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October 15, 2009

**Via Electronic Filing**James J. McNulty  
Secretary  
PA Public Utility Commission  
Commonwealth Keystone Bldg.  
400 North Street, 2<sup>nd</sup> Floor  
P.O. Box 3265  
Harrisburg, PA 17105-3265RE: Philadelphia Gas Works Universal Service and Energy Conservation  
Plan 2008-2010 Submitted in Compliance with 52 Pa. Code § 62.4Joint Petition for Interlocutory Review of A Material Question and  
Approval of Settlement, and Joint Petition for Settlement  
Docket No. M-00072021

Dear Secretary McNulty:

Enclosed for filing in the above-reference matter are the original of the following Statements with respect to the Joint Petition For Interlocutory Review of A Material Question And Approval Of Settlement and "Joint Petition for Settlement" filed last Friday, October 9, 2009, along with the electronic filing confirmation page.

Philadelphia Gas Works ("PGW"), the Office of Trial Staff and the Tenant Union Representative Network/Action Alliance of Senior Citizens of Greater Philadelphia submit Statements in Support of the Settlement. PGW also submits the verified Statement of Randy J. Gyory, Senior Vice President, Operations and Customers Affairs of PGW. The Office of Consumer Advocate is submitting a Statement of Position.

As set forth in the Joint Petition For Interlocutory Review of A Material Question And Approval Of Settlement, the Joint Petitioners request that the Commission consider this matter at its Public Meeting scheduled for October 22, 2009.

As evidenced by the attached Certificate of Service, the parties of record have been served in the manner indicated.

James J. McNulty  
Secretary  
October 14, 2009  
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If you have any questions regarding this filing, please contact me at your convenience.

Sincerely,

  
Daniel Clearfield

DC/jls  
Enclosures

cc: Chairman, James H. Cawley  
Vice Chairman, Tyrone J. Christy  
Hon. Robert F. Powelson  
Hon. Kim Pizzingrilli  
Hon. Wayne E. Gardner  
Bohdan R Pankiw  
Cheryl Walker Davis, Esq., Director, OSA  
Hon. Charles E. Rainey, Jr.  
Certificate of Service

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the parties' Statements related to the Joint Petition for Settlement and for Interlocutory Review of a Material Question upon the participants listed below in accordance with the requirements of § 1.54 (relating to service by a participant).

**VIA EMAIL AND FIRST CLASS MAIL**

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Date: October 15, 2009

  
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Kevin J. Moody, Esq.



to modify its Plan in time to apply LIHEAP Cash grants starting in October in accordance with present DPW directives.

This timely revision will avoid the potential removal of PGW from the LIHEAP vendor program (i.e., the distributor of all LIHEAP funds – LIHEAP Cash grants and CRISIS grants – provided to PGW customers). PGW’s removal as a LIHEAP vendor would have serious negative consequences for PGW’s low income customers as well as for the Company. Those consequences are described below.

Because PGW now anticipates that, given recently obtained information, it will begin to receive LIHEAP Cash grants starting in late October,<sup>1</sup> it is necessary to ask the Commission to review the proposed Settlement immediately, via the Joint Petition.<sup>2</sup>

### ***Background***

DPW administers the LIHEAP program in the Commonwealth. DPW has directed that PGW change its PUC approved method of applying LIHEAP Cash grants to the accounts of CRP participants for the 2009-2010 LIHEAP season. Specifically, DPW directed that PGW stop applying LIHEAP Cash grants to reduce the Universal Service and Energy Conservation Surcharge (“Surcharge” or “subsidy”) and instead apply LIHEAP Cash grants directly to the respective CRP participant’s “asked to pay” amount, any CRP arrears, and any remainder to future CRP “asked to pay” bills.<sup>3</sup> The Plan amendment authorized by the Settlement must be made **before the end of October 2009** in order to be in effect when the 2009-2010 LIHEAP

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<sup>1</sup> Attachment “A” (Gyory Statement) ¶ 15.

<sup>2</sup> If the PUC is provided with evidence that DPW has modified or rescinded its directive (e.g., by permitting PGW to implement the new application process for the 2010-2011 LIHEAP season, as OCA supports), the Settlement provides that the PUC may modify its order accordingly. Settlement, ¶s 13, 19, 20.

<sup>3</sup> Gyory Statement, ¶ 8.

season begins and before the bulk of LIHEAP Cash grants is received.<sup>4</sup> Thus, it is essential that the PUC approve the Settlement's Plan amendment at the Commission's Public Meeting scheduled for October 22, 2009.

***The Settlement is in the Public Interest***

It is imperative that the PUC quickly act to permit PGW to modify its Plan and comply with the present directive of DPW, as reflected in the September 8, 2009 letter ("September Letter") from DPW Secretary Richman to PUC Chairman Cawley, before the beginning of the 2009-2010 LIHEAP season.<sup>5</sup> One of the potential consequences of failing to obtain timely approval of the Settlement is that DPW could cease to utilize PGW as a LIHEAP vendor and instead pay LIHEAP Cash grants and CRISIS grants directly to customers.<sup>6</sup> One result of such direct payment would be loss of assurance that customers will use the grants for timely payment of natural gas bills, thus increasing the risk of termination for non-payment. One result of such shut-offs, aside from the dislocation and suffering of the affected families, would be that PGW will experience increased uncollectibles – which ultimately are paid by non-CRP customers. The direct payment of all grants to recipients would likely also result in significant low income customer confusion and other hardships and inconveniences.<sup>7</sup> Loss of LIHEAP vendor status could also negatively affect customers' ability to quickly use CRISIS grants to resolve emergencies.<sup>8</sup>

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<sup>4</sup> Joint Petition at 2; Settlement, ¶s 21-22, 24.

<sup>5</sup> Exhibit "1" to the Joint Petition for Settlement contains a chronology of all relevant letters to and from DPW and HHS as well as relevant PGW responses. The September Letter is found at tab W of Exhibit "1".

<sup>6</sup> Gyory Statement, ¶ 9.

<sup>7</sup> *Id.*, ¶s 9-10.

<sup>8</sup> *Id.*, ¶ 10.

In its effort to ensure that it can implement DPW's directive before the start of the 2009-2010 LIHEAP season, PGW has completed the programming modifications that would permit it to start applying LIHEAP Cash grants directly to CRP customers' asked to pay amounts. Accordingly, PGW can implement the Plan amendment authorized by the Settlement for the 2009-2010 LIHEAP season.<sup>9</sup> However, attempting implementation after some or all 2009-2010 LIHEAP Cash grants have been received and applied under the methodology utilized now could create a number of administrative issues whose resolution would be burdensome and time-consuming.<sup>10</sup> As a result, customers may be denied the benefit of the grants until after PGW has received PUC authorization to change the Plan, which might be too late to avoid service terminations or to restore service prior to the start of cold weather.<sup>11</sup>

The Settlement does not propose a retroactive application of the change in the application of LIHEAP Cash grants for the *2008-09 LIHEAP season*,<sup>12</sup> as this directive has not been required in the last public statement from DPW setting forth PGW's obligations on this issue – the September Letter.<sup>13</sup> Moreover, the Settling Parties have noted that such a retroactive application would impose an additional estimated \$16 million burden on non-CRP customers (via recovery through the Surcharge).<sup>14</sup> Questions about the legality of retroactive application under the Public Utility Code and other law have also been raised by various parties.

Approval of the Settlement is also in the public interest because it fairly and reasonably resolves a significant, urgent matter affecting PGW and all of its customers. The amendment to

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<sup>9</sup> *Id.*, ¶ 13.

<sup>10</sup> *Id.*, ¶s 13, 14.

<sup>11</sup> *Id.*, ¶s 9, 10, 12; Joint Petition at 2-3.

<sup>12</sup> Settlement, ¶ 15.

<sup>13</sup> *Id.*, ¶ 7.

PGW's Plan authorized by the Settlement offers a timely, reasonable resolution of the issues raised in this matter and represents a compromise of the parties' positions in this proceeding, while maintaining PGW's status as a LIHEAP vendor. Simply put, the Settlement will allow PGW to apply LIHEAP Cash grants in the manner presently being directed by DPW for the 2009-2010 LIHEAP season.

In recognition of OCA's position that the change in LIHEAP Cash grant application should not be put into effect until the 2010-11 LIHEAP season, if at all, the proposed Settlement leaves this issue for the PUC to decide (without voiding the rest of the Settlement).<sup>15</sup> If the PUC receives an indication that DPW would be willing to accept this result (without jeopardizing PGW's vendor status), the PUC will be in a position to make this modification. PGW emphasizes, however, that such a modification of the present public mandate of DPW would only be advisable if there were a clear and unequivocal directive from DPW that not implementing this change for this upcoming LIHEAP season will not threaten PGW's vendor status or otherwise harm PGW or its customers.

Under the terms of the proposed Settlement, PGW agrees to file -- no later than January 31, 2010, and separately from its next base rate case -- a proposal to alter CRP to accommodate DPW's current directive, as well as any other changes deemed appropriate for CRP.<sup>16</sup> Such a proceeding would presumably investigate methods to modify PGW's present CRP to recognize the change in the application of LIHEAP grants to a CRP customer's asked to pay amount.

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<sup>14</sup> Joint Petition, ¶ 12; Gyory Statement, ¶ 12.

<sup>15</sup> Settlement, ¶s 13, 20.

<sup>16</sup> *Id.*, ¶s 15-16.

Finally, the Settlement explicitly states that this Settlement does not mean that the parties agree with the propriety or appropriateness of DPW's directive, and that it is not intended to be precedent for the proper application of LIHEAP Cash grants for any other utility.<sup>17</sup>

***Reasons Why Petition for Interlocutory Review of Material Question Should Be Granted***

As outlined above, it is imperative that the PUC authorize PGW to modify its Universal Service Plan to comply with the present directive of DPW regarding LIHEAP Cash grant application and do so before LIHEAP Cash grants are received in late October. PGW has been able to achieve a settlement by all parties (with OCA agreeing to most of the terms) which would permit such timely Commission approval. However, the only way in which to provide for the full Commission's consideration of the Settlement at the PUC's October 22<sup>nd</sup> Public Meeting was to present the Settlement directly to the Commission via the Joint Petition without adding the time that would have been necessary for the ALJ to prepare a recommended decision. Thus, compelling reasons exist for the granting of the Joint Petitioners' request for interlocutory review.


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<sup>17</sup> *Id.*, ¶s 17-19.

***Conclusion***

WHEREFORE, PGW respectfully requests that the Commission: 1) grant the Joint Petition for Interlocutory Review of a Material Question and Approval of Settlement; 2) approve the Joint Petition for Settlement at its Public Meeting scheduled for October 22, 2009; 3) mark the record in the above matter closed; and 4) grant other such relief as is determined by the Commission to be in the public interest.

Respectfully submitted,



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Date: October 15, 2009



6. The effect of this offset methodology is to reduce the amount of the Surcharge, for which all firm non-CRP customers are responsible.

7. Under the offset methodology, individual CRP customers receive the benefit of the LIHEAP grants because PGW's "Percentage of Income" CRP provides a CAP Credit that implicitly credits the customer for the LIHEAP grant (whether the customer actually applies for or receives the grant) by providing a generous CAP Credit. This Credit results in a monthly bill for CRP customers that is affordable, whether or not he/she receives a LIHEAP grant and regardless of the size of the grant, while reducing the subsidy other non-CRP ratepayers are required to pay.

8. By letter dated May 6, 2009 to PGW, DPW directed that PGW stop utilizing its Commission-approved application of LIHEAP grants and instead apply the grants directly to the respective CRP participant's CRP bills (the "asked to pay" amount) or any CRP arrears, and any remainder to future CRP "asked to pay" bills. Exhibit "1" to the joint petition for settlement of this matter contains a chronology of all relevant letters from DPW and HHS as well as relevant PGW responses. DPW's May 6, 2009 letter to PGW is Exhibit "B" to PGW's petition for amendment and at tab L of Exhibit "1" to the settlement petition. In a May 27, 2009 letter, the Department of Health and Human Services expressed its support of this mandated approach. A copy of the May 27, 2009 letter is at tab N of Exhibit "1" to the settlement petition. Recently, the Secretary of DPW reaffirmed the Department's present position that PGW is required to apply these LIHEAP grants to individual CRP customer accounts beginning in the 2009-2010 LIHEAP season in correspondence dated September 8, 2009 to the Chairman of the PUC. This September 8, 2009 letter (at tab W of Exhibit "1" to the settlement petition) represents the most recent statement of DPW's position.

9. PGW has been informed by DPW that the consequences of non-compliance with the DPW directive is that DPW would no longer utilize PGW as a LIHEAP vendor and would instead pay grants directly to customers. Of course, if PGW lost its status as vendor, and CRISIS and Cash grants are paid directly to customers, there could be significant negative consequences for PGW and its customers. For example, a result of paying the grants directly to customers is that there would be no assurance that the grant would be used to pay a customer's natural gas bills. If the grant were used for some other purpose, customers could be exposed to increased risk of service termination.

10. PGW would expect that its de-listing as a vendor would create much confusion for CRP customers and if customers don't pay grants to PGW, PGW would experience increased uncollectibles, which ultimately are paid by non-CRP customers. If PGW is no longer a vendor and thus decides to stop serving as an intake site, consumers would have only one main intake site available through early January 2010 (with two other locations open only one day a week starting January 4, 2010). CRP customers who do not have a bank checking account could be forced to pay a fee to have the grant check cashed, and another fee to create a money order payable to PGW. Further, paying CRISIS grants directly to customers would add additional time and requirements onto a customer's ability to use the grant and would diminish the purpose of CRISIS grants, which is to resolve a home-heating emergency.

11. The estimated effect of applying LIHEAP grants to individual CRP customers' asked to pay amounts, rather than utilizing the grant to reduce the subsidy that must be recovered from other customers for the 2009-2010 LIHEAP season, is \$11.5 million. Again, this additional payment to CRP customers will cause the Universal Service Charge to be higher by \$11.5 million than it otherwise would be if the grants continued to be applied as they are presently.

12. Any retroactive application of this same method of applying LIHEAP grants to the 2008-2009 LIHEAP season would cause additional administrative issues and would impose an estimated additional \$16 million burden on non-CRP customers, through higher charges imposed through PGW's Surcharge.

13. PGW has completed the programming modifications that would permit it to start applying LIHEAP grants to CRP customers' asked to pay amounts. Therefore, such a change could technically be implemented for the 2009-2010 LIHEAP season. However, attempting to make this change after the fact (i.e., after PGW begins to receive LIHEAP grants) would cause a number of administrative issues, could create extensive customer confusion and may alter the customers' use of the grants until PGW received the legal authorization to change the application.

14. In order to further modify its existing CRP to take account of any change in the application of LIHEAP grants, other than those related to this year's program and listed above, PGW would have to make further programming changes in its existing billing system. Subsequent to necessary PUC approval, using every resource available and ceasing work on other business initiatives, PGW estimates that it would take 4-6 months to accomplish such reprogramming and implementation. Therefore no such modifications could be made in time for this upcoming LIHEAP season.

15. PGW recently obtained information that starting in late October 2009 it will begin to receive LIHEAP grants for the 2009-2010 LIHEAP season.

  
Randy J. Gyory



incumbent upon OTS to ensure that the public interest is served and to determine to what extent amicable resolution of any such proceeding will benefit the public interest. Based upon OTS' analysis of the Company's Petition for Amendment of its Universal Service and Energy Conservation Plan and subsequent settlement discussions, acceptance of this proposed Settlement is in the public interest and OTS recommends that the Commission grant the Petition for Interlocutory Review and approve the Settlement in its entirety.

2. PGW filed its currently effective Universal Service Plan on July 7, 2007.

The filing was approved by the Commission on August 31, 2007.

3. The Plan includes PGW's Customer Assistance Program ("CAP"), titled the Customer Responsibility Program ("CRP").

4. PGW's CRP provides a discount to low-income customers by reducing their bill to an amount equal to a percentage of their income (the "asked to pay") and transferring the cost of the discount ("CAP Credit") to non-CAP customers.

5. To provide the discount without overburdening non-CAP customers, the CAP Credit, which is recovered in PGW's Universal Service and Energy Conservation Surcharge ("Surcharge"), is partly offset by application of LIHEAP cash grants to the CAP Credit on behalf of the CRP participants for which the LIHEAP grants are provided.

6. OTS submits that the current application of the LIHEAP grants benefits CAP customers by offsetting the CAP Credit to facilitate provision of the CAP customer "asked to pay" amount and encouraging monthly payments through the affordable payment plan.

7. On May 6, 2009, The Pennsylvania Department of Public Welfare (“DPW”), the state agency charged with administering the LIHEAP program in the Commonwealth, sent a letter informing PGW that all LIHEAP grants must be applied to the CAP participants’ current “asked to pay” amounts. In order to comply with DPW’s request, PGW would be precluded from applying the LIHEAP grants to any part of the CAP Credit.

8. DPW and PGW continued to engage in correspondence regarding modifications to PGW’s LIHEAP program. PGW protested aspects of DPW’s proposal including the retroactive application of DPW’s proposed modifications.

9. On May 26, 2009, the U.S. Department of Health and Human Services (“DHHS”), the federal agency administering the LIHEAP program, communicated its support of DPW’s proposed modifications to PGW’s LIHEAP program.

10. On September 8, 2009, DPW sent a letter to the Commission reaffirming its position that PGW must apply the LIHEAP grants directly to CRP customer accounts beginning in the 2009-2010 LIHEAP season.

11. On July 8, 2009, PGW filed a Petition for Amendment of its Universal Service and Energy Conservation Plan requesting implementation of the LIHEAP program modifications proposed by DPW and supported by DHHS.

12. OTS, the Office of Consumer Advocate (“OCA”) and the Tenant Union Representative Network/Action Alliance of Senior Citizens of Greater Philadelphia (“TURN *et al.*”) filed Answers to the petition.

13. A Prehearing Conference convened on Thursday October 1, 2009 with ALJ Charles E. Rainey presiding. During the Prehearing Conference, the parties agreed to engage in settlement discussions and reconvene at a Second Prehearing Conference.

14. The Second Prehearing Conference convened on Thursday October 8, 2009, also with ALJ Rainey presiding. During this Prehearing Conference, the parties informed ALJ Rainey that we had reached a settlement in principle. ALJ Rainey proceeded to suspend the litigation proceedings pending the finalization of the settlement in principle.

15. In accordance with Commission's policy favoring settlements, 52 Pa. Code § 5.231, the parties reached a settlement. OTS, TURN *et al.* and the Company signed the Settlement. OCA did not oppose the Settlement.

16. In accordance with 52 Pa. Code § 5.302, the parties filed the Petition for Interlocutory Review. As with the Settlement, OTS, TURN *et al.* and the Company signed the Petition for Interlocutory Review. OCA did not oppose the Petition for Interlocutory Review.

17. The OTS submits that the Settlement represents a balance of the interests of the Company and its customers. Accordingly, for the reasons articulated below, OTS maintains that the Petition for Interlocutory Review and the Settlement are in the public interest and requests that they be approved by the Commission:

a. Failure to approve the Settlement before commencement of the 2009-2010 LIHEAP season in November could result in DPW disqualifying PGW as a LIHEAP vendor. OTS believes that the potential harm to ratepayers caused by

revocation of PGW's vendor status necessitates immediate resolution and cannot be sufficiently addressed through the normal Commission review process.<sup>1</sup>

b. The Settlement modifies PGW's application of LIHEAP grants in accordance with DPW's directives, thereby avoiding PGW's disqualification as a LIHEAP vendor for the 2009-2010 season.

c. The Settlement provides for a subsequent PGW filing to consider rate effects of the modified application of LIHEAP grants and any related changes to the CRP. OTS maintains that this filing is necessary to adequately address the broad effects of PGW's modified application of LIHEAP grants without jeopardizing PGW's status as a LIHEAP vendor for the 2009-2010 season.

d. The Settlement does not address retroactive application of LIHEAP grants. If necessary, consideration of additional DPW directives regarding retroactive application will be addressed in further proceedings.

### CONCLUSION

18. Based upon OTS' analysis, granting of the Petition for Interlocutory Review and approval of the Settlement is in the public interest. Resolution of this case by settlement rather than litigation will avoid the substantial time and effort involved in continuing to formally pursue all issues in this proceeding. Further, OTS believes that the risk of harm to ratepayers that could result from a failure to resolve the case before

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<sup>1</sup> The potential harms, including increased heating terminations, are discussed in the Petition for Interlocutory Review at page 2.

the November commencement of the LIHEAP season places paramount importance on an expedited resolution.

19. OTS further submits that the granting of the Petition for Interlocutory Review and acceptance of the Settlement will negate, with respect to both filings, any need for an evidentiary hearing, the preparation of Main and Reply Briefs, the preparation of Exceptions and Reply Exceptions, and the filing of possible appeals.

20. The Settlement is conditioned upon the Commission's approval of all terms and conditions contained therein and should the Commission fail to grant such approval or otherwise modify the terms and conditions of the Settlement, it may be withdrawn by the Company or OTS as provided therein.

21. OTS' agreement to settle this case is made without any admission or prejudice to any position that OTS might adopt during subsequent litigation in the event that the Settlement is rejected by the Commission or otherwise properly withdrawn by any other parties to the instant proceeding.

**WHEREFORE**, the Commission's Office of Trial Staff represents that it supports the Petition for Interlocutory Review and the Settlement as being in the public interest and respectfully requests that the Commission subsequently grant the Joint Petition for Interlocutory Review of a Material Question and approve the Joint Petition for Settlement, including all terms and conditions contained therein.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Adeolu A. Bakare', is written over a horizontal line.

Adeolu A. Bakare  
Prosecutor  
PA Attorney I.D. # 208541

Pennsylvania Public Utility Commission  
Post Office Box 3265  
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Dated: October 14, 2009



directly to the respective LIHEAP Cash recipient's CRP bills (the "asked to pay" amount) and/or any CRP arrears, with any remainder to future CRP "asked to pay" bills. DPW further informed PGW that if PGW did not make the changes, DPW would no longer utilize PGW as a LIHEAP vendor and would instead pay grants directly to customers. The Joint Petitioners concede that this threat, if implemented, would severely damage both PGW and its LIHEAP-eligible customers.<sup>1</sup>

## **II. Terms and Conditions of Settlement**

The Settlement terms are delineated in Paragraphs 13 through 20 of the Joint Petition for Settlement. TURN et al. support the Settlement because it ensures PGW's continued status as a LIHEAP vendor for the 2009-2010 LIHEAP program season, if timely approved by the Commission. LIHEAP *Cash* grants, as applied against the "asked to pay amount," are particularly important for CRP customers in the 2009-2010 LIHEAP season because the *Crisis* program will not start until January 4, 2010. LIHEAP Crisis grants have, up until now, been available concurrently with Cash grants at the start of the LIHEAP season – traditionally in November – to cancel shut-off notices and restore service to terminated customers. With the delayed availability of Crisis grants, the efficient issuance of LIHEAP Cash grants to PGW to reduce or eliminate "asked to pay amounts" of CRP accounts will be critical in preventing shut offs and restoring service to customers needing assistance to pay these bills as the harsh winter weather approaches.

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<sup>1</sup> If grants are distributed directly to PGW customers, there will be inevitable delays in the process by which checks are cashed and payments then made to PGW. TURN et al. submit that such delays will result in increased disputes and terminations, impairing the overall impact of the state LIHEAP program.

TURN et al. support DPW's new policy regarding application of LIHEAP Cash grants because it will bring Pennsylvania into compliance with the Low Income Home Energy Assistance Act (LIHEAA), the federal law which governs the LIHEAP program and mandates that LIHEAP benefits be applied directly to the amount LIHEAP recipients are billed by their utility companies. The U.S. Department of Health and Human Services, the federal agency that oversees the States' administration of their LIHEAP programs, has stated that LIHEAA forbids the use of LIHEAP Cash grants to subsidize Customer Assistance Programs ("CAPs"), such as PGW's CRP, and requires Pennsylvania utilities to apply the LIHEAP Cash grants obtained by CAP customers directly to the CAP customers' "asked to pay" amounts.

DPW's new policy, and PGW implementation of this policy, will provide a great incentive to PGW's CRP customers to apply for Cash grants to assist with CRP payment obligations. Currently, only about half of PGW's CRP customers apply for and assign LIHEAP Cash grants to PGW. Once the policy change is widely known among customers, there should be an increased rate of LIHEAP Cash applications among CRP customers, and potential additional millions of dollars in LIHEAP grants flowing to PGW. Fewer CRP customers should be behind on their bills. With fewer delinquencies should come fewer credit and collection costs and fewer termination costs. Finally, with fewer terminations there will be fewer instances of households using unsafe heating sources that may cause house fires or exposure to carbon monoxide.


PGW has made the system changes in order to start applying Cash grants to CAP accounts, per DPW instruction. PGW just awaits Commission approval. In this case, the grounds for approving the Settlement are especially strong because time is of the essence. If this

case must be litigated over the coming weeks and months, it is virtually certain that PGW would lose its LIHEAP vendor status for the 2009-2010 LIHEAP year.

### **III. Conclusion**

For the foregoing reasons, TURN et al. submit that the terms and conditions of the Joint Petition for Settlement are in the public interest and should be approved by the Pennsylvania Public Utility Commission. In addition, as LIHEAP Cash grants will be issued in early November 2009, as the harsh winter weather approaches, TURN et al. respectfully request expedited review and approval of the Joint Petition for Settlement, in time to allow PGW to receive these grants on behalf of its CRP customers, especially those customers who need these grants to cancel shut-off notices or restore service that has already been terminated.

Respectfully submitted,



Thu B. Tran, Esquire  
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Attorneys for TURN et al.

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215-981-3777

October 14, 2009

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Philadelphia Gas Works Universal :  
Services and Energy Conservation : Docket No. M-00072021  
Plan 2008-2010 Submitted in :  
Compliance with 52 Pa. Code § 62.4 :

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THE OFFICE OF CONSUMER ADVOCATE'S  
STATEMENT OF POSITION

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I. INTRODUCTION

On July 8, 2009, the Philadelphia Gas Works (PGW) filed a Petition seeking to amend its Universal Service and Energy Conservation Plan for 2008-2010. PGW requested the amendment of its Plan to change how the Company applies the federal Low Income Home Energy Assistance Program (LIHEAP) cash grants to low income Customer Responsibility Program (CRP) participants.<sup>1</sup> PGW made its filing in response to a letter it had received from the Department of Public Welfare (DPW) dated May 6, 2009, requiring that, going forward, and retroactively for all LIHEAP cash grants received in 2008, PGW stop applying LIHEAP grants that it receives for its CRP customers to the CRP shortfall.<sup>2</sup> Rather than apply the LIHEAP cash grant to the CRP shortfall as required under PGW's approved Universal Service Plan and the Commission regulations at 52 Pa. Code §69.265(9)(ii) and (iii), the DPW letter directed PGW to

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<sup>1</sup> The CRP is PGW's version of a customer assistance program (CAP) and forms the foundation of PGW's Universal Service Plan.

<sup>2</sup> The CRP shortfall is the amount of the CRP customer's bill that is paid by other non-participating customers.

apply the grant to the CRP customer's "asked to pay" amount or to past due "asked to pay" amounts.<sup>3</sup> Through a series of additional discussions and letters, DPW advised PGW that if PGW did not make the change directed by DPW, DPW would no longer utilize PGW as a LIHEAP vendor and would instead pay the LIHEAP cash grants directly to customers. Joint Petition for Settlement at 2-3.

On July 28, 2009, the Office of Consumer Advocate (OCA) filed an Answer to PGW's Petition. In its Answer, the OCA averred that PGW could not make the change directed by DPW without making corresponding changes to the CRP program design to account for this change in the application of the LIHEAP cash grant. The OCA noted that PGW's current CRP represents a balance between the need for affordability for CRP participants and the resultant cost recovery from non-CRP firm sales customers. The OCA averred that if PGW is required to change the application of the LIHEAP grant within the program, then other related design elements must be re-examined to ensure that the program design remains appropriate and that the burden on other customers remains reasonable. OCA Answer at 3-4. Answers were also filed by the Office of Trial Staff (OTS) and the Tenant Union Representative Network/Action Alliance of Senior Citizens (TURN, *et al.*).

Thereafter, the matter was assigned to the Office of Administrative Law Judge and further assigned to Administrative Law Judge Charles E. Rainey, Jr.. During this time, the parties engaged in settlement discussions in an attempt to resolve the issues raised by DPW's directive and PGW's Petition. On October 1, 2009, a prehearing conference was held. At that time, the parties requested an additional week to attempt to reach a resolution of the matter. On October 8, 2009, a second prehearing conference was held. At the second prehearing

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<sup>3</sup> The "asked to pay" amount is the portion of the customer's bill that is affordable for the customer based on the customer's household income.

conference, PGW, TURN, *et al.*, and OTS informed the ALJ that they had reached a settlement of the issues in the proceeding. The OCA stated at the second prehearing conference that it was not joining the settlement and that it did not support the provision of the settlement that allowed PGW to apply the LIHEAP grants to the “asked to pay” amount of the CRP customer’s bill and then charge other non-CRP customers the increased costs resulting from this application of the LIHEAP grant. Joint Petition for Settlement, ¶13. The OCA stated that it did not seek a hearing on this matter before the ALJ, but would present its position on this provision of the settlement through its Statement of Position. The OCA stated that it supported the other provisions of the Settlement.

The OCA hereby files its Statement of Position regarding the Joint Petition for Settlement. As stated at the prehearing conference, and in footnote 1 of the Joint Petition for Settlement, the OCA does not support Paragraph 13 of the settlement but does support the other provisions of the settlement.

## II. STATEMENT OF POSITION

### A. Introduction

The directive of DPW requiring PGW to modify its approved Customer Responsibility Program or be threatened with the potential loss of its LIHEAP vendor status has placed PGW, its ratepayers and the Commission in an untenable position. DPW has issued a directive to PGW to change the application of the LIHEAP cash grant to the CRP customer’s bill in contravention of PGW’s Commission-approved Universal Service Plan and in contravention of the Commission’s regulations at 52 Pa. Code §69.265(9)(ii) and (iii). In the communications attached in Exhibit 1 to the Joint Petition, DPW indicates that its directive to PGW is required by federal law. Joint Petition for Settlement, Exhibit 1-G. The OCA submits that DPW’s directive

is based on a misunderstanding of the CRP program, as well as the Customer Assistance Programs of all electric distribution companies (EDCs) and natural gas distribution companies (NGDCs), not just in Pennsylvania, but comparable Percentage of Income Payment Plans (PIPPs) across the Nation. The OCA respectfully submits that making such a major programmatic change, and increasing the cost burden of non-CRP customers by an additional \$11.5 million this winter heating season is not sound public policy. The OCA cannot join in Paragraph 13 of this Settlement to the extent that it adopts this position in the current LIHEAP program year.

It is important to note that the OCA has long supported, and indeed was instrumental in the establishment and expansion of customer assistance programs for low income natural gas and electricity customers across the Commonwealth. In particular, the OCA and its expert consultant, Roger Colton, have supported programs, like PGW's CRP program, where low income customers are asked to pay only an affordable portion of their actual monthly utility bill, based on a percentage of the customer's household income. The balance of the customer's total bill has been paid by a combination of funds from other customers and external funds such as LIHEAP grants. These programs are found in a number of states and are generally referred to as Percentage of Income Payment Plans, or PIPPs.

The DPW policy change would remove one of the fundamental underpinnings of Pennsylvania's customer assistance programs. That is, by refusing to allow utilities to use LIHEAP funds to reduce the amount of the customer's actual bill that must be paid for by other customers, the policy would force utilities to apply the grants to the customer's "asked to pay" amount. In the case of PGW, this change will cost PGW's non-CRP customers, many tens of

thousands of whom are low income themselves, to pay an additional \$11.5 million in the current year.

According to PGW's initial Petition, this controversy arose in October 2008 when DPW raised the issue of how PGW applies LIHEAP cash grants to CRP customer accounts. PGW averred in its Petition that it then held numerous discussions and meetings with DPW about the issue. On May 6, 2009, DPW sent a letter to PGW requiring that, going forward, and retroactively for all grants issued during the 2008 LIHEAP Season, PGW must apply the grants directly to the CRP customer's "asked to pay" amount or past due "asked to pay" amounts, rather than to the CRP shortfall. PGW Petition, ¶5; Joint Petition, Exhibit 1-L. Subsequently, DPW included this policy directive as a proposed change for the 2009-2010 LIHEAP Season in its proposed State LIHEAP Plan issued during the Summer of 2009.

The Commission itself filed Comments with DPW regarding the proposed State LIHEAP Plan and among other things, specifically challenged DPW's proposed policy change regarding the application of the LIHEAP cash grant to the "asked to pay" amount.<sup>4</sup> The Commission demonstrated that this change was inconsistent with longstanding Commission policy and was not required by federal law. The Commission requested that DPW delay the implementation of this proposed change for all utilities until these issues could be properly addressed. The Commission also sought comments on these issues and scheduled an *en banc* hearing as part of its Prepare Now campaign to hear testimony on these issues.<sup>5</sup> In a subsequent letter to the Commission, DPW granted a waiver of compliance for the current LIHEAP year to

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<sup>4</sup> See [http://www.puc.state.pa.us/General/pdf/2010\\_LIHEAP\\_State\\_Plan\\_Comments.pdf](http://www.puc.state.pa.us/General/pdf/2010_LIHEAP_State_Plan_Comments.pdf).

<sup>5</sup> The Commission postponed the *en banc* hearing and has not rescheduled it at this time. Comments were filed by numerous parties, however, on October 9, 2009. In its Comments, the OCA supported the Commission's position before DPW and explained why the DPW proposed policy change miscomprehends the design of the CRP program, fails to recognize the significant increase in costs that non-CRP customers will bear, and requires a redesign of the CRP if the policy is implemented.

all Pennsylvania utilities except for PGW. Joint Petition, Exhibit 1-W. DPW included this proposed policy change in the 2009-2010 Final State LIHEAP Plan and noted that discussions regarding the timeline for implementation were on-going. 2009/2010 Final State LIHEAP Plan, pg. viii.<sup>6</sup>

The OCA submits that the DPW directive is not required by federal law and is not necessary to address the problem identified.<sup>7</sup> It is particularly unfair to PGW customers who have been singled out to pay an additional \$11.5 million for this policy change without potential countervailing changes made in their utilities' respective customer assistance programs over the coming year. Notably, as shown in Exhibit 1-X to the Joint Petition for Settlement, Roger Colton, who is not just the OCA's consultant, but a leading expert in the area of the design customer assistance programs throughout the Nation, has demonstrated that the treatment directed by DPW is neither required by federal law nor consistent with federal law.<sup>8</sup> Mr. Colton also found that in no other state with a PIPP is the LIHEAP grant required to be applied to the affordable "asked to pay" amount required of the customer. As Mr. Colton concluded after a nationwide review of the law and policy:

Both legal and policy considerations support the conclusion that LIHEAP funds may be used to pay the shortfall between a customer's percentage of income payment and the full customer bill.

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<sup>6</sup> See, <http://www.dpw.state.pa.us/Resources/Documents/Pdf/AnnualReports/LIHEAPStatePlan2010.pdf>

<sup>7</sup> As is seen from the first letter attached to the Joint Petition for Settlement, the initial problem identified was the "pooling" or aggregating of the LIHEAP grants. The OCA acknowledges that this could be a potential problem in certain narrow circumstances such as where a customer's LIHEAP grant exceeds the CRP shortfall or where a customer leaves the service territory or CRP program before receiving the full credit for the LIHEAP grant. These narrow circumstances could be addressed through proper financial accounting and monitoring, however, without upsetting the entire balance of the current CRP. This problem can certainly be remedied without requiring the LIHEAP cash grant to be applied to the affordable "asked to pay" amount and forcing other customers to bear even greater costs to support the CRP programs.

<sup>8</sup> The OCA attached a White Paper from Mr. Colton to its Comments filed on October 9, 2009 with the Commission on these issues. The White Paper attached to the OCA's Comments expands on the memo that is included as Exhibit 1-X to the Joint Petition for Settlement.

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Through the three existing PIPP models, both the letter of the LIHEAP statute and the objectives of the LIHEAP statute are served. Customer payments are set at an affordable level (as measured by a percentage of income) with the portion of the total home energy bill that exceeds an affordable burden being paid by a combination of external resources (including LIHEAP).

Joint Petition for Settlement, Exhibit 1-X, pg. 17.

If the DPW proposed change is deemed to be required as a matter of federal law or policy, the Customer Assistance Programs in Pennsylvania – and indeed every PIPP program in the Nation – will need to be redesigned to account for these changes. As Mr. Colton notes, this interpretation of federal law would not only impact Pennsylvania:

From a policy perspective, to hold that LIHEAP may not be used to pay the portion of a PIPP participant's bill that exceeds the affordable percentage of income would require a major restructuring of PIPPs throughout the nation. Three models exist through which states distribute funds to reduce low-income home energy bills to an affordable percentage of income. While different states may define the threshold of "affordability" differently, each PIPP state views the bill at standard rates as the full bill. Each PIPP state then allocates responsibility for the payment of that bill to different funding sources. The responsibility to pay one portion of the total bill, representing an affordable percentage of income, is allocated to the customer. The responsibility to pay the portion of the bill exceeding the affordable percentage of income is allocated to external resources. Whether paid through a Public Administrator Model, through a Utility Administrator Model, or through a Net Burden Model, these external resources include a combination of LIHEAP and state SBCs. *In no PIPP state are the LIHEAP payments directed toward further reducing a customer's home energy bill below that percentage of income that has been found to be affordable by state regulators and/or legislators.*

Joint Petition for Settlement, Exhibit 1-X, pg. 17 (*emphasis added*).

The OCA submits that DPW's directive to require application of the LIHEAP grant to the "Asked to Pay" amount is not mandated by federal law, would be unfair to PGW's non-CRP customers, and would be harmful to PGW's and this Commission's efforts to develop balanced and reasonable low income customer assistance programs. The OCA supports efforts by the Commission to have DPW reconsider its proposal and to allow the prior practice of applying the LIHEAP grant to the CAP shortfall to continue. If DPW continues with its proposed policy change, however, the OCA submits that PGW, like all other Pennsylvania electric and natural gas companies, must have the opportunity to redesign its program *before* the policy is implemented in order to maintain the balance that has been achieved in these programs over the past two decades.

As discussed below, the OCA cannot agree to, or support, the singling out of PGW's ratepayers to pay an additional \$11.5 million this winter heating season to implement this policy directive at this time.

B. The OCA Cannot Support Paragraph 13 of the Settlement.

In paragraph 13 of the Settlement, the Settling Parties have agreed that, absent a contrary determination by DPW, PGW will amend its existing Universal Service Plan and apply the LIHEAP grants for the 2009-2010 LIHEAP season to the "asked to pay" amounts and CRP arrearages as directed by DPW. Under this provision, the rates of PGW's non-CRP customers, tens of thousands of whom are low income themselves, will go up by an estimated \$11.5 million. The non-CRP customers will bear this burden despite the fact that the "asked to pay" amount represents the portion of the customer's bill that has been found to be affordable to the customer. As shown in the letter from DPW to Chairman Cawley (Joint Petition for Settlement, Exhibit 1-W), only PGW is being required to move forward with this significant change in its customer

assistance program design for this LIHEAP season without the ability to consider other necessary program design changes that could restore the essential balance that has been reached in the design of the current CRP.

The OCA submits that changing PGW's CRP in the manner called for by the DPW directive is not in the public interest in the short term or in the long term. In the long term, if DPW continues its directive, the CRP may require a significant redesign to ensure that the balance reached under the Commission's regulations that has allowed this program to grow significantly in the last several years is restored. Such redesign could disrupt the program that has developed, and could disadvantage many customers now in CRP who have had the benefit of an affordable payment.

In the short term, this change will increase the costs of the CRP to other non-participating customers. The rate impact of this \$11.5 million increase during these difficult economic times that are expected to continue this winter will be particularly burdensome. PGW has a significant number of low income customers, and many more customers whose income only barely exceeds the 150% of federal poverty that is required to receive a LIHEAP grant or enter the CRP program. According to the Commission's 2008 Universal Service Report, only 51% of PGW's confirmed low income customers are receiving CRP benefits. In other words, PGW has at least as many low income customers who are paying for the CRP program benefits as who are receiving them.<sup>9</sup> At the same time, these non-CRP low income customers, as well as PGW's many thousands of other customers with incomes just above 150% of the federal poverty level are already paying more than \$200 per customer per year to support the CRP program.

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<sup>9</sup> As the Universal Service Report cautions, the number of confirmed low income customers is not the same as the total number of low income customers in the service territory. The confirmed low income customers represent only those customers that PGW has income information for in its billing system. The total number of low income customers is a larger number.

See, Bureau of Consumer Services 2008 Universal Service Report, pg. 66. This is more than three times the cost per customer of any other natural gas CAP in Pennsylvania. Yet, it is these PGW customers who have been singled out under DPW's policy to pay an additional \$11.5 million in the current year. That is because LIHEAP funds, which have been used to moderate the cost of the CRP shortfall will be lost, and those funds instead will be used to further reduce the affordable "asked to pay" amount of those customers already on the CRP program.

Again, the problem that appears to have been identified with the PGW program in the letter attached to the Joint Petition for Settlement as Exhibit 1-A is a narrow one. The problem identified in Exhibit 1-A was that of "pooling" or aggregating the LIHEAP cash grants and not applying them to the individual CRP participant shortfall, *i.e.*, not being applied on an account by account basis. This potential problem could arise in the CRP in the limited instances where the annual LIHEAP grant exceeds the total annual CRP shortfall or where a customer moves out of the service territory, or is removed from CRP, before the LIHEAP grant is used up. The OCA submits that those limited and narrow circumstances could be addressed through proper financial accounting and monitoring, without upsetting the entire balance of the CRP program and without imposing an \$11.5 million rate increase on PGW's other customers. See, *e.g.*, Joint Petition for Settlement, Exhibit 1-X, pg. 16.

Changes in the Commission-approved CRP program that are inconsistent with the Commission's longstanding and appropriate policy and are not required by federal law should not be the basis for a decision in this case. The OCA will continue to work with the Commission as well as PGW, to support efforts to obtain a waiver for PGW as has been provided for all other EDCs and NGDCs in Pennsylvania and to seek a reconsideration of this policy. The OCA, however, cannot support a solution that simply shifts the cost of this directive to other customers.

Many of these customers struggle to make payments and do not participate in, or qualify for, either CRP or LIHEAP. But they are being asked to bear the burden of this policy change with no other cost savings or efficiencies being implemented to reduce the cost of the program or restore the essential balance that makes the program work.

C. The OCA Supports Other Provisions Of This Settlement.

While the OCA cannot support paragraph 13 of the Settlement, the OCA does support other provisions of the Settlement. Importantly, Paragraph 16 of the Settlement establishes a process for the consideration of the changes to the CRP that would be necessitated by DPW's proposed policy change. The Settlement calls for a sharing of information and data that will assist the parties in considering changes and the impact of those changes on customers. PGW has also committed to meet with the parties to discuss the necessary modifications before making any filing with the Commission. These commitments will greatly assist PGW and the parties in attempting to arrive at a solution that properly balances all interests if DPW continues with this policy change.

The Settlement also preserves issues regarding the retroactive application of the proposed program change to the prior LIHEAP season. The Settlement would require a separate filing if PGW is required by DPW to make a retroactive change. This will spare non-CRP customers from bearing yet another \$16 million of increased costs associated with the retroactive application of the policy change at this time and reserve all arguments as to the legality and appropriateness of any retroactive application until a further proceeding. Joint Petition, ¶15. The Settlement also preserves the rights of all parties to seek to modify the position of DPW or the federal Health and Human Services (HHS) agency with regard to the application of the

LIHEAP grants for CRP customers or other CAP customers. Joint Petition, ¶17. This provision will allow all parties to continue their efforts to address and seek modification of this policy.

Finally, the Settlement is clear that the resolution provided by the settlement is not intended as precedent for the proper application of LIHEAP grants for any other utility nor an agreement that the DPW directives or policies are appropriate. Joint Petition, ¶¶18, 19. While seemingly standard settlement terms, these provisions are particularly important here as consideration of these proposed policy changes continues. As mentioned earlier, DPW has provided a waiver of this policy change for this LIHEAP season for all utilities, except PGW. The Final State Plan also indicates that the timeline for this proposed policy change continues to be discussed. Issues regarding this proposed policy change, if it is finally determined to be implemented, will require proceedings before the Commission for most of the utilities to consider amendments to their customer assistance programs. As the OCA has stated in this case and other filings, the customer assistance programs will require a significant redesign if this directive becomes a final policy. These settlement provisions assure that the resolution of these issues will be determined in those proceedings independent of any short term resolution in PGW's unique circumstances.

The OCA supports the provisions of the Settlement, other than paragraph 13.

### III. CONCLUSION

For the foregoing reasons, the Office of Consumer Advocate does not support Paragraph 13 of the Joint Petition for Settlement under which PGW will apply the LIHEAP cash grants of CRP customers to the "asked to pay" amount of the customer's bill, and thereby increase the rates of non-CRP customers by approximately \$11.5 million in this winter season. The OCA supports the other provisions of the Settlement.

Respectfully Submitted,



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