideration and Clarification regarding the extent to which the proposed maximum CAP energy affordability burdens for customers at or below 50 percent of the Federal Poverty Level would cause Pennsylvania's electric and natural gas utilities to increase the amount of Low Income Home Energy Assistance Program (LIHEAP) benefits returned to the Department of Human Services. The OCA also requested clarification regarding the cost information to be included in the universal service plan compliance filings and clarification that the compliance plans include this cost information for the revised programs. Also on November 20, 2019, the Energy Association of Pennsylvania (EAP) filed a Petition for Reconsideration and Clarification at Docket Nos. P-2020-3016889 and M-2019-3012599. On February 6, 2020, the Commission issued its Orders denying the OCA's Petition for Reconsideration and/or Clarification and granting the clarification requested in the EAP Petition for Reconsideration and/or Clarification. 2019 Amendments to Policy Statement on Customer Assistance Program, 52 Pa. Code Sections 69.261-69.267, Docket Nos. P-2020-3016885, M-2019-3012599, Order at 11 (Feb. 6, 2020) (OCA Reconsideration Order); 2019 Amendments to Policy Statement on Customer Assistance Program, 52 Pa. Code Sections 69.261-69.267, Docket Nos. P-2020-3016889, M-2019-3012599, Order at 11 (Feb. 6, 2020)(EAP Reconsideration Order). In the EAP Reconsideration Order, the Commission clarified that the filing requirements in Ordering Paragraphs 6,7, and 8 of the Nov. 5 CAP Policy Statement Order did not direct mandatory compliance with the amendments to the CAP Policy Statement and clarified the required information to be filed. EAP Reconsideration

Order at 11-12. Relating to the budgets and costs of the proposed changes in the OCA Reconsideration Order, the Commission's Order provided:

The November 5 Order directs that utilities provide enrollment projections in their addendums for the new CAP provision they propose to implement. This requirement has been reiterated in our order addressing the EAP petition for reconsideration at Docket Nos. P-2020-3016889 and M-2019-3012599. To the extent further granularity may be warranted, it can be addressed in utility-specific proceedings.

OCA Reconsideration Order at 11.

On January 6, 2020, Philadelphia Gas Works (PGW or Company) voluntarily proposed a pilot program implementing new maximum energy burdens (pilot programs) for its Customer Assistance Program (CAP), the Customer Responsibility Program (CRP). PGW proposed to reduce the energy burdens to 6% for customers with income at or below 51-100% and 101-150% of the Federal Poverty Level (FPL) and to 4% for customers with income at or below 0-50% of the FPL. Petition at ¶¶ 5, 8, App. H. PGW also proposed to remove the obligation to pay \$5/month towards pre-program arrears and to modify the consumption limits. Petition at ¶¶ 5, 8, App. H. PGW's proposed Amended Plan indicated that the proposed plan costs will increase from \$68,620,083 in 2020 to \$97,104,143 in 2021. PGW Amended USECP 2017-2022 at App. A. As PGW's Petition for Commission Action notes, PGW implemented the program on September 12, 2020. PGW Petition for Commission Action at ¶ 14. The actual costs of the program changes have been charged to all firm service customers. PGW Petition for Commission Action at ¶ 14. Consistent with the Commission's March 26, 2020 Order, PGW has also filed quarterly updates regarding the costs of the program to date. PGW Petition for Commission Action at ¶ 14.

II. ISSUES AND SUB-ISSUES

Based upon a preliminary analysis of PGW's filing, the OCA has compiled a list of issues and sub-issues that it anticipates will be included in its investigation of the Company's "pilot"

USECP design and the costs of the program design. The OCA has served one set of discovery to date and anticipates additional discovery will be required. As soon as the OCA has completed its review of the Company's filing and interrogatory responses, it is expected that informal discovery meetings may be scheduled. After the discovery process has been completed, the OCA will file its direct testimony, which will set forth more specifically the specific issues to be addressed in this proceeding. At that time, the OCA will also be able to make and to quantify its specific recommendations.

1. Plan Design Modifications: The OCA will review the design of the "pilot," including but not limited to, the lowered energy burdens, the removal of the \$5/month towards pre-program, and the modification to the consumption limits.

2. Cost Control Measures: The OCA will review the cost control measures included in the Plan and the impact of the changes to the energy burdens on Low Income Home Energy Assistance Program (LIHEAP) refunds.

3. Costs of the Pilot Modifications: The OCA will review the costs of the pilot modifications, including the impact of rising natural gas costs on the Plan.⁴

The OCA will examine each of these issues in more detail in its testimony in this proceeding. The OCA reserves the right to raise additional issues regarding the Company's Plan, as necessary.

III. WITNESSES

The OCA intends to present the direct, rebuttal and surrebuttal testimony, as may be necessary, of Roger Colton. Mr. Colton will present testimony in written form and will also attach various exhibits, documents and explanatory information that will assist in the presentation of the

⁴ As the OCA identified in its Answer, the OCA also has reserved the right in its review of the costs of the program to seek refunds to the date of the Commonwealth Court Order.

OCA's case. In order to expedite the resolution of this proceeding, the OCA requests that copies of all interrogatories, testimony, and answers to interrogatories be mailed directly to its expert witness at the following address, as well as e-mailing a copy to counsel for the OCA:

Roger D. Colton
Fisher Sheehan & Colton
34 Warwick Road
Belmont, MA 02478
E-mail: roger@fsconline.com

The topics Mr. Colton intends to testify about include the Customer Assistance Program "pilot" design changes, cost control measures, and program design costs.

The OCA specifically reserves the right to call additional witnesses, as necessary. As soon as the OCA has determined if an additional witness or witnesses will be necessary for any portion of its case, all parties of record will be notified.

IV. SERVICE ON THE OCA

The OCA will be represented in this case by Senior Assistant Consumer Advocate Darryl A. Lawrence, and Assistant Consumer Advocate Christy M. Appleby. Two copies of all documents should be served on the OCA as follows:

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V. PROCEDURAL SCHEDULE AND NEED FOR EVIDENTIARY HEARING

The Prehearing Order specifically requested that the parties provide the following information: “if you believe evidentiary hearings are appropriate in the remanded matter, a proposed plan and schedule of discovery, a listing of your proposed witnesses and the subject of their testimony, and a proposed litigation schedule, agreed to by all parties if possible.” Prehearing Order at 2. This case involves mixed questions of fact, law, and policy that necessitate the issuance of an Initial Decision in this matter. The Company implemented the “pilot” program in October 2020. Details regarding the implementation of the program should be included in the record for the Commission’s consideration.

The Company’s amendments related to the Nov. 5 CAP Policy Statement Order raise questions as to the cost of the program, the impact of the amendments on the overall plan, and the continued cost-effectiveness of the Plan, among others. The OCA submits that further analysis of the impact of the changes on returned LIHEAP dollars is also required. With significantly lower energy burdens, it is possible that LIHEAP dollars will not be able to be fully utilized, resulting in a waste of scarce resources. The OCA submits that an adequate forum is necessary for the collection of necessary information and an analysis of the data.

As the OCA noted above, the OCA proposes to present the testimony of Roger D. Colton. Mr. Colton will review the pilot program and make recommendations regarding the design of the Customer Assistance Program (CAP), cost control measures, and the costs of the program design changes. In order to facilitate this review, the OCA, OSBA, and PGW have agreed upon the following procedural schedule:

| | |
|---------------------------------|------------------|
| PGW Direct Testimony | February 4, 2022 |
| Other Parties’ Direct Testimony | March 7, 2022 |
| Rebuttal Testimony | March 31, 2022 |
| Surrebuttal Testimony | April 12, 2022 |

Rejoinder Outline
Hearings
Main Brief
Reply Brief

April 18, 2022
April 19-20, 2022
May 10, 2022
May 20, 2022

The OCA believes that this proposed schedule will provide the parties with sufficient time to review the pilot program changes but will also expeditiously move this matter forward in a timely manner.

As the OCA noted above, PGW also filed its 2023-2027 Universal Service and Energy Conservation Plan (2023-2027 USECP) at Docket No. M-2021-3029323. While there may be some issues that overlap in the issues identified, the OCA submits that the instant case is limited to the treatment of the changes to the Universal Service and Energy Conservation Plan that PGW has made in response to the Nov. 5 Final CAP Policy Statement Order. This case was remanded from the Commonwealth Court to allow the parties the notice and opportunity to be heard regarding issues related to the current Plan. An evaluation of the current plan pilot and amendments was what was mandated by the Commonwealth Court order. The review of the 2023-2027 Universal Service and Energy Conservation Plan is broader in scope than the changes identified in the Nov. 5 Final CAP Policy Statement Order and addressed by PGW's Petition in this matter. As the Prehearing Order correctly notes, the 2023-2027 USECP is currently assigned to the Bureau of Consumer Services. Traditionally, the BCS holds a collaborative meeting to identify issues related to the new Plan, and then an Order requesting comments is subsequently issued. The Order will often identify issues or problems that have arisen with BCS's review of informal complaints. The OCA does not believe that consolidation or circumvention of the review process of the 2023-2027 Plan is necessary and would potentially remove the valuable insights of

BCS into the new Plan.⁵ The OCA submits that there is no compelling reason to alter the standard practice for review here.

VI. DISCOVERY

In order to effectively investigate and adequately develop a record on these issues, the OCA requests modifications to the Commission's procedural rules on a going-forward basis as set forth below.

(1) Answers to written interrogatories will be served in-hand within ten (10) calendar days of service of the interrogatories except that service of interrogatories served after 12:00 noon on a Friday shall be deemed service on the following business day;

(2) Objections to interrogatories will be communicated orally within three (3) business days of service; unresolved objections shall be served to the ALJs in writing within five (5) business days of service of the interrogatories;

(3) Motions to dismiss objections and/or direct the answering of interrogatories will be filed within three (3) business days of service of written interrogatories;

(4) Responses to motions to dismiss objections and/or direct the answering of interrogatories will be filed within three (3) business days of service of such motions;

⁵ In the OCA's experience in other USECP proceedings, there has not been a set timeframe for BCS to complete its review of the Plans and the length of time has varied significantly. The time between filing and BCS issuing an Order requesting comments has often been lengthy. For example, on July 2, 2018, Peoples Natural Gas Company LLC (PNGC) and Peoples Gas Company (PGC) (collectively Companies) at Docket No. M-2018-3003177, *et al.* filed their proposed 2019-2021 Universal Services and Energy Conservation Plan (Proposed 2019 USECP or Proposed 2019 Plan).⁵ An Order requesting Comments and Supplemental Information was not issued until August 27, 2020. To date, the Commission has not issued a final Order. On February 29, 2019, Duquesne Light Company (Duquesne or Company) filed its proposed Universal Service and Energy Conservation Plan for 2020-2023(USECP) at Docket No. M-2019-3008227.⁵ On November 19, 2020, the Commission entered its Tentative Order and requested that Duquesne provide Supplemental Information. A Settlement was filed in the docket, but to date, the Commission has not issued a final Order. The shortest interval, of late, was for the National Fuel Gas Distribution Corporation (NFG). On March 31, 2021, NFG filed its proposed natural gas Universal Service and Energy Conservation Plan for 2022-2024 (USECP or Plan) pursuant to 52 Pa. Code Section 62.4 at Docket No. M-2021-3024935. On July 15, 2021, the Commission entered its NFG USECP 2022-2026 Comment Order and requested Supplemental Information. To date, the Commission has not issued a final Order.

(5) Responses to requests for document production, entry for inspection, or other purposes will be served in-hand within ten (10) calendar days or objected to within five (5) business days of service;

(6) Requests for admission will be deemed admitted unless answered within ten (10) calendar days or objected to within five (5) business days of service.

(7) Rulings over motions shall be issued, if possible, within seven (7) calendar days of the filing of the motion;

(8) Any discovery or discovery related pleadings such as objections, motions, answers to motions served after 12:00 noon on a Friday or on any business day preceding a state holiday shall be deemed to have been served on the following business day for purposes of tracking responsive due dates; and

(9) That due dates be “in-hand” and that electronic or fax service on the due date will satisfy the “in-hand” requirement.

VII. SETTLEMENT

The OCA will work with the parties to discuss settlement.

Respectfully Submitted,

/s/ Christy M. Appleby

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