

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITIES COMMISSION**

Philadelphia Gas Works Universal Service :
and Energy Conservation Plan for 2014-2016 : Docket No. M-2013-2366301
Submitted in Compliance with :
52 Pa. Code § 62.4 :

**Reply Comments of the Coalition for Affordable Utility Services and Energy Efficiency in
Pennsylvania (CAUSE-PA) Regarding Philadelphia Gas Works Universal Service and
Energy Conservation Plan for 2014-2016**



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**On behalf of the Coalition for Affordable Utility
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I. INTRODUCTION AND BACKGROUND

On May 31, 2013, in accordance with the Pennsylvania Public Utility Commission (PUC or Commission) regulations at 52 Pa. Code § 62.4, Philadelphia Gas Works (PGW) filed a proposed Universal Service and Energy Conservation Plan for 2014-2016 (USECP). On April 3, 2014, the PUC issued a tentative order requiring clarification of certain components of its low income programs and requiring PGW to submit further information about its Enhanced Low Income Retrofit Program (ELIRP). In lieu of these additional requirements, the PUC tentatively approved of PGW's USEC Plan and sought comments from interested stakeholders. (PUC Tentative Order at 1 (hereinafter TO)).

The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), through its attorneys at the Pennsylvania Utility Law Project (PULP), timely submitted Comments to PGW's USECP, outlining several concerns with the structure of PGW's universal service programs. CAUSE-PA reviewed the comments submitted and submits the following Reply Comments to address several issues that warrant further exploration and explanation.

As a preliminary matter, CAUSE-PA again urges the Commission to refer this proceeding to an Administrative Law Judge to resolve disputed issues of law and fact regarding critical aspects of the PGW universal service program provisions.

II. CRP PROGRAM DESIGN

A. The Commission should require PGW to expand CRP enrollment to meet current need.

In its Tentative Order, the Commission directed PGW to include in its comments:

- 1) The results of its investigation into the decline of CRP enrollment over the past few years;
- 2) Any changes that will be proposed or implemented as a result of the investigation;
- 3) Why it anticipates the participant level or program budget of CRP to remain stagnant in light of the enhanced CRP outreach efforts described in its Proposed 2014-2016 Plan.

In its Comments to the Tentative Order, CAUSE-PA noted that the decline in CRP enrollment is a matter of particular concern and urged the Commission to require PGW to take affirmative steps to expand CRP enrollment to meet the needs of its low-income customers within its service territory. CAUSE-PA noted that it awaited PGW's comments on this matter.

Unfortunately, the response of PGW to the Commission's request for additional information falls short. PGW's comments provide little indication that it has conducted a serious investigation into the decline of CRP enrollment over the past few years; nor that it has developed or proposes to make additional changes, beyond those noted in its Plan, to its outreach or applicant assistance process to reverse the decline and achieve CRP participant growth. The one internal area of operations revealed by PGW's Comments is that the decline in the number of successful CRP applicants and recertifications, and therefore in CRP enrollment numbers, is probably linked to its enhanced level of internal reviews of incomplete applications. (PGW Comments at 13 and n. 17.) PGW does not propose to use any resources to study whether incomplete application or recertification forms are the result of documentation processes which are too rigorous or complicated or if further assistance is needed to enable the submission of

correct and complete forms and the required documentation. CAUSE-PA asserts that this matter should be referred to an Administrative Law Judge to permit a full review of this issue.

PGW noted in its comments that it believes CRP enrollment declined as a result of:

- A decline in LIHEAP grants and the related failure of those not receiving grants to recertify.
- Lower natural gas prices, which may result in CRP payment agreements no longer being the most affordable, coupled with a “more robust” process of review by PGW staff of incomplete applications; and
- The decline in the Philadelphia area unemployment rate.

While these conclusions may be possible contributing factors of enrolment decline, they remain simply conjecture, not supported by hard data which may emerge from an actual investigation.

Equally plausible is that CRP enrollment has declined because of PGW’s increased scrutiny of incomplete applications and recertifications without any enhanced efforts to assist applicants and recertifiers to correct those incomplete forms. Further, the decline in unemployment levels in the Philadelphia area may be simply a reflection of long-term unemployment and a reduction in unemployment enrollment for those unable to secure extended UC benefits.

B. The Commission should reject PGW’s suggested policy revision limiting social security card requirements, and instead order a thorough review of its requirements, because the suggested revision is insufficient to resolve the significant barriers to and delayed processing of CRP applications that social security card requirements create.

PGW clarified in its Comments that it currently requests copies of every applicant and household member’s social security card. (PGW Comments at 3). As the Commission noted in its Tentative Order, and CAUSE-PA further expanded upon in its Comments, this broad requirement to produce a hard copy of an applicant and their household members’ social security cards contravenes the Federal Privacy Act,¹ poses a significant barrier for individuals in need of

¹ The United States District Court for the Eastern District of Pennsylvania previously held that the federal Privacy Act¹ bars the Pennsylvania State Police from requiring a firearm purchaser to provide his or her Social Security

assistance² and can significantly delay processing of CRP applications.³

To address the Commission’s concerns, PGW proposed in its Comments “to require social security *cards* only as part of PGW’s periodic review of CRP applications to prevent fraud (rather than requiring them on a regular basis).” (PGW Comments at 4 (emphasis added)). PGW then further noted, “The social security *number* for those who have refused to provide it will be required only as part of a periodic fraud review.” Id.

PGW’s proposed procedural changes are unclear and fall short of addressing the privacy concerns, barriers to assistance, and lengthy delays that arise when requiring, requesting, and/or collecting social security cards and/or numbers.

First and foremost, PGW does not define the circumstances that an application may trigger a periodic fraud review. The APPRISE report provides some insight into the process that PGW may use to conduct its periodic fraud review. In the recommendations section, the APPRISE report notes:

Fraud Review – The most common concern that Universal Service staff noted about the program was that customers inadvertently submit incomplete information when applying for the CRP. Universal Service staff should select a small sample of suspect cases and conduct a thorough investigation of income and household composition.

number in order to conduct the statutorily required background check. *Stollenwerk v. Miller*, 2006 U.S. Dist. LEXIS 7048, 2006 WL 463393, at *3-*4 (E.D. Pa. Feb. 24, 2006).

² Many foreign born victims of crime, including human trafficking, domestic violence, sexual assault, and other interpersonal crimes - do not have a social security number, or any of the “alternatives” identified by PGW in its Comments such as a Pennsylvania driver’s license or individual tax identification number. However, these individuals are often living in poverty and would greatly benefit from CRP assistance. **Imposing social security number requirements – even if limited to “periodic review” – would act as a complete bar for this vulnerable population.** See *Comments of PCADV, PECO Amended Universal Service and Energy Conservation Plan for 2013-2015*, Docket No. M-2012-2290911 (Nov. 28, 2012).

³ As the Commission noted in its Tentative Order, “Considering that lowest income customers are the most in need of affordable bills, any delay in CRP enrollment could have serious financial consequences for these households.” (Tentative Order at 16).

(APPRISE Report at x). If the basis for a periodic fraud review is an incomplete application, then the failure to provide a social security card or number could trigger a periodic review, which – under PGW’s proposed procedural change – would then trigger the social security card or social security number requirement.

PGW explained in its Comments that it is willing to accept a Pennsylvania driver’s license or an Individual Tax Identification Number (ITIN) as alternative documentation for adult applicants and household members who do not provide a social security card. But requiring production of these documents presents the same barriers as a social security number and/or card requirement. To obtain a driver’s license, an individual must pass a driving test, submit substantial documentation (including a social security card), and pay a fee ranging from \$34.50 for an initial permit and four-year license to \$29.50 for a license renewal. PGW’s service territory is located in an urban area, where many – particularly those living below the federal poverty guidelines – do not drive. Even a state-issued identification card, which does not require a driving test, is issued at a cost of \$27.50. And, for many of the customers seeking CRP assistance, this fee is likely out of reach, rendering the alternative documentation proposed by PGW meaningless.

Individual Tax Identification Numbers are, likewise, not a suitable alternative to social security numbers. As was elaborated on in the recent PECO Universal Service and Energy Conservation Plan proceeding, obtaining an ITIN can take upwards of 6 weeks. But most CRP applicants are made aware of their CRP eligibility only after receiving a 10 day termination notice. For these individuals, waiting 6 weeks is simply not a viable option to help maintain connection to essential utility services. Further, an ITIN would not effectively prevent fraud or the provision of duplicate services, which PGW claims is the reason for imposing a social

security card / social security number requirement to begin with. ITINs are only obtained to allow an immigrant to stay current on tax payments. Thus, once an immigrant obtains legal status, she or he could end up with both an ITIN and a social security number, which would allow them to apply for duplicate services without detection. And, the IRS does little to ensure that an individual is who they claim to be when applying for an ITIN. In that respect, the IRS clearly states that ITINs “are not valid identification outside the Federal tax system.” *See Direct Testimony of Diana Locke*, Docket No. P-2012-2283641, M-2012-2290911, at 6-7 (Feb. 4, 2013). Thus, neither of the alternatives suggested by PGW in its Comments are workable alternatives to requiring a social security number, as both a Pennsylvania driver’s license and an ITIN would pose the same barriers that production of a social security card and/or number pose.

Finally, the policy change proposed by PGW does not indicate how it protects the social security numbers and copies of social security cards that it currently collects or that it intends to collect moving forward. Insufficient security measures for an individual’s social security number or card can expose customers to significant financial harm and can run afoul of other consumer protection and privacy laws. American citizens value their privacy and are increasingly on guard against unauthorized disclosure of their private information,⁴ as disclosure of personally identifying information has proven to pose a distinct risk of identity theft, stalking, or other crime. Even more than other personally identifying information, an individual’s social security number should be guarded from any possible unauthorized disclosure, as such use exposes individuals to the highest risk of fraud or other crime. In recognition of this extreme security

⁴ *See* Electronic Privacy Info. Ctr., Consumer Polls, available at <http://epic.org/privacy/survey/default.html#polls>; Harris Interactive, *Many U.S. Adults Claim to Have Been Notified that Personal Information Has Been Improperly Disclosed* (2006), available at <http://www.harrisinteractive.com/vault/Harris-Interactive-Poll-Research-FOR-IMMEDIATE-RELEASE-2006-11.pdf>.

risk, the United States Social Security Administration encourages all individuals to guard against sharing their number for any reason, even when asked.⁵ If PGW is collecting and storing these numbers, it must be required to adopt policies and practices that protect the data from inadvertent disclosure.

Consistent with our initial comments, CAUSE-PA urges the PUC to stop PGW from requiring CRP participants to provide a copy of their social security card and to prominently disclose in plain language on the CRP application that a CRP applicant may withhold their SSN without fear of any negative impact on her or his application. In addition, CAUSE-PA asserts that PGW should also be required to explain how, when, and under what circumstances it conducts a fraud review to ensure that its policies are equitable and that it does not discriminate.

C. The Commission should approve PGW’s offer to accept a signed, written statement of zero or minimal income without additional certification, documentation, or signatory requirements, subject to a full evaluation of the process it uses to conduct periodic fraud reviews.

PGW clarified in its Comments that it requires applicants with zero or minimal income to explain how she or he meets basic needs. In addition, these applicants must submit documentation of housing costs and how those costs are paid, and must provide contact information and a signature for the person or persons providing financial support. The Commission noted in its Tentative Order that these additional requirements can significantly delay the CRP application process and may create additional financial barriers in meeting the documentation requirements. CAUSE-PA fully supported this conclusion in its initial comments,

⁵ See Soc. Sec. Admin., *Identity Theft and Your Social Security Number*, SSA Pub. No. 05-100064, ICN 463270 (Oct. 2012), available at <http://www.ssa.gov/pubs/10064.html#a0=0>.

and requested that the Commission require PGW to accept a signed, written statement from the applicant, without additional certification, documentation or signatory requirements.

PGW offered in its Comments that it “would be amenable to modifying this process so that documentation of housing costs is only required occasionally – for applications selected as part of PGW’s periodic review of CRP applications to prevent fraud.” (PGW Comments at 7). CAUSE-PA is encouraged by this offer that a fair resolution is within reach. However, the requirement that a third party who provides financial assistance or support must also provide a signed statement is excessive and unwarranted. Not only is the requirement of this form of corroboration unnecessarily burdensome, it can unduly delay and in some cases become a barrier to program admission or recertification. A signed statement by the applicant should suffice.

In addition, as noted above in subsection B, it is unclear what triggers PGW to conduct a periodic fraud review, how often reviews are conducted, or to what extent additional information is required. As with production of a social security number, failure to provide additional documentation is likely to trigger a periodic fraud review (*see supra* section II.B; APPRISE Report at x). Before accepting PGW’s proposed modification, CAUSE-PA urges the Commission to refer this matter to an ALJ to explore the process that PGW uses to conduct periodic fraud reviews.

D. The Commission should require PGW to apply arrearages retroactively because, as it stands, PGW’s arrearage forgiveness procedure fails to properly incentivize full, timely CRP payments and, as a result, CRP participants are rarely able to achieve full arrearage forgiveness.

.PGW clarified in its Comments that it “does not retroactively apply arrearage forgiveness for the months when the customer had outstanding CRP payments due and failed to pay on time.” (PGW Comments at 4). It explained that it has two objectives in providing

arrearage forgiveness: “(1) provide an affordable payment to low-income customers; and (2) encourage on time and in full payment behavior.” (PGW Comments at 5).

But in reality, PGW’s CRP asked to pay amount is often unaffordable, especially once a \$5.00 arrearage forgiveness fee is added to the CRP customer bill, because it often raises the amount due above established energy burdens. *See* 52 Pa. Code § 69.265. Because the CRP asked to pay amount is often unaffordable, timely and full payment behavior becomes less likely. If a CRP customer falls behind, it is unlikely that they will then be able to later catch up - a fact PGW recognized in its Comments: “Realistically, though, most customers who fall behind in the monthly CRP payments will have difficulty catching up on CRP asked to pay bills...” (PGW Comments at 5). PGW believes that to address this reality, arrearage forgiveness should only apply if the CRP customer makes a timely, full payment. (Id.) But this ignores the reality that low income customers face. As we all know, extra or unexpected costs arise all the time - car registrations, school field trips, doctor visits, car repairs, and other emergencies. For a low income individual, these extra costs sometimes must take priority over other monthly bills. A customer may, for instance, choose to buy antibiotics to treat bronchitis and forgo paying their gas bill. But that does not mean she or he should be deprived of arrearage forgiveness the next month if she or he is able to make a full payment. Applying full, retroactive arrearage forgiveness any time an account becomes current is, in actuality, the best incentive for encouraging regular payment because it motivates individuals to stay on track and, should they fall behind, provides extra incentive to catch up. To the contrary, PGW’s policy limiting arrearage forgiveness to only those months where an account is current and paid in full provides no extra motivation to catch up with an account when money is tight.

CAUSE-PA urges the Commission to require PGW to grant arrearage forgiveness retroactively. Doing so will properly incentivize full, timely payment without disproportionately penalizing low income individuals for the realistic financial constraints they face. In the alternative, the Commission should refer this matter to an ALJ to further explore the issue of arrearage forgiveness and to reach an equitable resolution of the issue.

E. The Commission should require PGW to more closely monitor CRP accounts to be sure that CRP provides the least cost option for service.

In its Tentative Order, the Commission noted significant concern that CRP customers may be paying more than they otherwise would in another program or at full tariff rates. In response, PGW asserted in its Comments that it recalculates and recertifies CRP accounts every time a CRP customer makes an inquiry about their payment amount or reports that their household composition changed. (PGW Comments at 8). It further commented that it compares and calculates the CRP amount every time the customer applies or recertifies an existing CRP agreement. (Id.) But the frequency of review that PGW's explanation suggests belies the Commission's report that in 2013 it fielded 450 informal complaints by PGW customers – 29 of which were instances where a customer paid a higher rate than if they were on a payment arrangement or for actual usage.

PGW claims in its comments that even if a CRP customer overpays some months, the benefits a customer receives in other months overshadow that overpayment. (PGW Comments at 8). It claims that “shifting customers in and out of CRP would place additional burdens on the customer who would have to reapply for CRP more frequently if removed because the CRP program was no longer beneficial at a specific point in time but – when the numbers change –

may become more beneficial in the future.” Id. Indeed, continual applications may be burdensome for the customer. But CAUSE-PA asserts that it is likely not as burdensome as overpaying for gas service during any monthly period in which that household is living below the federal poverty line. And, if PGW were to make improvements to ease burdensome application requirements proposed in subsections B and C above (social security and certification / signatory requirements for individuals with zero or minimal income), that burden becomes even less of an issue.

This inequitable balance of the relative burdens associated with CRP overpayment should warrant immediate exploration by an ALJ into the changes needed to upgrade PGW’s account technology to regularly review CRP accounts.

F. The Commission should require PGW to submit specific requests for waiver of LIURP regulations and reject PGW’s argument that a waiver of LIURP requirements was implicitly granted or is not required.

In its April 23, 2014 Response, PGW requested that the Commission permit its low-income energy efficiency program known as ELIRP to remain within its DSM Plan. In recognition of the logistical concerns raised by PGW in that Response, CAUSE-PA concluded in its Comments that it is not practical, at present, for the Commission to extract ELIRP in total from PGW’s DSM plan. However, CAUSE-PA also specifically argued for the inclusion of additional safeguards, such as requiring that the low-income energy efficiency program be continued past August 31, 2015 and requiring PGW to incorporate ELIRP details into its USECP with sufficient specificity to enable coordination between ELIRP and other universal service programs.

Unfortunately, PGW now apparently wants to have the best of all worlds, the ability to place ELIRP outside of Universal Services, to be exempt from Universal Service requirements necessitating inclusion of a LIURP component, and to be exempt from following LIURP regulations. PGW desires not just a temporary reprieve from placing ELIRP into the Universal Service panoply of programs, but a determination that the Commission - by permitting PGW to initially structure ELIRP within its DSM - has implicitly granted a permanent waiver to PGW of the LIURP regulations and that an explicit waiver request is no longer required. This argument should be soundly rejected.

First, ELIRP approval within DSM is for a limited duration, until the end of August, 2015. There was no prior consideration that LIURP regulations would be permanently waived. As the Commission has already pointed out “Neither the DSM Settlement nor the *DSM Settlement Order* addressed LIURP/ELIRP activity after August 2015. Thus, PGW’s ELIRP program would appear to sunset in 2015.” (TO at 20). PGW has therefore never been explicitly or implicitly granted a permanent waiver of LIURP requirements.

Second, If PGW desires such a waiver of LIURP requirements, PGW should petition the Commission for specific and explicit consideration and review of that waiver request. Implicitly granting a waiver of a universal program requirement is not to be sanctioned. To permit otherwise would allow a utility to assert an implied waiver each time the Commission permitted the creation of a similar program not subject to specific Commission regulations, and thus permanently bypass and ignore universal service or other Commission requirements.

Finally, in this case, the Commission has specifically noted that ELIRP does not presently comply with Section 58.5 regarding the 15% cap on LIURP administrative costs. CAUSE-PA pointed out in its comments that although ELIRP is currently operating under a

different cost effectiveness evaluation methodology than LIURP, these high administrative costs should be explained in detail to be sure the costs are justified and do not result in taking away financial resources that could be better spent delivering retrofit and increased energy efficiency services to CRP customers. CAUSE-PA notes that PGW, other than stating that its administrative costs are declining and should be viewed as a proxy metric, has not provided sufficient detail in its comments for the Commission to make an assessment of PGW's need to continue ELIRP administrative costs above 15%. CAUSE-PA asserts that for such an assessment to be made, PGW should be required to submit a specific waiver request, as the TO proposed, and the issue should be presented to an ALJ for full consideration.

G. The Commission should require PGW to increase ELIRP enrollment to accommodate current and projected needs.

In its Comments, CAUSE-PA noted that, in its April 23, 2014 Response to the Commission's Tentative Order, PGW projected a lower ELIRP enrollment level of 2,108 each year for 2015 and 2016 and a static budget of \$7,600,000 (TO at 29; PGW Response Cmts, April 23, 2014, at 11), while as of March 31, 2013, there were 71,625 CRP customers who had not received PGW weatherization in the past 2 years (Proposed 2014-2016 Plan at 8; TO at 28). CAUSE-PA submitted that PGW's proposed ELIRP enrollment and spending levels are inadequate, as they do not begin to meet the current needs of those 71,625 CRP customers who are otherwise eligible for usage reduction assistance. In addition, CAUSE-PA pointed out that PGW has failed to dedicate sufficient ELIRP resources to address the usage reduction needs of Philadelphia's vast multi-family housing residents and that PGW's implementation plan for ELIRP does not reflect the strategies that are necessary to deliver efficiency services to this housing stock.

To address these significant gaps, CAUSE-PA proposed that PGW should be required to expand ELIRP as part of the DSM to be filed this summer and/or as part of the 2014-2016 USECP to provide additional enrollments and commensurate budget and submitted that, at a

minimum, a budget of \$10,000,000 would be required in each year of 2015 and 2016 to begin to address the current needs of CRP customers.

PGW has provided no further update in its Comments regarding how it determined its needs assessment and arrived at static enrollment levels of 2,108 each year for 2015 and 2016 and a static budget of \$7,600,000. In addition, PGW's USECP and Comments fail to address the needs of low-income households residing in multi-family buildings, which were highlighted by KEEA, PULP, NHT, and NRDC in a joint letter to the Secretary, constituting comments filed to this Docket.

CAUSE-PA respectfully submits that the issue of determining the adequate and appropriate level of low income households to receive energy efficiency services, the types of services, and the budget required each year to provide those services is a matter to be submitted to an Administrative Law Judge for testimony, hearing and determination.

II. CONCLUSION

CAUSE-PA thanks the Commission for this opportunity to submit Reply Comments and respectfully requests that the Commission, prior to issuing an order, refer these matters to an Administrative Law Judge to resolve issues of law and fact regarding critical aspects of PGW's universal service program provisions.

RESPECTFULLY SUBMITTED BY
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