



April 20, 2020

*Via e filing*

Secretary Rosemary Chiavetta  
Pennsylvania Public Utility Commission  
400 North Street  
Harrisburg, PA 17120

**Re: Petition for Expedited Approval of PGW's Letter Request to Amend its  
Universal Service and Energy Conservation Plan**

**Docket No. P-2020-3018867**

**Answer to Petition for Reconsideration of the Office of Small Business Advocate**

Dear Secretary Chiavetta,

Please find enclosed the Joint Answer of the Tenant Union Representative Network, Action Alliance of Senior Citizens of Greater Philadelphia, and the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania (collectively the Low Income Advocates) to the Petition for Reconsideration of the Office of Small Business Advocate in the above referenced matter.

Copies are being served by email, pursuant to the attached Certificate of Service. Due to the COVID-19 pandemic, we are not sending hard copies unless requested by the parties. Please let me know if you need hard copies. Please contact me with any questions or concerns. I can be reached at (215) 981-3756 or by email at [jprice@clsphila.org](mailto:jprice@clsphila.org).

Respectfully submitted,

Joline R. Price, Esquire  
Enclosures

Cc: Office of Special Assistants (via email to [RA-OSA@pa.gov](mailto:RA-OSA@pa.gov))  
Certificate of Service

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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition for Expedited Approval of :  
PGW’s Letter Request to Amend its Universal : Docket No. P-2020-3018867  
Service and Energy Conservation Plan :  
Pursuant to the 2019 Amendments to the Policy :  
Statement at Docket No. M-2019-3012599 :

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JOINT ANSWER IN OPPOSITION TO THE PETITION OF THE  
OFFICE OF SMALL BUSINESS ADVOCATE  
FOR RECONSIDERATION

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Pursuant to 52 Pa. Code § 5.572(e), Tenant Union Representative Network, Action Alliance of Senior Citizens of Greater Philadelphia, and Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (collectively, the Low Income Advocates), through their respective counsel at Community Legal Services and the Pennsylvania Utility Law Project, file this Answer to the Office of Small Business Advocate’s April 10, 2020 Petition for Reconsideration (Petition) of the March 26, 2020 Opinion and Order of the Pennsylvania Public Utility Commission (Order) in the above-captioned proceeding.

**I. Procedural History**

1. Admitted in part, denied in part. OSBA’s averment is admitted in that Philadelphia Gas Works (PGW) filed its 2020 Addendum and Cover Letter to its 2017-2022 Universal Service and Energy Conservation Plan on January 6, 2020, and served the Office of Small Business Advocate (OSBA) and others on the same date. However, the Low Income Advocates deny OSBA’s assertion that PGW’s January 6 filing “did not reflect the proposed language to incorporate the changes to PGW’s 2017 USECP delineated in the January 6<sup>th</sup> Cover Letter.” OSBA Petition at 1. The Cover Letter plainly requested the Commission approve, as a Pilot Program, modifications

to its Customer Responsibility Program (CRP) to implement the reduced energy burdens established in the Commission’s amended final CAP Policy Statement, eliminate monthly \$5 copayments for arrearage forgiveness, and implement a CRP consumption limitation. The cover letter requested approval within 30 days.

By way of further answer, following submission of its January 6, 2020 letter requesting approval of its Pilot Program, PGW convened discussions with interested parties, including the Office of Small Business Advocate (OSBA), OCA, the Low Income Advocates, the Bureau of Investigation and Enforcement (I&E), representatives from the Clean Air Council, and counsel for the Industrial interest groups. Stakeholder meetings were held on Wednesday, January 22, 2020 and February 11, 2020.<sup>1</sup> PGW invited all stakeholders to engage in informal discovery, and provided written responses to questions from OCA and the Low Income Advocates regarding cost estimates and consumption limits, respectively. All parties received follow up information from PGW.

2. Admitted. By way of further Answer, OSBA was duly served with a copy of PGW’s Petition, and did not object to PGW’s request for responses to its Petition within 10 days.<sup>2</sup>

3. Admitted.

4. Admitted.

5. Denied as stated. On March 2, 2020, Office of Consumer Advocate (OCA) filed a Notice of Intervention and Answer to PGW’s petition. OCA’s Answer speaks for itself.

6. Admitted.

7. Admitted.

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<sup>1</sup> These meetings were attended by representatives of the Low Income Advocates, OCA, I&E, and the Industrial interest groups.

<sup>2</sup> See Order at 8 (“None of the stakeholders objected to a shortened interval for responding to PGW’s petition to expedite approval of the 2020 Addendum.”)

8. Admitted.

9. Denied. Pennsylvania courts have consistently held that due process is a flexible concept that varies with the situation. See, e.g., Harrington v. Com., Dep't of Transp., Bureau of Driver Licensing, 763 A.2d 386, 391 (Pa. 2000). In USECP proceedings, the Commission has previously explained that its review process varies depending on the issues raised in such proceedings. In disposing of an analogous petition for reconsideration raising due process concerns, the Commission explained:

[T]he Commission has generally reviewed universal service and energy conservation plan updates and approved them without notice and a hearing when the filings complied with law. Based on the facts of the specific case, however, the Commission has sometimes employed appropriate alternative procedures for reviewing such a filing. In at least one case, the Commission consolidated the triennial plan review with a related proceeding. In at least one other case, the Commission issued a tentative order approving a universal service and energy conservation plan and requested comments, noting that the matter could be referred to the Office of Administrative Law Judges for hearings if factual questions were raised by the comments.<sup>3</sup>

OSBA was served PGW's January 6, 2020 cover letter, which requested Commission action within 30 days. OSBA was included in correspondence and discussions with PGW and other stakeholders concerning PGW's proposals set forth in the January 6, 2020 cover letter. OSBA was served PGW's February 21, 2020 Petition, which requested answers be filed within 10 days. OSBA did not object or raise any concern about the 10 day response period proposed by PGW. OSBA did not file a timely response to PGW's Petition and failed to indicate any interest in PGW's proposal until its late-filed March 19, 2020 Notice of Intervention – well over a month after PGW filed its Petition, and well over two months after PGW made its initial filing. OSBA's failure to meaningfully participate by filing an Answer to PGW's Petition, after having received actual notice of its opportunity to do so, does not create a due process violation. As the

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<sup>3</sup> In Re: Dominion Peoples Universal Service and Energy Conservation Plan for 2009-2011, Order, Docket No. M-2008-2044646 at 11-12 (order entered March 26, 2009).

Commission’s regulations make clear, “A respondent failing to file an answer within the applicable period may be deemed in default, and relevant facts stated in the pleadings may be deemed admitted.” 52 Pa. Code § 5.61(c).

10. Admitted. By way of further answer, due process must be evaluated based on the specific issues present. The Commission is not required to follow the procedures it has historically used for three-year (now five-year) USECP proceedings in evaluating PGW’s January 6, 2020 cover letter and Petition for Expedited Review which proposes to implement the energy burdens set forth in the Commission’s final amended CAP Policy Statement – after over three years of investigation. As the Commission has stated:

[b]ased on the facts of the specific case... the Commission has sometimes employed appropriate alternative procedures for reviewing such a filing.<sup>4</sup>

11. Denied as stated. The Commission’s Order provides, in pertinent part:

Because PGW did not file and serve a proposed 2017-2022 USECP incorporating the changes articulated in the Cover Letter, the January 6, 2020 filing was not initially docketed as a petition to amend the 2017 USECP. The January 6, 2020 filing was, however, subsequently re-docketed as a petition to amend PGW’s 2017 USECP when PGW filed and served its February 21, 2020 Petition to expedite review of the January 6, 2020 filing. Stakeholders were not on notice to answer the January 6, 2020 filing until after that filing was re-docketed as a petition. For ease of reference we shall continue to refer to the components of the January 6, 2020 filing as the Cover Letter and the 2020 Addendum.

Order at 6-7.

12. Admitted.

13. Denied. By way of further answer, Governor Wolf’s Proclamation of Disaster Emergency provides: “WHEREAS, a novel coronavirus (now known as “COVID-19”) emerged

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<sup>4</sup> March 26, 2009 Order In Re: Dominion Peoples Universal Service and Energy Conservation Plan for 2009-2011, M-2008-2044646 at 11-12.

in Wuhan, China, began infecting humans in December 2019, and has since spread to 89 countries, including the United States.”

14. Admitted.

15. Denied. By way of further answer, Governor Wolf’s Proclamation of Disaster Emergency provides: “FURTHER, I hereby suspend the provisions of any regulatory statute prescribing the procedures for conduct of Commonwealth business, or the orders, rules or regulations of any Commonwealth agency, if strict compliance with the provisions of any statute, order, rule or regulation would in any way prevent, hinder, or delay necessary action in coping with this emergency.”

16. Admitted.

17. Admitted.

## **II. Legal Requirements for Granting Reconsideration**

18. Admitted.

19. Admitted.

20. Denied. OSBA’s Petition does not satisfy the standards for reconsideration, as it fails to raise any new or novel issues not previously considered or which appear to have been overlooked by the Commission. The Commission was undeniably aware of the emerging health and economic crisis, given its Order was issued on a telephonic Public Meeting necessitated by the emergency closure of the Commission’s offices and the state-wide stay-at-home orders. Even if the Commission had not specifically considered the impact its Order might have in light of COVID-19, concerns regarding the financial impact of COVID-19 support PGW’s immediate implementation of the energy burdens set forth in the Commission’s CAP Policy Statement, given the pervasive economic impact of the COVID-19 pandemic on low income consumers in

Pennsylvania. In addition, OSBA was not denied due process when it failed to meaningfully participate or raise any issues about the procedure employed by the Commission in approving PGW's pilot program.

### **III. Argument**

21. Admitted.

22. Denied. Due process depends on the issues present in a particular proceeding. OSBA was served PGW's January 6, 2020 cover letter, which requested Commission action within 30 days. OSBA was included in correspondence and discussions with PGW and other stakeholders concerning PGW's proposals set forth in the January 6, 2020 cover letter. OSBA was served PGW's February 21, 2020 Petition, which requested answers be filed within 10 days. Despite ample notice and opportunity to participate, OSBA did not object or raise any concern about the 10 day response period proposed by PGW.<sup>5</sup> OSBA did not file a timely response to PGW's Petition and failed to indicate any interest in PGW's proposal until its late-filed March 19, 2020 Notice of Intervention. As such, OSBA's failure to participate does not create a due process violation.

23. Denied. Issues concerning the cost impacts of PGW's CRP modifications were raised and considered by the Commission and do not constitute grounds for reconsideration. Issues concerning PGW's proposed rate increase were also raised and considered by the Commission, and are subject to review in the context of PGW's base rate proceeding (Docket No. R-2020-3017206). See Order at 9.

24. Admitted.

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<sup>5</sup> See Order at 8 ("None of the stakeholders objected to a shortened interval for responding to PGW's petition to expedite approval of the 2020 Addendum.")

25. Denied as stated. Issues concerning the cost impacts of PGW's CRP modifications were raised and considered by the Commission in its Order, and do not meet the standard for reconsideration. Furthermore, in approving the Pilot Program, the Commission specifically recognized the need to collect actual cost information to aid in future review: "Gathering the data from the new energy burdens as a Pilot Program will provide a starting point for analysis should PGW propose similar energy burdens in its 2023-2027 USECP." Order at 15. The Commission's preference for actual data obtained in operating the Pilot Program is justifiable and aimed at evaluating the true impacts of the proposed energy burdens.

26. The Low Income Advocates lack knowledge or information sufficient to form a belief about the truth of this averment. By way of further response, commercial customer responsibility for PGW's universal service and energy conservation surcharge is a base rate proceeding issue, not an issue presented by PGW's Pilot Program.

27. Denied as stated. Issues concerning the cost impacts of PGW's CRP modifications were raised and considered by the Commission and do not constitute grounds for reconsideration. Furthermore, the Commission's Order explicitly acknowledges its approval of these modifications as part of PGW's Pilot Program, conclusively demonstrating that the Commission did carefully consider and did not overlook the program's "pilot" status.

OSBA's arguments concerning the nature of the CRP modifications, designated as a "pilot program," are inconsistent with the parlance utilized in the Public Utility Code. OSBA contends that because PGW's modifications are not limited to a small subset of customers, that it is not a "pilot program." OSBA contends that PGW's Pilot Program violates the "common understanding" of the term "pilot program" because the program applies to the entire population of PGW customers. While also factually incorrect (PGW's CRP program is only available to

low-income customers who satisfy the program’s eligibility criteria), OSBA’s analysis is fundamentally flawed. PGW’s implementation of the Pilot Program would be the first USECP in Pennsylvania to target the energy burdens established in the Commission’s final amended CAP Policy Statement. PGW’s program is of limited duration and is subject to further review and approval before it can be adopted as a permanent component of PGW’s USECP. Indeed, PGW is required to file a new USECP on November 1, 2021 – just over 18 months from the date of this filing.<sup>6</sup> As such, it is a “pilot program” in Pennsylvania; one which through early implementation can provide essential data and enable stakeholders to provide meaningful input in the Commission’s Universal Service Rulemaking. Order at 4-5.

28. Denied. To the extent OSBA’s concerns regarding the financial impact of COVID-19 may relate to cost impacts of PGW’s Pilot Program, OSBA fails to raise sufficient grounds for reconsideration. The Commission considered potential cost impacts from the Pilot Program, approving PGW’s immediate implementation of the energy burdens set forth in the Commission’s CAP Policy Statement in order to obtain actual cost data. Order at 4-5.

As noted above, the Commission was undoubtedly aware of the emerging health and economic crisis. At the time the Commission’s Order was issued, non-essential business in Pennsylvania had been shuttered for nearly two weeks, and stay-at-home orders were in place across the state. The gravity of the economic impact of COVID-19 was clear, even though the exact impact will not be known for many months as we move into the next phases of battling the pandemic in Pennsylvania. Nevertheless, the Commission determined that it was in the public interest to proceed. The Low Income Advocates agree.

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<sup>6</sup> Universal Service and Energy Conservation Plan (USECP) Filing Schedule and Independent Evaluation Filing Schedule, Order, Docket No. M-2019-3012601, at 12 (order entered October 3, 2019) (indicating that PGW’s next USECP, for the years 2023-2027, must be filed with the Commission on November 1, 2021, at which time the Plan will be subject to full review).

Importantly, the financial impacts of COVID-19 are only beginning to come to light, and their potential impact on PGW's CRP program are hypothetical at this time. Furthermore, PGW's commencement of a base rate increase proceeding does not constitute grounds for reconsideration of the Commission's approval of PGW's Pilot Program because the impact of the potential rate proceeding was also considered by the Commission. Order at 9. Cost concerns related to PGW's proposed base rate increase are properly examined in PGW's base rate proceeding. Finally, as explained above, the Commission's approval of PGW's Pilot Program did not violate due process and, to the extent OSBA desired to be heard, it waived its rights to do so by failing to submit its views for the Commission's consideration in a timely manner.

The Low Income Advocates further submit that OSBA errs in conflating cost impacts of COVID-19 with PGW's proposed CRP modifications. The cost impacts associated with implementation of PGW's Pilot Program can be fully assessed in PGW's next USECP proceeding, as discussed above. The cost impacts of COVID-19, which are not limited to PGW's CRP program, but are generated across customer classes and business operations, can and should be the subject of further consideration and evaluation in separate contexts.

While the health and economic impact of COVID-19 is not confined to PGW's CRP customers, the Low Income Advocates submit that the increased risk of harm to low-income Philadelphians weighs against granting reconsideration and the delay in implementation that would result. Low income PGW customers already struggle under the weight of unaffordable bills, and need help *right now*. While the potential economic impacts of COVID-19 are far ranging and could potentially have a severe effect on low income consumers, it is not possible now, and will not be possible for many months and perhaps longer, to fully assess how they impact upon utility affordability in Philadelphia. But it is unreasonable to further delay delivery

of affordable utility service according to standards adopted before the COVID-19 pandemic. If those standards were reasonable before, during a period of economic growth, they are even more reasonable now given the financial reverberations caused by the COVID-19 pandemic – especially for economically vulnerable low income communities.<sup>7</sup> In the months ahead, access to affordable natural gas service will be vital; implementation of the energy burdens approved by the Commission should not be delayed.

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<sup>7</sup> See American Inequality Meets COVID-19, The Economist (April 18, 2020), <https://www.economist.com/united-states/2020/04/18/american-inequality-meets-covid-19> (discussing emerging data showing that low income and minority communities are hardest hit by the pandemic, both in terms of health and economic impacts and outcomes.)

**IV. Conclusion**

WHEREFORE, the Low Income Advocates request that the Commission deny OSBA's Petition for Reconsideration of the Commission's March 26, 2020 Order approving PGW's Pilot Program to implement CRP modifications consistent with the Commission's final amended CAP Policy Statement.

Respectfully submitted,



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April 20, 2020

## VERIFICATION

I, Joline Price, on behalf of Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia, hereby state that the facts contained in the foregoing pleading are true and correct to the best of my knowledge, information and belief, that I am duly authorized to make this Verification, and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. §4904 (relating to unsworn falsification to authorities).

A handwritten signature in black ink, appearing to read "Joline Price". The signature is fluid and cursive, with the first name being more prominent than the last.

Date: April 20, 2020

Joline Price  
*Counsel for TURN et al.*

## VERIFICATION

I, Elizabeth R. Marx, on behalf of Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania, hereby state that the facts contained in the foregoing pleading are true and correct to the best of my knowledge, information and belief, that I am duly authorized to make this Verification, and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. §4904 (relating to unsworn falsification to authorities).

A handwritten signature in blue ink, reading "Elizabeth R. Marx". The signature is cursive and includes a period at the end.

Elizabeth R. Marx, Esq.  
Counsel for CAUSE-PA

Date: April 20, 2020

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition for Expedited Approval of :  
PGW's Letter Request to Amend its Universal : Docket No. P-2020-3018867  
Service and Energy Conservation Plan :  
Pursuant to the 2019 Amendments to the Policy :  
Statement at Docket No. M-2019-3012599 :

CERTIFICATE OF SERVICE

I hereby certify that I have this day served copies of TURN et al.'s Answer in Opposition to the Petition of the Office of Small Business Advocate for Reconsideration in the above-captioned matter, as set forth below in accordance with the requirements of 52 Pa. Code §1.54:

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April 20, 2020



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