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May 18, 2011

**Via Electronic Filing**

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

Re: Philadelphia Gas Works' Petition to Modify Its Universal Service and Energy  
Conservation Plans With Respect to the Customer Responsibility Program  
Docket No. P-2010-2178610

Dear Secretary Chiavetta:

On behalf of Philadelphia Gas Works enclosed please find the original of its Petition to Withdraw its Petition of June 4, 2010 along with the electronic filing confirmation page with regard to the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Very truly yours,



Daniel Clearfield

DC/lww  
Enclosure

cc: Hon. Christopher Pell w/enc.  
Cert. of Service w/enc.

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of PGW's Petition to Withdraw its Petition of June 4, 2010 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: May 18, 2011

  
Daniel Clearfield, Esq.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Philadelphia Gas Works to :  
Modify its Universal Service and : Docket No. P-2010-2178610  
Energy Conservation Plan with Respect :  
to the Customer Responsibility Program :

**ORDER**

Upon consideration of the petition filed by Philadelphia Gas Works ("PGW"), pursuant to 52 Pa. Code § 5.94, to withdraw the above captioned petition of June 4, 2010 concerning proposed modifications to PGW's Customer Responsibility Program ("CRP"), it is in the public interest to permit the withdrawal of that petition.

THEREFORE,

IT IS ORDERED:

1. That the petition to withdraw PGW's Petition of June 4, 2010 in the above-captioned matter is granted.
  
2. Consistent with PGW's petition to withdraw, within 120 days of the entry of this Order, PGW shall either: (1) file a separate petition to propose modifications of its CRP or (2) provide an update to the Commission and the parties in the proceeding docketed at P-2010-2178610. PGW shall, thereupon, file a revised Petition within sixty (60) days of obtaining clarification from the Pennsylvania Department of Public Welfare, as set forth in its Petition for Withdrawal, ¶ 8.

Date: \_\_\_\_\_

\_\_\_\_\_  
Christopher P. Pell  
Administrative Law Judge

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Philadelphia Gas Works to :  
Modify its Universal Service and : Docket No. P-2010-2178610  
Energy Conservation Plan with Respect :  
to the Customer Responsibility Program :

**PHILADELPHIA GAS WORKS'  
PETITION TO WITHDRAW ITS PETITION OF JUNE 4, 2010**

Philadelphia Gas Works ("PGW") hereby petitions the Pennsylvania Public Utility Commission ("PUC" or "Commission"), pursuant to 52 Pa. Code § 5.94, to withdraw its above-captioned petition of June 4, 2010 ("Petition") concerning proposed modifications to PGW's Customer Assistance Program ("CAP"), the Customer Responsibility Program<sup>1</sup> ("CRP").

PGW's Petition proposed modifications to CRP to more fully address the mandated changes ("DPW Mandate") by the Department of Public Welfare ("DPW") concerning the application of Low Income Home Energy Assistance Program Cash Grants ("LIHEAP" and "LIHEAP Cash Grants") to the accounts of CRP customers.

Twenty-one days before the scheduled hearing on the proposed modifications,<sup>2</sup> PGW received a copy of a letter which DPW filed with the Commission ("DPW Letter") expressing

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<sup>1</sup> CRP is a low-income payment assistance program available to residential customers with gross household income at or below 150% of the federal poverty level ("FPL").

<sup>2</sup> DPW's letter is dated March 14, 2011. It was received by PGW from another party in this case on March 17, 2011.

DPW's view that PGW's proposed modifications to CRP were illegal and inconsistent with relevant federal and DPW rules, regulations and interpretations thereof. The DPW Letter specifically threatened to revoke PGW's LIHEAP "vendor status" if PGW were to implement the proposed modifications to CRP that were set forth in the Petition. The DPW Letter is attached as "Attachment A."

Based on DPW's comments, PGW believes that it would be best to withdraw the Petition of June 4, 2010 and file revised modifications to CRP within one hundred twenty (120) days of an order approving the Commission's approval of the withdrawal of the Petition, assuming that, at that time, there is clarity regarding the type of CAP modifications that will pass muster by DPW. If DPW has not provided the necessary clarification by then, PGW will file its revised petition within sixty (60) days after the clarification is received.

In support of this Petition to Withdraw, PGW states as follows:

**A. Background**

1. On October 23, 2009, the Commission issued an Order approving a Settlement Agreement ("Settlement Agreement") that permitted PGW to amend its 2008-2010 Universal Service Plan to enable it to comply with the DPW Mandate. *See Philadelphia Gas Works Universal Service and Energy Conservation Plan*, Docket No. M-00072021 (Order entered October 23, 2009). Pursuant to the Settlement Agreement, PGW was authorized to comply with DPW directives and apply Cash Grants directly to the "asked to pay" accounts of individual CRP customers. PGW also agreed to file a petition to propose any additional modifications to its CRP necessitated by the DPW Mandate. Settlement Agreement at 6, ¶ 16.

2. On June 4, 2010, PGW filed its Petition to modify CRP. The PGW proposal (referred to as the "Modified Method") attempted to align the level of overall support provided

by non-CRP customers (who are required to remit any subsidies provided to supported CRP customers via PGW's Universal Service Charge) with the levels (and associated "targeted energy burdens") that existed prior to the DPW Mandate.<sup>3</sup>

3. The Parties to this proceeding include the Office of Consumer Advocate ("OCA"), the Office of Trial Staff ("OTS"), the Office of Small Business Advocate ("OSBA"), the Philadelphia Industrial Commercial Gas Users Group ("PICGUG"), and Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (collectively, "TURN *et al.*").

4. In the DPW Letter,<sup>4</sup> DPW expressed its interpretation of the Modified Model and its view that the Modified Method is illegal and inconsistent with relevant federal and DPW rules regulations and interpretations thereof.<sup>5</sup>

5. On March 21, 2011, PGW filed a Motion for Continuance so that PGW could determine what actions (if any) it would take in response to the positions in the DPW Letter. The ALJ granted this Motion and suspended the procedural schedule and postponed the

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<sup>3</sup> The Petition also included a proposed "conservation incentive" proposal. This was in compliance with the settlement of PGW's last rate proceeding in which PGW agreed "to include in that filing a proposal to create a positive incentive to encourage conservation by CRP participants." Pa PUC v. PGW, Docket No. R-2009-2139884, Joint Petition For Settlement, ¶ 25 ("Rate Settlement").

<sup>4</sup> The DPW Letter can also be found at: <http://www.puc.state.pa.us/pcdocs/1125113.pdf>.

<sup>5</sup> The Commission's Order of November 23rd encouraged DPW to consider participating in this proceeding so that the Commission might receive first-hand its views on this issue. But, DPW has not yet sought to intervene in this proceeding. *See* 52 Pa. Code §§ 5.71 to 5.76.

hearings.<sup>6</sup> *See* P-2010-21178610, Order Granting Motion for Continuance and Suspending Litigation Schedule (entered on March 25, 2011).

**B. PGW's Request To Withdraw PGW's Petition of June 4, 2010**

6. Based on the DPW Letter, PGW believes that it would be best to withdraw the Petition.

7. The Petition is a contested pleading. The withdrawal of a pleading in a contested proceeding requires the approval of the presiding officer or the Commission. 52 Pa. Code § 5.94.

8. PGW intends to file a separate petition to propose modifications of its CRP within 120 days of an order approving the Commission's approval of this withdrawal petition. This commitment is contingent upon the assumption that, by that time, DPW will have clarified the types of CAP plans that would satisfy DPW rules and regulations and/or DPW's interpretation of relevant federal law. If DPW has not provided the necessary clarification by that time, PGW will submit its petition as soon as possible after receiving DPW clarification, but not later than sixty (60) days thereafter. Specifically, PGW will be looking to determine whether DPW finds the "CAP Plus" or another approach acceptable. If this clarity is not obtained in the 120 day period, PGW will provide an update to the Commission and the parties in the Petition proceeding. PGW

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<sup>6</sup> A prehearing conference has been scheduled by the ALJ for May 23, 2010 for PGW to provide the ALJ and the Parties with a status report on PGW's efforts to resolve the concerns raised by the DPW Letter. *See* P-2010-21178610, Notice of Further Prehearing Conference (entered on April 7, 2011).

plans to take all reasonable efforts to obtain DPW clarification. PGW's eventual filing will comply with the directives in the Settlement Agreement and the Rate Settlement.<sup>7</sup>

9. PGW will file its Universal Service and Energy Conservation Plan for 2011-2013 within thirty (30) days of a final Commission Order approving or rejecting its revised petition.<sup>8</sup>

10. The following parties have indicated to PGW that they do not object to this request for the withdrawal of the Petition of June 4, 2010: OCA, OTS, OSBA, PICGUG and TURN, *et al.*.

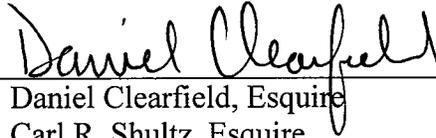
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<sup>7</sup> It is important from a systems implementation and cost standpoint to implement together these two changes – i.e., modifications to the CRP to address the DPW Mandate and any conservation incentive.

<sup>8</sup> PGW submits that the petition with the revised modifications will satisfy the requirements of Ordering Paragraph 2 of the Commission's Order of November 23, 2010. Docket No. P-2010-2178610, Order entered November 23, 2010. That Order directed PGW to file its Universal Service and Energy Conservation Plan for 2011-2013 "within thirty (30) days of a final Commission Order approving or rejecting the petition that was filed on June 4, 2010." *Id.*, at p. 9 (Ordering Paragraph 2). The petition with the revised modifications will be a substitute pleading for the Petition of June 4, 2010. The Commission's Order of November 23, 2010 further allowed an extension of time to file impact and process evaluations relevant to the universal service and energy conservation program to December 1, 2012. *Id.*, at p. 9 (Ordering Paragraph 3).

WHEREFORE, PGW respectfully requests that the Commission (1) permit the withdrawal of PGW's petition of June 4, 2010, consistent with the terms and conditions set forth above, and (2) grant any other relief deem appropriate under these circumstances.

Respectfully submitted,



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Carl R. Shultz, Esquire  
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Attorneys for Philadelphia Gas Works

Date: May 18, 2011

## **Attachment A**



COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF PUBLIC WELFARE  
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MAR 14 2011

The Honorable Rosemary Chiavetta  
Secretary  
Public Utility Commission  
Commonwealth Keystone Building  
P.O. Box 3265  
Harrisburg, Pennsylvania 17105-3265

RECEIVED

MAR 14 2011

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

**Re: Petition of Philadelphia Gas Works  
Docket Number P-2010-2178610**

Dear Secretary Chiavetta:

Pursuant to the Resolution section beginning on page 7 of the Commission's Order entered November 23, 2010, the Pennsylvania Department of Public Welfare ("DPW"), who administers the Low-Income Home Energy Assistance Program ("LIHEAP") in Pennsylvania, is participating in these proceedings by providing DPW's statement based on federal law and guidance that govern LIHEAP.

LIHEAP is a block grant under which the federal government gives annual grants to states to operate multi-component home energy assistance programs for needy families. Established in 1981 by Title XXVI of P.L. 97-35, LIHEAP has been reauthorized and amended several times, most recently in 2005. The LIHEAP statute charges the U.S. Department of Health and Human Services ("HHS") to create administrative rules for LIHEAP and states: "The Secretary shall issue regulations to prevent waste, fraud and abuse" in the LIHEAP program. See 42 U.S.C. § 8624; see also 45 C.F.R. § 96.84(c). The LIHEAP statute, at 42 U.S.C. § 8627(b) also delegates to HHS the duty to investigate compliance with LIHEAP laws by conducting investigations of the use of funds received by States in order to evaluate compliance with the provisions of federal law and, whenever "the Secretary determines that there is a pattern of complaints from any State in any fiscal year, the Secretary shall conduct an investigation of the use of funds received under this subchapter by such State in order to ensure compliance with the provisions of this Subchapter."

On July 21, 2010, HHS released Low-Income Home Energy Assistance Information Memorandum 2010-13 (IM 2010-13), to advise states as to the allowable uses of LIHEAP funds. Based on HHS's role with respect to interpreting and administering the LIHEAP program, states are required to comply with IM 2010-13. IM 2010-13 reads: "HHS is concerned that LIHEAP funds used in PIPPs or other vendor assistance programs may be administered without regard to LIHEAP statutory or

regulatory requirements. Through this IM, HHS wishes to clarify ways that LIHEAP funds may be coordinated with vendor energy assistance programs, such as PIPPs, and continue to be governed by the LIHEAP statute and regulations." IM 2010-13 also reads that if a "State wishes to coordinate its LIHEAP funds with a vendor's energy assistance program, such as a PIPP, the State must ensure that those LIHEAP funds continue to be governed by the LIHEAP statute, regulations and State Plan." Most significant to this case is the part of IM 2010-13 that reads:

HHS has determined that the process of subtracting the LIHEAP benefit from the client's energy bill and to then calculate the PIPP discount and/or the client's payment amount appears to be using LIHEAP as a resource and creates an inequity or adverse treatment for LIHEAP clients participating in the PIPP. Such use of LIHEAP funds appears to be out of compliance with Sections 2605(b)(7) of the LIHEAP statute ... and Section 2605(f).

DPW has reviewed the Philadelphia Gas Works' Petition to Modify its Universal Services and Energy Conservation Plans with Respect to the Customer Responsibility Program, PUC Docket No. P-2010-2178610, which sets forth PGW's "Modified Model." PGW's proposal to add a LIHEAP Cash Adjustment to the bills of CRP heating customers currently being billed 8%, 9% or 10% of gross household income to reflect the fact that these customers will either receive a LIHEAP Cash Grant or will be eligible to receive a LIHEAP Cash Grant is inconsistent with the DPW policy that LIHEAP funds must be applied in full to the benefit of the individual eligible households that applies, as required by 42 U.S.C. § 8621(a). That section requires that LIHEAP benefits are issued for the purpose of assisting low-income households, particularly those with the lowest incomes. Federal policy states that "when LIHEAP funds are provided to a utility on behalf of a client to pay his energy bill, the utility does not have the independent authority to use those funds for any other customer or for any other purpose." HHS has determined that the process of subtracting the LIHEAP benefit from the client's energy bill and to then calculate the discount and/or the client's payment amount appears to be using LIHEAP as a resource and creates an inequity or adverse treatment for LIHEAP clients participating in the discount program. Such use of LIHEAP funds appears to be out of compliance with 42 U.S.C. § 8624 (b)(7) of the LIHEAP statute. In the LIHEAP State Plan, DPW has assured the federal government that it will require home energy suppliers to charge LIHEAP recipients the difference between the actual cost of the home energy and the amount of the payment made by DPW to the home energy supplier, as required by 42 U.S.C. § 8624(b)(7)(B). There is no basis in IM 2010-13 to believe that HHS's prohibition on subtracting a LIHEAP benefit amount from the client's energy bill when determining payment amounts or PIPP discounts is limited to the situation where the utility company subtracts the actual LIHEAP benefit the participant receives. If it is impermissible to subtract the whole LIHEAP benefit, it is also impermissible to subtract any part of that benefit, however estimated. It is unclear how PGW's Modified Model meets this requirement. Pursuant to that guidance, PGW's

subtraction of a LIHEAP benefit from the CRP participant's energy bill results in adverse treatment of the LIHEAP recipient and the improper deeming of LIHEAP funds as resources available to the LIHEAP recipient. PGW's Modified Model is mathematically equivalent the exact thing the HHS guidance identifies as a violation of the federal LIHEAP statute because of the manner in which it uses LIHEAP benefits in calculating the PIPP discount and the customer's payment amount.

PGW's Modified Model treats LIHEAP Cash Grant recipients "adversely" within the meaning of federal law and regulations when it adds a LIHEAP Cash Adjustment to the bills of CRP heating customers to reflect the fact that these customers will either receive a LIHEAP Cash Grant or will be eligible to receive a LIHEAP Cash Grant, but, in contrast, does not require such an adjustment for low income Senior Citizen Discount customers receiving LIHEAP or for non-CRP recipients receiving LIHEAP.

The Modified Model is also inconsistent with DPW LIHEAP policy and 42 U.S.C. § 8621(a) (greater benefits to the neediest households), to the extent that it proposes larger dollar increases in the "asked to pay amount" above existing levels for the poorer LIHEAP recipients who receive the largest grants, which would have the effect of negating greater benefits granted to the neediest of recipients.

In addition, PGW's proposal to calculate the "net energy burden" of CRP heating customers for the purposes of compliance with the targeted energy burdens of the PUC's CAP Policy Statement by taking their LIHEAP Cash Grants into consideration, is inconsistent with 42 U.S.C. § 8624(f) (Low-Income Home Energy Assistance Act), which states that "home energy assistance payments or allowances provided directly to, or indirectly for the benefit of, an eligible household under this subchapter shall not be considered income or resources of such household (or any member thereof) for any purpose under any Federal or State law... ." PGW's Modified Model does this. Likewise, PGW's proposal to increase bills of CRP heating customers by adding LIHEAP Cash Adjustments, which are projected for each customer as a proportion of his/her eligible grant according to the LIHEAP Benefits Table violates this provision. DPW cannot permit LIHEAP vendors to participate if their plans violate federal LIHEAP law.

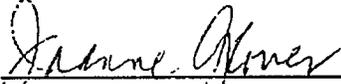
PGW's Modified Model, in the case of a CRP customer who is current on his/her bill, to apply 1/12 of the LIHEAP Cash Grant assigned to PGW to each of the customer's future monthly bills is inconsistent with the DPW policy requiring that the grant be applied as follows: First, to any past due CRP payment or "asked to pay" amount; Second, to the current CRP payment or "asked to pay" amount; Third, if any LIHEAP funds remain, to future CRP payments until exhausted.

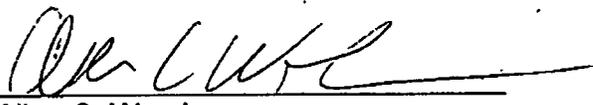
The Honorable Rosemary Chiavetta -4-

DPW must be able to monitor how all of the LIHEAP funds were applied to the customer's account. 42 U.S.C. § 8624(b)(10). If LIHEAP funds are applied in a way that did not reduce the monthly amount the customer has to pay, DPW does not believe it can monitor the application of funds for the benefit of recipients as opposed to the benefit of the utility.

DPW does not believe PGW's Modified Model is consistent with the U.S. Department of Health and Human Services' policy described in Information Memorandum LIHEAP-IM-2010-13, dated July 21, 2010, and the Department of Health and Human Services has not approved presently any PGW plan as complying with the LIHEAP Act. While the PUC considers whether to approve implementation of the Modified Model, sending vendor payments to PGW on behalf of eligible CRP customers based on this Modified Model would be an improper use of LIHEAP funds. Whether the PUC approves the Modified Model or not, if PGW uses LIHEAP funds in the way described in its Modified Model, DPW must deny PGW's vendor status in the LIHEAP program, because the Modified Model does not comply with the federal laws and requirements of LIHEAP. The PUC should recognize that HHS has provided clear guidance on the use of LIHEAP funds in connection with a PIPP and other customer assistance programs. Therefore, DPW encourage the PUC not to approve this Modified Model if PGW plans to be a LIHEAP vendor.

Sincerely,

  
\_\_\_\_\_  
Joanne Glover  
Acting Deputy Secretary  
Office of Income Maintenance

  
\_\_\_\_\_  
Allen C. Warshaw  
Chief Counsel  
Office of General Counsel

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of DPW's statement with respect to PGW's Corrected Petition to Modify its Universal Services and Energy Conservation Plans with Respect to the Customer Responsibility Program upon the participants listed below in accordance with the requirements of § 1.54 (relating to service by a participant).

**VIA FIRST CLASS MAIL**

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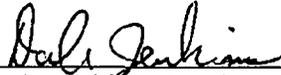
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Dated this 14<sup>th</sup> day of March, 2011.

  
\_\_\_\_\_  
Dale Jenkins, Esquire

**RECEIVED**

MAR 14 2011

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

Counsel for the Pennsylvania Department of Public Welfare