



December 8, 2015

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

Re: Petition of Philadelphia Gas Works for Approval of Demand-Side Management Plan for FY 2016-2020 and Philadelphia Gas Works Universal Service and Energy Conservation Plan for 2014-2016 52 Pa. Code § 62.4 – Request for Waivers, Docket No. P-2014-2459362 (Ref Docket Nos. P-2009-2097639 and M-2013-2366301).

Dear Secretary Chiavetta:

Please accept Clean Air Council's Reply Brief and Certificate of Service in the above captioned matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph Otis Minott".

Joseph Otis Minott, Esquire

A handwritten signature in black ink, appearing to read "Ernest Logan Welde".

Ernest Logan Welde, Esquire

Attorneys for Clean Air Council

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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|--|---|---------------------------|
| Petition of Philadelphia Gas Works for | : | |
| Approval of Demand-Side Management | : | |
| Plan for FY 2016-2020 | : | |
| | : | Docket No. P-2014-2459362 |
| and | : | |
| | : | |
| Philadelphia Gas Works Universal Service | : | |
| and Energy Conservation Plan for 2014- | : | |
| 2016 52 Pa Code § 62.4 – Request for | : | |
| Waivers | : | |

**REPLY BRIEF
OF THE
CLEAN AIR COUNCIL**

Joseph Otis Minott, Esq.
Ernest Logan Welde, Esq.

Clean Air Council
135 S. 19th Street
Suite 300
Philadelphia, PA 19103
Telephone: (215) 5667-4004
Facsimile: (215) 567-5791

Attorneys for Clean Air Council

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I. INTRODUCTION

Clean Air Council (“CAC”)¹ supports robust demand-side management (“DSM”) programs but recognizes that utilities offering such programs need to address the negative impact on their financial viability of receiving less revenue from customers who participate and reduce their energy usage. Viewed in this light, CAC supports the view that adoption of the Conservation Adjustment Mechanism (“CAM”) and Performance Incentives (“PI”) mechanisms by Philadelphia Gas Works (“PGW”) is good policy to enable PGW to offer a more robust DSM program (and resolve the budget issues raised in this proceeding). It is unfortunate that not only do parties opposing these creative solutions fail to recognize the positive impact they could have on providing additional and greater energy efficiency programs, but that some parties are actually proposing significantly higher program budgets without offering any way to resolve the very real issue presented to PGW from decreasing revenues related to energy efficiency. These positions are shortsighted and will minimize the beneficial environmental and economic impacts that PGW’s DSM programs could have in the Commonwealth. CAC St. 1-R at 2.

By helping to expand the availability of efficient, environmentally beneficial resources, the implementation of CAM and PI would be a win for all of PGW’s consumers, PGW, the Commonwealth, and the environment. Approval of CAM and PI would address a serious hurdle to proactive utility energy efficiency and conservation efforts, and would result in positive environmental impacts. CAC St. 1-R at 2. Specifically, granting CAM will (1) eliminate a disincentive for utility-sponsored energy efficiency programming; (2) encourage robust program offerings that will help reduce reliance on fossil fuels; (3) reduce CO₂ emissions and other air pollutants in Pennsylvania; and, (4) bring Pennsylvania in-line with proven and accepted national

¹ CAC is a member-supported environmental organization serving the Mid-Atlantic Region. CAC St. 1-R at 1. CAC is dedicated to protecting and defending everyone’s right to breathe clean air. *Id.*

utility energy efficiency and conservation best practices. CAC St. 1-R at 1-2. PI goes further than CAM by providing a positive incentive towards attaining the most efficient and cost-effective results and, in combination with CAM, would allow PGW to prioritize and aggressively pursue DSM as a core business function, thereby producing greater energy savings and benefits to PGW's ratepayers. CAC St. 1-R at 6-7.

In this reply brief, CAC will address the opposition of the Office of Consumer Advocate ("OCA"), the Office of Small Business Advocate ("OSBA"), the Bureau of Investigation and Enforcement ("I&E"), the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania ("CAUSE"), the Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (collectively, "TURN") and the Philadelphia Industrial and Commercial Gas Users Group ("PICGUG") to PGW's proposed CAM and PI.

CAC also offers its comments regarding PGW's requested waiver of 52 Pa. code § 58.4(a) and its proposal regarding On-Bill Repayment. While CAC has not taken a position on other issues in this proceeding or offered further comment in this reply brief, its silence should not be construed as support or opposition for those issues.

II. PGW PROPOSED TWO NEW COST ELEMENTS FOR ECRS

A. CAC's Position

CAC is concerned that the recommendations of other parties regarding the CAM and PI may force PGW to either stop DSM programming or to not fund the programs at levels that could be achieved if these two mechanisms would be implemented. CAC St. 1-R at 3. PGW's DSM programs support market transformation and encourage the use of high efficiency equipment throughout PGW's territory. CAC St. 1-R at 3.

CAC supports PGW's cost-effective delivery of DSM programs to the extent that they reduce reliance on fossil fuels and the emissions of greenhouse gases by promoting more

efficient equipment and building designs. CAC St. 1-R at 1-2. To this end, PGW's CAM should be approved as doing so will (1) eliminate a disincentive for utility-sponsored energy efficiency programming; (2) encourage robust program offerings that will help reduce reliance on fossil fuels; (3) reduce CO₂ emissions in Pennsylvania and (4) bring Pennsylvania in-line with proven and accepted national utility energy efficiency and conservation best practices. CAC St. 1-R at 1-2. Likewise, PGW's PI should be approved because it will provide a positive incentive towards attaining the most efficient and cost-effective results and, in combination with CAM, would allow PGW to prioritize and aggressively pursue DSM as a core business function, thereby producing greater energy savings and benefits to PGW's ratepayers. CAC St. 1-R at 6-7.

The Commission should not reject the CAM or PI based on the opposition offered by the other parties, as these reasons do not have merit and would result in a disservice to the Commonwealth.

B. Conservation Adjustment Mechanism (“CAM”)

CAM removes an existing disincentive towards attaining the most efficient and cost-effective results. For a number of reasons, the Commission should not reject the CAM based on the opposition offered by the other parties.

Need for CAM

The opposing parties downplay or ignore both the need for CAM and the financial benefits of CAM. *See, e.g.*, OCA Main Brief at 34-40. Most significantly, the opposing parties do not acknowledge the negative financial consequences to PGW of continuing these programs while irrevocably shrinking the amount of revenues it receives (because it cannot recover these lost margins). Shrinking this pool of revenue decreases the amount of money PGW has available to fund its operations. *See, e.g.*, PGW Main Brief at 46-49. Enabling PGW to recover these lost margins through a CAM is an approach that is consistent with how this issue is addressed in

other jurisdictions and would lead to positive benefits for PGW's ratepayers and the environment.

By ensuring recovery of lost margins specifically attributable to DSM activities, the CAM would remove the disincentive that PGW faces from offering robust energy efficiency programs providing cost-effective energy and utility bill savings to customers. CAC St 1-R at 4. Lost margins create a serious hurdle preventing utilities from pursuing discretionary energy efficiency programming on behalf of their customers. CAC St. 1-R at 4. With a CAM in place, PGW's participating customers would continue to receive the benefit of usage reductions through lower throughput commodity charges. CAC St. 1-R at 4. Further, non-participating customers would continue to receive a benefit in the form of reduced throughput commodity charges through the CRP subsidy reduction. CAC St. 1-R at 4.

Environmental Benefits from CAM

The opposing parties ignore the environmental benefits that could be possible if PGW were able to pursue its DSM goals without harm to its finances. CAC St. 1-R at 5. By removing, the financial disincentive for PGW to offer robust DSM programs, there is an opportunity to improve DSM program results. This, in turn, would further reduce greenhouse gas emissions and other pollutants through more efficient use of fossil fuels and would be a win for consumers, the public health, and the environment. There is a very real health benefit associated with Pennsylvania using less energy. A more robust DSM program would limit the amount of energy used, and in turn the amount of fossil fuel used, which would result in less air pollution throughout Pennsylvania.

PGW's DSM Programs Are Voluntary

PGW's DSM programs, other than CRP, are voluntary. In its Main Brief, OSBA suggests that said programs are not voluntary. OSBA Main Brief at 8, 15. However, OSBA acknowledges

that there is no legal requirement on PGW, or any Pennsylvania natural gas distribution company, to have DSM programs. OSBA Main Brief at 8. In addition, adopting OSBA's suggestion that PGW's program is not voluntary would convert any and all utility programs using revenues received from ratepayers into non-voluntary programs regardless of the reason and purpose of the programs. Such a result makes no sense, and will inhibit the possibility for future voluntary gas programs.

Act 129 Is Not Applicable to PGW

There is no parallel between Act 129, which is mandated and was imposed on the electric distribution companies for specific purposes, and PGW's voluntary natural gas DSM programs. CAC St. 1-R at 7. PGW cannot, therefore, be held to any regulatory requirements under Act 129 for offering the DSM programs.

The opposing parties argue that the General Assembly has prohibited the recovery of lost revenues. 66 Pa. C.S. § 2806.1(k); I&E Main Brief at 9-10; OCA Main Brief at 31-54; OSBA Main Brief at 8-9, 15-16. For example, in its Main Brief, I&E explains that “[t]he Commission has specifically said that utilities who are required to implement DSM programs must recover lost revenues through base rates.” I&E Main Brief at 10. That prohibition is based on Act 129, which placed DSM mandates on the electric industry. *See, e.g.*, 66 Pa. C.S. §§ 2806.1(a), (c), (d). By its terms, Section 2806.1(k) is only applicable to electric distribution companies. 66 Pa. C.S. § 2806.1(k). DSM programs are not mandated in the natural gas industry, and the prohibition in Section 2806.1(k) cannot be read as being applicable to a city natural gas distribution operation or a natural gas distribution company. *See* 1 Pa. C.S. § 1921(b) (“When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.”). Accordingly, the other parties’ reliance on the policy and prohibitions in Act 129 is misplaced.

No Single-Issue Ratemaking

There is no single-issue ratemaking concern because, as CAC understands the proposal, PGW is seeking a Section 1307 surcharge. *See* PGW Main Brief at 50-53. The surcharge provisions in the Public Utility Code contain procedures to determine the reasonableness of the charges made outside of a base rate case. *See Pennsylvania Indus. Energy Coalition v. PUC*, 653 A.2d 1336, 1350 (Pa. Commw. Ct. 1995). CAM is just, reasonable, and in the public interest because it will remove barriers so as to create increased environmental benefits and customer savings.

C. Performance Incentives (“PI”)

PI is a financial incentive that PGW would receive for achieving and surpassing targeted program goals. CAC St. 1-R at 6. PI goes further than CAM by providing a positive incentive towards attaining the most efficient and cost-effective results. CAC St. 1-R at 6. PI would allow PGW to prioritize and aggressively pursue DSM as a core business function, thereby producing greater energy savings and benefits to PGW’s ratepayers. CAC St. 1-R at 6-7. PGW should not be denied PI based on the reasons offered by the other parties, as these reasons do not have merit.

Need for PI

There is a need for an incentive to meet and achieve aggressive energy efficiency goals. By rewarding PGW for its delivery of energy efficiency programs, PGW is more likely to view investments in cost-effective DSM as attractive business opportunities. CAC St. 1-R at 8. Granting the PI would encourage PGW to more aggressively pursue its energy efficiency goals as a strategic business objective. CAC St. 1-R at 8.

The objections of the other parties are misplaced. *See* OCA Main Brief at 56; CAUSE Main Brief at 17; TURN Main Brief at 10; PICGUG Main Brief at 6. For example, OCA notes that PGW’s DSM programs were “designed to help residential and commercial customers

achieve usage reductions to further reduce their natural gas bills.” OCA Main Brief at 57. Such intention and design does **not** translate into an incentive to meet and achieve aggressive energy efficiency goals.

Benefits of PI

Objections based on the lack of customer benefit are without merit. *See* I&E Main Brief at 10-11; CAUSE Main Brief at 17; TURN Main Brief at 10; PICGUG Main Brief at 6. PI would transfer some of the benefits of DSM to PGW – a sharing of benefits. CAC ST 1-R at 7. But, the other parties fail to recognize that, the majority of the financial benefits would remain with customers – even after the implementation of PI. CAC ST 1-R at 7. As proposed by PGW, there would be direct benefits – in energy savings and economic benefits – if PGW’s PI were approved. CAC St 1-R at 7-8. Customers may benefit even further by PGW more aggressively pursuing its DSM goals. CAC St 1-R at 8. In addition, customers are also citizens who enjoy the air and other resources of Pennsylvania. These resources will be improved by the reduction in energy use, and customers/citizens will enjoy these benefits.

Penalty Structures for PI Should Be Rejected

Suggestions for a penalty structure are ill advised and should be rejected. *See* OSBA Main Brief at 9; OCA Main Brief at 57; CAUSE Main Brief at 17; TURN Main Brief at 10; PICGUG Main Brief at 6. A penalty structure is not warranted for PGW’s voluntary DSM programs. If the Commission imposes punishments upon voluntary programs, utilities will certainly lack the desire to implement or continue voluntary programs. Moreover, since PGW is a municipally-owned utility and not an investor-owned utility, any penalty imposed would be paid by PGW’s ratepayers. This means that resources could be diverted from PGW’s other goals.

No Section 523 Concerns

There is no Section 523 concern because, as CAC understands it, the costs that PGW proposes to recover through PI are not the same as what the Commission could award PGW in a rate case pursuant to Section 523. *See* PGW Main Brief at 58-59.

III. OTHER ISSUES

While CAC has not taken a position on other issues in this proceeding, its silence should not be construed as support or opposition for those issues. With that said, CAC wishes to offer its comments on the below issues for the Commission's consideration.

A. Chapter 58 Waiver Requests

CAC notes that PGW has agreed to work with the Bureau of Consumer Services ("BCS") regarding public notice that the Commission may deem appropriate pursuant to 52 Pa. Code § 58.4(a). *See* PGW Main Brief at 79-80. CAC strongly supports public notice and participation in all forms.

B. PGW On-Bill Repayment Program

While CAC acknowledges that the concerns raised by some parties regarding PGW's proposal warrant discussion, PGW's proposal to engage in a stakeholder collaborative would provide the venue for that discussion. *See* PGW Main Brief at 40-42.

IV. CONCLUSION

PGW should be granted (a) the CAM, to remove the disincentive from offering the DSM portfolio; and (b) the PI, to align PGW's business objectives with the societal and environmental goals of its DSM portfolio. The approval of CAM and PI would address a serious hurdle to proactive natural gas efficiency and conservation efforts in Philadelphia and would result in positive environmental impacts in the Commonwealth.

Respectfully submitted,



Joseph Otis Minott, Esq.
(PA ID 36463)
E-mail: joe_minott@cleanair.org

Ernest Logan Welde, Esq.
(PA ID 315012)
E-mail: lwelde@cleanair.org

Clean Air Council
135 S. 19th Street
Suite 300
Philadelphia, PA 19103
Telephone: (215) 5667-4004
Facsimile: (215) 567-5791

Attorneys for Clean Air Council

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of Clean Air Council's letter filing pre-served testimony upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code § 1.54.

Via Email and/or First Class Mail

| | |
|--|---|
| The Honorable Christopher P. Pell Administrative Law Judge PA Public Utility Commission 801 Market Street, Suite 4063 Philadelphia, PA 19107 | The Honorable Marta Guhl Administrative Law Judge PA Public Utility Commission 801 Market Street, Suite 4063 Philadelphia, PA 19107 |
| Sharon Webb, Esq. Office of Small Business Advocate Commerce Building, Suite 202 300 North 2 nd Street Harrisburg, PA 17101 swebb@state.pa.us | Harry S. Geller, Esq. Elizabeth R. Marx, Esq. The Pennsylvania Utility Law Project 118 Locust Street Harrisburg, PA 17101 pulp@palegalaid.net |
| Josie B. H. Pickens, Esq. Thu B. Tran, Esquire Robert Ballenger Energy Unit, Community Legal Services North Philadelphia Law Center 1410 West Erie Avenue Philadelphia, PA 19102 JPickens@clsphila.org ttran@clsphila.org rballenger@clsphila.org | Charis Mincavage, Esq. Adelou Bakare, Esq. Elizabeth Trinkle, Esq. McNees, Wallace, Nurick P.O. Box 1166 Harrisburg, PA 17108-1166 cmincava@mwn.com ABakare@mwn.com etrinkle@mwn.com |
| Richard Kanaskie, Esq. Gina L. Lauffer, Esq. Bureau of Investigation & Enforcement PA Public Utility Commission Commonwealth Keystone Building 400 North Street, 2nd Floor Harrisburg, PA 17120 rkanaskie@pa.gov ginlauffer@pa.gov | Tanya J. McCloskey, Esq. Christy M. Appleby, Esq. Darryl Lawrence, Esq. Office of Consumer Advocate 5 th Floor, Forum Place Bldg. 555 Walnut St Harrisburg, PA 17101-1921 tmccloskey@paoca.org cappleby@paoca.org dlawrence@paoca.org |
| Daniel Clearfield, Esq. Deanne O'Dell, Esq. Eckert Seamans Cherin & Mellott, LLC 213 Market Street, 8th Floor Harrisburg, PA 17101 dclearfield@eckertseamans.com dodell@eckertseamans.com | Joseph Magee Grace McGovern Bureau of Consumer Services PA Public Utility Commission PO Box 3265 Harrisburg, PA 17105-3265 jmagee@pa.gov gmcgovern@pa.gov |



Joseph Otis Minott, Esquire