


COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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November 15, 2021

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

Re: Addendum to Philadelphia Gas Works Universal  
Service and Energy Conservation Plan for  
2017-2020  
Docket No. M-2016-2542415

Petition to Amend Philadelphia Gas Works  
Universal Service and Energy Conservation Plan  
for 2017-2022  
Docket No. P-2020-3018867

Dear Secretary Chiavetta:

Enclosed please find the Office of Consumer Advocate's Answer to Philadelphia Gas Works' (PGW) Petition for Commission Action in the above-referenced proceedings. The undersigned certifies that this filing contains no averments or denials of fact subject to verification and penalties under 52 Pa. Code Section 1.36.

Copies have been served as indicated on the enclosed Certificate of Service.

Respectfully submitted,

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Certificate of Service

\*319947

CERTIFICATE OF SERVICE

Re: Addendum to Philadelphia Gas Works :  
Universal Service and Energy Conservation : Docket No. M-2016-2542415  
Plan for 2017-2020 :  
  
Petition to Amend Philadelphia Gas Works :  
Universal Service and Energy Conservation : Docket No. P-2020-3018867  
Plan for 2017-2022 :

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Answer to Philadelphia Gas Works' (PGW) Petition for Commission Action, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 15<sup>th</sup> day of November 2021.

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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Addendum to Philadelphia Gas Works :  
Universal Service and Energy Conservation Plan : Docket No. M-2016-2542415  
For 2017-2020 :

Petition to Amend Philadelphia Gas Works :  
Universal Service and Energy Conservation Plan : Docket No. P-2020-3018867  
For 2017-2022 :

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ANSWER  
OF THE  
OFFICE OF CONSUMER ADVOCATE

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The Office of Consumer Advocate (OCA) hereby submits this Answer in response to the October 25, 2021 Petition for Commission Action filed by Philadelphia Gas Works (PGW) in the above-referenced dockets.

**I. INTRODUCTION**

On October 25, 2021, pursuant to Section 5.41 of the Commission’s regulations (52 Pa. Code § 5.41), PGW filed a Petition for Commission Action to request that the Commission schedule an expedited proceeding in order to address PGW’s revised energy affordability burdens that were remanded from the Commonwealth Court’s determination in the above-referenced dockets.<sup>1</sup> In its Petition, PGW requests that the Commission:

- (1) issue an order directing PGW to maintain the existing energy burden Pilot Program as part of its Customer Responsibility Program (“CRP Pilot Program”) on a temporary basis until a final Commission order is issued in the proceeding on remand; (2) set a schedule for an expedited proceeding on remand in order to provide for the evidentiary proceedings and issuance of a new decision required by the Commonwealth Court’s decision; and (3) direct the Office of Administrative

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<sup>1</sup> See, John R. Evans v. Pa. Public Utility Commission and Tanya J. McCloskey v. Pa. Public Utility Commission, 421 and 422 C.D. 2020 (consolidated), slip op., 2021 Pa. Commw. Unpub. LEXIS 519 (Sept. 29, 2021) (Remand Order).

Law Judge (“OALJ”) to develop a certified record to be submitted to the Commission for decision.

Petition at 1; see also, Petition at ¶¶ 17-24.

PGW’s Petition is pursuant to the Commonwealth Court’s Remand Order of the Commission March 26, 2020 Order in this proceeding.<sup>2</sup> In its Remand Order, the Commonwealth Court determined that the OCA and Office of Small Business Advocate had been denied adequate notice and opportunity to be heard by the 30-day paper pleadings process provided in the Commission’s Order below. The Remand Order provided that:

The process provided by the Commission here to review and approve the Petition was truncated and limited, effectively, to the pleadings, despite there being factual questions about the proposed Pilot Program, the increased costs of which would be automatically collected from PGW’s non-CAP ratepayers through a USECP surcharge. (Cover Letter at 7, R.R. at 9a (stating the Pilot Program would increase PGW’s USECP surcharge).) This limited and truncated process did not provide OCA or OSBA a real and meaningful opportunity to be heard on PGW’s Petition. Nor did OCA’s and OSBA’s participation in the general proceedings on the CAP Policy Statement Amendments provide them with a real and meaningful opportunity to challenge this Petition, notwithstanding the Commission’s reference in the Reconsideration Order to utility-specific proceedings. Finally, the Commission’s past approval of USECP modifications without a hearing and based only on the filings in situations where there were no factual disputes does not mean that hearings are not required to satisfy due process in the face of such disputes. Accordingly, we agree with OCA and OSBA, as well as Commissioners Coleman and Yanora, that the process provided by the Commission in approving the Petition did not comport with the requirements of due process.

Remand Order at \*37-38. The Commonwealth Court directed the Commission “to provide evidentiary proceedings and issue a new decision consistent with this Opinion.” Remand Order at \*44.

For the reasons set forth below, the OCA does not oppose PGW’s request for a temporary extension of the existing pilot program during the pendency of this remand proceeding, with the caveat that the OCA reserves the right to request refunds to the date of the Remand Order. Further,

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<sup>2</sup> Remand Order at \*37-38, 44.

the OCA submits that PGW's requests for an expedited process and for certification of the record should be denied.

## **II. ANSWER**

In its Petition, PGW requests that the existing pilot program, including the revised energy burdens, be maintained on a temporary basis until a final Commission Order is issued in the proceeding on remand. Petition at ¶¶ 17-21. PGW argues that the OCA and OSBA did not request a stay of the matter and that the Company operated in good faith on September 12, 2020 by implementing the Commission's March 26, 2020 Order. Petition at ¶ 20. PGW also argues that reverting to the energy burdens that existed prior to the Commission's March 26, 2020 would impact low-income customer bills and the costs have already been charged to PGW's firm service customers through the Universal Service and Energy Conservation Surcharge. Petition at ¶ 21. In its Petition, PGW argues that requiring PGW to make these changes prior to a Commission remand determination would be administratively burdensome, costly for PGW's ratepayers, and would lead to higher bills and CAP customer confusion. Petition at ¶ 21. In its October 25, 2021 Petition, PGW notes that it would be filing on or about November 1, 2021 its 2023-2027 Universal Service and Energy Conservation Plan, and that the Commission's determination in this proceeding would be an important consideration for that filing. Petition at ¶ 22.<sup>3</sup>

The OCA does not oppose continuation of the existing pilot program on a temporary basis. The OCA agrees that it will unnecessarily confuse consumers and be a waste of resources if the energy burdens are changed prior to a final Commission decision here during the pendency of this proceeding.

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<sup>3</sup> PGW subsequently filed its 2023-2027 Universal Service and Energy Conservation Plan on October 29, 2021.

The Commonwealth Court determined that the Commission's Order was in error and that the determination made by the Commission was based upon a record that did not allow the parties adequate notice and opportunity to be heard. Remand Order at \* 44. Accordingly, the OCA submits that if the OCA's recommendations are adopted by the Commission, the OCA reserves its right to pursue refunds from the date of the Commonwealth Court's September 29, 2021 Remand Order. The Remand Order specifically determined that adequate notice and opportunity to be heard was not provided. Remand Order at \* 37-88, 44. As of the September 29, 2021 Remand Order date, PGW is effectively on notice that refunds from that date forward is one potential outcome from the present matter. To the extent that the Commission adopts the OCA's recommendations in this proceeding, the OCA submits that the firm service customers have the right to seek refunds from the date of the Commonwealth Court's September 29, 2021 Remand Order.

In its Petition, PGW proposes that the Commission establish an "expedited" schedule to address the remand of the Commonwealth Court decision in order to avoid "the confusion expense, and waste of resources that would likely occur if PGW were directed to make immediate changes in the energy burden and its Universal Service charge pending the outcome of the remand proceeding." Petition at ¶ 17. In its Petition, PGW identifies that the Commonwealth Court's Remand Order did not specify the exact process for a remand. Petition at ¶¶18, 19. PGW also does not provide a specific timeline as to its request for an "expedited" schedule, but does request that the record be certified instead of allowing for an Administrative Law Judge's determination in this matter.

As the OCA identified in its Answer to PGW's February 20, 2020 Petition, the OCA believes that a reasonable timeframe should be established in order to allow a full review. The

issues in this proceeding will be limited to the 2017-2022 Universal Service and Energy Conservation Plan. The OCA submits, however, that PGW previously recommended in the case below a 30-day expedited schedule. The proposed 30-day expedited schedule was not adequate time to review the issues in this proceeding. The OCA submits that type of expedited schedule is not appropriate and would defeat the purpose of the OCA's appeal of this matter to the Commonwealth Court.

The "pilot" program has implemented a significant change in the Company's program design and increase to the costs of the program should not be confined to a short timeframe. The Company's changes to its energy burdens raise significant questions as to the costs of the program, including the changes to the energy burden; the impact of the changes on the overall plan, including the need for additional cost control measures; and the continued cost-effectiveness of the Plan, among others. The OCA submits that further analysis of the impact of the changes on returned LIHEAP dollars is also required. With significantly lower energy burdens, it is possible that LIHEAP dollars will not be able to be fully utilized, resulting in a waste of scarce resources.

The Commonwealth Court affirmed that the OCA and OSBA must have the necessary opportunity to be heard. Remand Order at \*44. The Commission should provide an adequate and reasonable forum to evaluate the proposed program changes and sufficient time for the collection of necessary information and an analysis of the data. The OCA commits to working with the Presiding Officer and the other Parties to develop a reasonable procedural schedule for this matter, that includes sufficient time for discovery and written expert testimony.

As part of its request for an expedited schedule, PGW also requests that the Office of Administrative Law Judge develop a certified record to be submitted to the Commission for decision. Petition at 1, ¶ 17. The OCA opposes PGW's proposal to certify the record to the



Commission for the decision. The purpose of the remand of this proceeding is to allow for the opportunity to develop a full and complete factual record. The Commonwealth Court's decision specifically called for "evidentiary proceedings" and found the paper pleading process employed below inadequate. Remand Order at \*37-38. The remand proceeding will include mixed issues of fact, law, and policy, and it will be important to have an Initial Decision from the Administrative Law Judge in order to recommend to the Commission how this matter should be resolved. An Initial Decision from the Administrative Law Judge is an important component to the fact-finding of this proceeding and should not be removed from the evidentiary proceeding process.

For the reasons set forth above, the OCA does not oppose PGW's request for a temporary extension of the existing pilot program during the pendency of this remand proceeding, with the caveat that the OCA reserves the right to request refunds to the date of the Remand Order. The OCA requests that PGW's requests for an expedited process and for certification of the record be denied.

### III. CONCLUSION

WHEREFORE, the Office of Consumer Advocate submits that the OCA does not oppose PGW's request for a temporary extension of the existing pilot program during the pendency of this remand proceeding, with the caveat that the OCA reserves the right to request refunds to the date of the Remand Order. The OCA respectfully requests that PGW's requests for an expedited process and for certification of the record be denied.

Respectfully Submitted,

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