



December 20, 2021

Via E-File

The Honorable Mark A. Hoyer
Deputy Chief Administrative Law Judge
Pennsylvania Public Utility Commission
301 5th Avenue, Suite 220
Pittsburgh, PA 15222
mhoyer@pa.gov

The Honorable Emily I. DeVoe
Administrative Law Judge
Pennsylvania Public Utility Commission
301 5th Avenue, Suite 220
Pittsburgh, PA 15222
edevoe@pa.gov

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 2017-2020 Docket No. P-2020-3018867

Dear Judge Hoyer and Judge DeVoe,

Please find the attached **Prehearing Memorandum of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA)** in the above-referenced proceedings. As indicated on the attached Certificate of Service, service was accomplished by email only. In addition to serving all parties of record, we are also providing a copy to other interested parties included to date on correspondence in this matter.

Respectfully Submitted,

A handwritten signature in blue ink that reads "Elizabeth R. Marx". The signature is written in a cursive style and is positioned above a horizontal line.

Elizabeth R. Marx
Counsel for CAUSE-PA

CC: Parties of Record (Certificate of Service)
Secretary Rosemary Chiavetta (via e-file)

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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 2017-2020	:	Docket No. P-2020-3018867
	:	

Certificate of Service

I hereby certify that I have this day served copies of the **Prehearing Memorandum of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania** upon the parties of record in the above captioned proceeding in accordance with the requirements of 52 Pa. Code § 1.54 in the manner and upon the persons listed below.

VIA EMAIL ONLY

The Honorable Mark A. Hoyer Deputy Chief Administrative Law Judge Pennsylvania Public Utility Commission 301 5 th Avenue, Suite 220 Pittsburgh, PA 15222 mhoyer@pa.gov	The Honorable Emily I. DeVoe Administrative Law Judge Pennsylvania Public Utility Commission 301 5 th Avenue, Suite 220 Pittsburgh, PA 15222 edevoe@pa.gov
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Christy M. Appleby, Esq. Darryl Lawrence, Esq. Office of Consumer Advocate 5th Floor, Forum Place Bldg. 555 Walnut Street Harrisburg, PA 17101-1921 cappleby@paoca.org dlawrence@paoca.org	Sharon Webb, Esq. Office of Small Business Advocate Forum Place Bldg., 1st Floor 555 Walnut Street Harrisburg, PA 17101 swebb@pa.gov
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Respectfully submitted,
PENNSYLVANIA UTILITY LAW PROJECT
Counsel for CAUSE-PA



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Date: December 20, 2021

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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 2017-2020	:	

**PREHEARING MEMORANDUM OF THE COALITION FOR
AFFORDABLE UTILITY SERVICES AND ENERGY EFFICIENCY IN
PENNSYLVANIA**

PENNSYLVANIA UTILITY LAW PROJECT

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December 20, 2021

Pursuant to the December 15, 2021 Prehearing Conference Order issued by Deputy Chief Administrative Law Judge Mark A. Hoyer and Administrative Law Judge Emily I. DeVoe in the above captioned proceeding, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”), by and through its counsel at the Pennsylvania Utility Law Project, hereby file this Prehearing Conference Memorandum.

I. HISTORY OF THE PROCEEDING

On May 5, 2017, the Commission entered an Order initiating a statewide energy affordability study regarding home energy burdens for participants enrolled in low-income Customer Assistance Programs (CAPs) in Pennsylvania (Energy Affordability Review).¹ On May 10, 2017, the Commission entered a companion Order initiating a comprehensive review of Universal Service and Energy Conservation programs in Pennsylvania (Universal Service Programs Review).²

Dozens of stakeholders, including each of the parties of record in this proceeding, participated in these related proceedings, which took more than two years to complete and included multiple rounds of comments, utility-specific information and data, and multiple stakeholder work group meetings.³ The Commission issued an extensive report on

¹ Energy Affordability for Low Income Customers, Order, Docket No. M-2017-2587711 (Order entered May 5, 2017).

² Review of Universal Service and Energy Conservation Programs, Order, Docket No. M-2017-2596907 (Order entered May 10, 2017).

³ 2019 Amendments to Policy Statement on Customer Assistance Program, 52 Pa. Code § 69.261-69.267, Final Policy Statement and Order, Docket No. M-2019-3012599, Appx. A & B (Order entered on November 5, 2019) (hereinafter Final CAP Policy Statement and Order) (providing a detailed timeline and participant list for the Universal Service Review and Energy Affordability Proceedings). PGW participated in these proceedings and submitted information and data to the Commission prior to the release of the Commission’s Energy Affordability Report.¹⁸ PGW submitted supplemental information and data to the Commission on April 8, 2019.¹⁹ The data and supplemental information that PGW provided to the Commission included cost estimates of the impact of reducing energy burdens for participants enrolled in its customer assistance program, the CRP.

Home Energy Affordability for Low-Income Customers in Pennsylvania in January 2019
(Energy Affordability Report).⁴

On November 5, 2019, the Commission issued an Order adopting final amendments to its formal CAP Policy Statement.⁵ In its Final CAP Policy Statement and Order, the Commission directed utilities to file and serve an addendum to their existing or proposed Universal Service and Energy Conservation Plans (USECP) within 60 days of entry date of the Order, indicating whether and to what extent the utility intended to implement the policy changes specified in its Final CAP Policy Statement and Order.⁶

On February 6, 2020, the Commission denied the Petitions for Reconsideration filed by OCA and the Energy Association of Pennsylvania, respectively, finding that “*to the extent further granularity may be warranted it can be addressed in utility-specific proceedings.*”⁷

On January 6, 2020, PGW filed a detailed letter, which accompanied an addendum to its 2017-2022 USECP addressing the policy changes adopted by the Commission in the Final CAP Policy Statement. In pertinent part, PGW’s letter requested the Commission approve, as a Pilot Program, modifications to its CRP to implement the Commission’s revised energy burdens, eliminate monthly \$5 copayments for arrearage forgiveness, and implement a CRP consumption limitation to serve as a new cost-control feature (herein referred to as the CRP Pilot Program). PGW’s filing included detailed enrollment and budget projections for the CRP Pilot Program.

Pa PUC, Home Energy Affordability for Low-Income Customers in Pennsylvania, Docket No. M-2017-2587711 (Jan. 2019).

⁵ Final CAP Policy Statement and Order; see also 52 Pa. Code §§ 69.261-69.267.

⁶ Final CAP Policy Statement and Order at 32.

⁷ Petition of Office of Consumer Advocate for Reconsideration/Clarification of the November 5, 2019 Final CAP Policy Statement and Order, Docket Nos. M-2019-3012599, P-2020-3016885, at 11 (order entered Feb. 6, 2020) (hereinafter February 6 Order).

On February 21, 2020, following two stakeholder meetings and exchange of informal discovery, PGW filed a Petition for Expedited Approval of its CRP Pilot Program (Expedited Petition), consistent with the description in its January 6, 2020 letter. In its Expedited Petition, PGW included cost estimates for the CRP Pilot Program.

On March 2, 2020, the Low Income Advocates filed a Letter in Lieu of Answer in support of PGW's CRP Pilot Program. On the same day, the OCA filed an Answer asserting that PGW's CRP Pilot Program required further review, and opposing expedited review.

On March 26, 2020, the Commission approved PGW's CRP Pilot Program (March 26 Order) on an expedited basis, weighing the relative costs and benefits and concluding that the pilot "would likely provide greater benefit than the harm that could be caused by the projected increased costs."

On April 10, 2020, the OCA and OSBA filed Petitions for Reconsideration of the Commission's March 26 Order.

On April 20, 2020, CAUSE-PA, together with the Tenant Union Representative Network (TURN) and the Action Alliance of Senior Citizens of Greater Philadelphia (Action Alliance), filed Joint Answers to OCA and OSBA's Petitions for Reconsideration.

On April 30, 2020, the Commission rejected OCA and OSBA's Petitions for Reconsideration.

On May 4, 2020, the OCA and OSBA separately appealed to the Commonwealth Court. These appeals were consolidated by the Commonwealth Court on September 15, 2020. No party filed a stay at any time following the Commission's March 26 Order.

On May 22, 2020, CAUSE-PA filed Notices of Intervention with the Commonwealth Court in the OCA and OSBA appeals. On June 1, 2020, TURN and Action Alliance filed Notices of Intervention in the Commonwealth Court appeals.

On September 25, 2020, PGW filed a status update with the Commission, indicating that implementation of the CRP Pilot Program was complete as of September 12, 2020. Since implementation, PGW has provided the Commission with a quarterly report on the status of the program at Docket No. P-2020-3018867, allowing the Commission to actively monitor costs associated with the CRP Pilot Program. PGW's January 6, 2020 Addendum to its Universal Service Plan for 2017-2020 estimated that the CRP Pilot Program would result in CRP program costs increasing by more than \$27 million annually (from \$59,694,816 in 2020 to \$87,018,257 in 2021). According to the final status update PGW filed with the Commission on November 1, 2021, PGW's actual CRP costs over 12 months (October 2020 – September 2021) show an increase of just \$1 million (from \$59,694,816 to \$60,748,545) – an amount *less* than the typical year-over-year increase projected for PGW's CRP budget prior to implementation of the Pilot Program.⁸

On January 21, 2021, OCA filed a Brief in support of its appeal, and OSBA filed its brief on February 26, 2021.

On April 12, 2021, CAUSE-PA filed a joint brief in the Commonwealth Court together with TURN and Action Alliance.

On April 26, 2021, OCA and OSBA filed reply briefs with the Commonwealth Court.

Oral argument was held before the Commonwealth Court, en banc, on May 12, 2021.

⁸ See PGW Second Amended 2017-2020 USECP at 43.

On September 29, 2021, the Commonwealth Court issued an unreported memorandum opinion remanding the Commission's March 26 Order for further proceedings consistent with its opinion in the matter.

On October 25, 2021, PGW filed its Petition for Commission Action requesting that the remanded proceeding proceed on an expedited basis.

On October 29, 2021, Philadelphia Gas Works submitted its Universal Service and Energy Conservation Plan for the period 2023 - 2027 (2023-2027 USECP). This separate matter was assigned to the Bureau of Consumer Services on November 1, 2021. CAUSE-PA filed a Petition to Intervene in PGW's 2023-2027 USECP on December 15, 2021.

On November 4, 2021, CAUSE-PA and TURN separately filed Petitions to Intervene in the remanded matter.

On November 15, CAUSE-PA and TURN filed a Joint Answer to PGW's October 25, 2021 Petition supporting an expedited proceeding.

On December 7, 2021, the matter was assigned to Deputy Chief Administrative Law Judge Mark A. Hoyer and Administrative Law Judge Emily I. DeVoe.

On December 9, 2021, DCALJ Hoyer and ALJ DeVoe contacted the parties and instructed the parties to confer and identify a mutually agreeable date and time for a prehearing conference in this matter.

The parties subsequently agreed upon December 20, 2021 at 11:00 am, and communicated that date to DCALJ Hoyer and ALJ DeVoe.

On December 14, 2021, the Commission issued a notice, scheduling the prehearing conference for December 20, 2021. On December 15, 2021, DCALJ Hoyer and ALJ DeVoe issued

a Prehearing Conference Order requiring each party to file a Prehearing Memorandum by 9:00 am on December 20, 2021.

II. REPRESENTATION AT THE PREHEARING CONFERENCE

CAUSE-PA is represented in this proceeding by counsel at the Pennsylvania Utility Law Project.

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For the purposes of the prehearing conference in this matter, CAUSE-PA will be represented by Elizabeth R. Marx, Esq. at the Prehearing Conference in this matter.

III. ISSUES ON REMAND

CAUSE-PA submits that there is just one threshold issue for the Commission to determine on remand: *Whether PGW's CRP Pilot Program is just and reasonable and, if so, whether the pilot should continue pending review and implementation of PGW's USECP for 2023-2027.* In reaching a conclusion on this threshold question, the Commission must assess whether the CRP Pilot Program will ensure that PGW's low income customers are able to reasonably afford to maintain natural gas services to their homes consistent with the Commission's statutory universal service obligations and the regulatory and policy parameters established in furtherance of those obligations. CAUSE-PA reserves the right to raise additional

issues or otherwise adjust the issues identified above as may be warranted through the course of the proceeding.

IV. EVIDENTIARY HEARINGS

DCALJ Hoyer and ALJ DeVoe raise important questions and concerns in the Prehearing Conference Order as to the appropriate coordination of the instant proceeding and the Commission's consideration of PGW's pending Universal Service and Energy Conservation Plan for 2023-2027. The issues before the Commission in review of PGW's 2023-2027 USECP are broader than the issues in the instant proceeding but are substantially intertwined.

In advance of filing this Prehearing Memorandum, CAUSE-PA consulted with the parties and understands that at least two parties oppose consolidation of the two proceedings. CAUSE-PA does not take a position at this time regarding whether this proceeding should be fully consolidated with PGW's 2023-2027 USECP. But we are concerned that litigation of these two proceedings on tandem policy and litigation tracks may cause further uncertainty, inconsistencies, and unnecessary duplication of scarce resources for the parties and the Commission. Such a result would not serve the interests of the parties, the public, or ratepayers. We note that on its current trajectory, this proceeding is unlikely to conclude until a few months prior to the effective date of PGW's 2023-2027 USECP. If further appeals are taken, conclusion of this matter may not be reached until long after the effective date of PGW's 2023-2027 USECP.

That said, CAUSE-PA believes that there is room for settlement of the instant proceeding, which may obviate the need for litigation. Moreover, even if settlement is not reached, we believe that additional discussions about the intersection of this case and PGW's 2023-2027 USECP may help to streamline the two proceedings and prevent the duplication of

resources and/or potential inconsistencies in Commission directives across the two proceedings. For example, discovery in each proceeding is likely to be relevant in both cases, but further agreement will be necessary to ensure admissibility of evidence across these proceedings. While we recognize that full consolidation may not be possible, given the broader scope of issues in the 2023-2027 USECP, we believe there are likely numerous other ways to effectively streamline these proceedings.

Rather than proceed with consolidation or establish a litigation schedule at this time, CAUSE-PA requests that DCALJ Hoyer and ALJ DeVoe schedule a further prehearing conference in January. In the interim, we request that the parties be directed to engage in settlement discussions and to determine whether and to what extent this proceeding should be streamlined or otherwise consolidated with PGW's 2023-2027 USECP. Even if settlement is not reached, this brief additional time would allow the parties to proceed with litigation in a more coordinated manner, helping to reduce the unnecessary duplication of resources and ensure consistency across Commission orders in this proceeding.

a. Proposed Witness

To the extent evidentiary proceedings are ultimately necessary in this proceeding, CAUSE-PA intends to present expert testimony of Harry S. Geller, Esq.

Harry S. Geller, Esquire
118 Locust Street
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717-576-2282

Mr. Geller will testify as to the justness and reasonableness of PGW's CRP Pilot Program. We reserve the right to identify additional witnesses if necessary to respond to additional issues

which may arise through the course of the proceedings, and will promptly notify DCALJ Hoyer, ALJ DeVoe, and parties if we identify a need for additional witnesses.

b. Proposed Discovery

CAUSE-PA does not object to the discovery modifications that we understand will be proposed by the OCA in this matter.

c. Proposed Litigation Schedule

CAUSE-PA has engaged in discussions with the parties regarding a proposed litigation schedule, as time has allowed. As explained above, we recommend that the parties be ordered to discuss possible settlement and/or to assess the ways in which this proceeding could or should intersect with the pending 2023-2027 USECP proceeding before establishing a litigation schedule. As of the filing of this Prehearing Memorandum, we continue to work with the parties to reach agreement on a procedural schedule in the event our recommendation is not adopted.

d. Proposed Service of Process

CAUSE-PA requests that all documents be permitted to be served electronically.

e. Proposed Hearing Format

CAUSE-PA requests that hearings in this matter, to the extent necessary, be held telephonically.

V. SETTLEMENT

CAUSE-PA is ready and willing to engage in settlement discussions and encourages the parties to commence with settlement discussions early in the proceeding to protect economically vulnerable consumers, advance the public interest, and preserve the limited resources of the parties and the Commission.

Respectfully submitted,

A handwritten signature in blue ink, reading "Elizabeth R. Marx". The signature is written in a cursive style with a horizontal line underneath it.

Elizabeth R. Marx, Esq. (Pa. ID: 309014)

Ria M. Pereira, Esq. (Pa. ID: 316771)

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