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December 20, 2021

Via Electronic Filing

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

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 for electronic filing please find Philadelphia Gas Works' ("PGW") Prehearing Memorandum with regard to the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,

/s/ Lauren M. Burge

Lauren M. Burge, Esq.

LMB/lww
Enclosure

cc: Hon. Mark A. Hoyer w/enc.
Hon. Emily I. DeVoe w/enc.
Nicholas Miskanic w/enc.
Certificate of Service w/enc.

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of PGW's Prehearing Memorandum upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

Via Email Only

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Dated: December 20, 2021

/s/ Lauren M. Burge
Lauren M. Burge, Esq.

**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 2017-2022	:	
	:	Docket No. P-2020-3018867
	:	
	:	

**PREHEARING MEMORANDUM OF
PHILADELPHIA GAS WORKS**

Philadelphia Gas Works (“PGW” or the “Company”) hereby submits this Prehearing Memorandum pursuant to 66 Pa. C.S. § 333 and the Prehearing Conferenced Order dated December 15, 2021.

I. PROCEDURAL HISTORY

PGW is a city natural gas distribution operation as defined in Section 2212 of the Public Utility Code. 66 Pa. C.S. § 2212. As such, PGW is subject to the same requirements, policies and provisions regarding universal service and energy conservation programs as applicable to any other natural gas distribution company (“NGDC”).

PGW’s Universal Service and Energy Conservation Plan (“USECP”) for 2017 to 2020 was originally approved by Commission Order entered on October 5, 2017.¹

On October 3, 2019, the Commission entered an Order at Docket No. M-2019-3012601 (“October 2019 Order”) that extended the duration of existing or proposed USECPs from three to five years, and established pilot filing schedules for future plans and impact evaluations. This

¹ Docket No. M-2016-3012601.

Order required electric distribution companies (“EDCs”) and NGDCs to submit enrollment and budgetary projections for the years added to the current or proposed USECPs. October 2019 Order at Ordering ¶ 3.

Additionally, on November 5, 2019, the Commission entered a Final Policy Statement and Order at Docket No. M-2019-3012599 (“Final Policy Statement and Order”) adopting certain CAP policy changes and amending its CAP Policy Statement at 52 Pa. Code §§ 69.261-69.267. The Final Policy Statement and Order, in conjunction with the October 2019 Order, required EDCs and NGDCs to submit addendums to their existing or proposed USECPs indicating how they planned to implement the policy changes specified in the amended CAP Policy Statement. Final Policy Statement and Order at Ordering ¶ 6. In particular, the Commission’s amended CAP Policy Statement stated that utilities should establish new maximum tiered CAP energy burdens of 6% for natural gas heating customers in Federal Poverty Income Guidelines (“FPIG”) tiers 51%-100% and 101%-150%, and 4% for natural gas heating customers in FPIG tier 0%-50%. 52 Pa. Code § 69.265(2).

On January 6, 2020, PGW filed the required cover letter and addendum to its USECP. Through this filing, PGW amended its 2017-2020 USECP to extend the plan through 2022, and provided enrollment and budgetary projections for 2021 and 2022. PGW’s cover letter also addressed the CAP energy burden changes specified in the amended CAP Policy Statement that it proposed to implement via a pilot program. Specifically, PGW’s January 6, 2020 filing proposed to implement the maximum energy burdens consistent with the amended CAP Policy Statement and to remove the obligation to pay \$5 per month towards pre-program arrears. These modifications were proposed to be implemented as a pilot program through the term of PGW’s Amended USECP. PGW requested that the Commission approve the CRP Pilot Program within

30 days to allow the Company adequate time to implement the change prior to an upcoming replacement of its customer information system (“CIS”).

On February 6, 2020, the Commission entered two separate Orders on Reconsideration and Clarification in response to Petitions filed by the Energy Association of Pennsylvania (“EAP”) and the Office of Consumer Advocate (“OCA”) for Reconsideration/Clarification of the November 5, 2019 Final CAP Policy Statement and Order at Docket No. M-2019-3012599 (“EAP Reconsideration Order”).² The EAP Reconsideration Order clarified that utility compliance with the amended CAP Policy Statement is not mandatory, but was strongly encouraged.³ The EAP Reconsideration Order also indicated, *inter alia*, that utilities proposing to voluntarily modify their USECPs pursuant to the amended CAP Policy Statement must submit a cover letter, a Petition to Amend an existing USECP, and an addendum reflecting proposed CAP changes to an existing USECP including enrollment and budgetary projections.⁴ The EAP Reconsideration Order indicated that utilities should endeavor to implement the amended CAP Policy Statement “as quickly as possible” and ideally by January 1, 2021.⁵

In compliance, on February 21, 2020, PGW filed a Petition for Expedited Approval requesting that the Commission approve the CRP Pilot Program and other modifications as described in PGW’s January 6, 2020 filing, consistent with the EAP Order. PGW explicitly incorporated its January 6, 2020 cover letter and addendum by reference. Through its Petition,

² 2019 Amendments to Policy Statement on Customer Assistance Program, 52 Pa. Code § 69.261-69.267, Docket No. M-2019-3012599, Order on EAP Reconsideration and Clarification (entered Feb. 6, 2020) (“EAP Reconsideration Order”).

³ *Id.* at 11-12.

⁴ *Id.* at 12, Ordering Paragraphs 3-5.

⁵ *Id.* at 8-10.

PGW requested expedited Commission review and approval of its CRP Pilot Program in order to have time to implement the pilot program prior to the filing of PGW's next USECP for 2023-2027 (which was to be filed by November 1, 2021). PGW had already begun its planned CIS replacement project and as a part of that project needed to cease implementing new system enhancements in order to ensure successful testing and implementation of the CIS. As a result, PGW requested approval of the CRP Pilot Program by March 31, 2020.

On March 2, 2020, OCA filed a Notice of Intervention and Answer opposing PGW's Petition for Expedited Approval. Also on March 2, 2020, the Tenant Union Representative Network ("TURN"), Action Alliance of Senior Citizens of Greater Philadelphia ("Action Alliance"), and the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania ("CAUSE-PA") (collectively, the "Low Income Advocates") filed a Letter in Lieu of Answer in support of PGW's Petition. The Office of Small Business Advocate ("OSBA") did not submit an Answer or other response but subsequently filed a Notice of Intervention on March 19, 2020.

On March 26, 2020, the Commission issued an Order granting PGW's Petition for Expedited Approval and approving PGW's Addendum and CRP Pilot Program ("March 26, 2020 Order"). On April 10, 2020, OCA and OSBA each filed Petitions for Reconsideration of this Order. The Petitions for Reconsideration were not granted.

On May 4, 2020, OCA and OSBA filed Petitions for Review with the Commonwealth Court of Pennsylvania seeking review and reversal of the Commission's March 26, 2020 Order.⁶ Neither OCA nor OSBA requested a stay of the March 26, 2020 Order.

⁶ *John R. Evans v. Pa. Public Utility Commission and Tanya J. McCloskey v. Pa. Public Utility Commission*, 421 and 422 C.D. 2020 (consolidated).

PGW implemented the CRP Pilot Program as of September 12, 2020. Pursuant to the March 26, 2020 Order, PGW filed quarterly reports with the Commission on the CRP Pilot Program's implementation and costs. The quarterly reports have been served on all parties, including OCA and OSBA. No party took any action to stay the implementation of the CRP Pilot Program, and PGW implemented the program in good faith as directed by the Commission's March 26, 2020 Order. While the CRP Pilot Program has been in place, the additional costs from the higher CRP benefits caused by the revised energy burdens have been charged to PGW's firm rate customers through PGW's Universal Service and Energy Conservation Surcharge, and CRP customers' bills have been lower.⁷

On September 29, 2021, the Commonwealth Court entered an Opinion holding that the Commission erred in granting PGW's Petition for Expedited Approval without providing interested parties adequate notice of the grant of expedited consideration and a meaningful opportunity to respond to the particular facts of the proposed changes to PGW's USECP. As a result, the Court vacated the March 26, 2020 Order and remanded to the Commission for further proceedings. The Court directed the Commission to provide evidentiary proceedings and issue a new decision consistent with its Opinion.⁸

On October 25, 2021, PGW filed a Petition for Commission Action requesting that the Commission issue an order providing an expedited proceeding to address PGW's revised energy burdens on remand from the Commonwealth Court, and to remove uncertainty about the status of PGW's program in the interim. Specifically, PGW requests that the Commission: (1) issue an order directing PGW to maintain its existing energy burden Pilot Program as part of its Customer

⁷ See PGW's Supplement No. 145 to Gas Service Tariff – Pa. P.U.C. No. 2, Ninetieth Revised Page No. 81.

⁸ *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 copy 2021 WL 4451007.

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

On October 29, 2021, PGW filed its USECP for 2023-2027 at Docket No. M-2021-3029323.⁹

On November 4, 2021, CAUSE-PA and TURN each filed Petitions to Intervene in this proceeding on remand.

On November 15, 2021, CAUSE-PA and TURN filed a Joint Answer supporting PGW’s Petition for Commission Action. Also on November 15, 2021, OCA filed an Answer to PGW’s Petition in which it did not oppose PGW’s request for a temporary extension of the existing pilot program during the pendency of the proceeding on remand, with the caveat that OCA reserved the right to request alleged “refunds” going forward from the date of the Commonwealth Court’s order. OCA opposed a 30-day expedited schedule for the remand proceeding, but supported a “reasonable” timeframe for review. OCA also opposed PGW’s proposal for a certified record to be submitted to the Commission, and rather requested that the Administrative Law Judges issue an Initial Decision.

PGW now submits this Prehearing Memorandum in accordance with the Prehearing Conference Order issued by the Administrative Law Judges.

⁹ On December 15, 2021, CAUSE-PA and TURN each filed a Petition to Intervene in PGW’s 2023-2027 USECP proceeding. To date, no other filings have been made in that proceeding.

II. PGW’S POSITION ON ITS PETITION FOR COMMISSION ACTION AND PENDING USECP FOR 2023-2027

The Prehearing Order directed PGW to address its position on its October 25, 2021 Petition for Commission Action in light of the fact that PGW has since filed its USECP for 2023-2027. PGW’s overall position as stated in its Petition for Commission Action has not changed. The Company anticipated that its USECP would be filed within a few days of filing its Petition and took that into consideration. PGW continues to request that the limited remand issues regarding the energy burdens in PGW’s CRP Pilot Program be addressed in a reasonably expedited manner through this proceeding on remand, which will inform related topics being addressed in its USECP for 2023-2027. The Commonwealth Court’s Order and the proceeding on remand are not about PGW’s recently filed USECP for 2023-2027, but rather are limited to addressing the energy burdens that were at issue on appeal. There is no legal reason or basis for this docket to be consolidated with the USECP, and practically speaking it is more efficient to address these limited issues at this docket (as is discussed further below). The scope of PGW’s USECP is quite broad and includes many programs and CRP components that are beyond the remand issue.

PGW incorporates its Petition for Commission Action herein by reference, but in summary, the Petition requested that an order be issued directing PGW to maintain its existing CRP Pilot Program, including the revised energy burdens, on a temporary basis until a final Commission order is issued in this proceeding on remand. Further, PGW requested that the Commission move forward with the proceeding on remand on an expedited basis in order to provide for the evidentiary proceedings and issuance of a new decision required by the Commonwealth Court’s decision. In order to expedite a final Commission decision, PGW requested that the OALJ be directed to develop a certified record to be submitted to the

Commission to make a final determination (without the issuance of an initial decision). In light of OCA's concerns and in the interest of avoiding additional delay, PGW withdraws its request that the ALJs develop a certified record and does not oppose the issuance of an Initial Decision.

PGW interprets the Commission's assignment of this remand proceeding to the Office of Administrative Law Judge as an indication that it does not intend to take any action modifying PGW's current plan and will only consider modifications upon receipt of the record and Recommended Decision in this remand proceeding. PGW reserves the right to respond if a proposal to make any interim changes in PGW's current plan prior to the outcome of this proceeding.

III. ISSUES

The issues in this proceeding on remand are limited to those raised in the consolidated Commonwealth Court appeals, and items directly related to these issues. On appeal, OCA and OSBA specifically challenged the revised energy burdens implemented as part of PGW's CRP Pilot Program. As such, the issues in this proceeding on remand are limited to:

1. Whether the revised energy burdens implemented as part of PGW's CRP Pilot Program are just, reasonable and in the public interest; and
2. To the extent that the Commission orders any changes to the current energy burdens, whether such changes should be applied retroactively and whether it would be reasonable and in the public interest to order "refunds," to customers paying PGW's USC and recoupment from CRP customers who received greater benefits.

The Prehearing Order asks the parties to discuss whether these issues are more appropriately addressed in an adversarial proceeding on PGW's USECP for 2023-2027. To the

contrary, it is PGW's position that these limited topics are best addressed as part of this remand proceeding, rather than as part of the pending USECP proceeding, and in fact inclusion of the USECP for 2023-2027 in an adversarial proceeding would far exceed the scope of the remand. As noted in the Prehearing Order, the USECP proceeding is currently assigned to BCS,¹⁰ and not to the Office of Administrative Law Judge. PGW's position is that the limited issues on remand must be, and are best addressed in the context of this remand proceeding, which will provide an evidentiary hearing as specifically required by the Commonwealth Court's order. Further, addressing the issues on remand in an expedited manner (as PGW requested in its Petition for Commission Action) will provide an efficient process to resolve these issues and might inform the pending USECP proceeding.

Moreover, parties will have an opportunity to present their positions on the reasonableness of the revised energy burden for application on a going forward basis for the 2023-2027 USECP. The Commonwealth Court's Order and this remand proceeding only focus on issues specific to the energy burdens currently reflected in PGW's CRP Pilot Program; they do not involve PGW's entire USECP or the contents of the USECP for the 2023-2027 period. Those issue are appropriately addressed in the 2023-2027 USECP docket.

IV. PROPOSED LITIGATION SCHEDULE

PGW's proposed the litigation schedule below for this proceeding. This schedule provides time for discovery while also addressing the issues on remand on an expedited basis. To PGW's knowledge, this schedule is agreeable to OCA and OSBA and is under review by other parties.

¹⁰ See 52 Pa. Code § 69.263 regarding the role of BCS in USECP development.

<u>Item</u>	<u>Proposed Schedule</u>
PGW Direct Testimony	February 4, 2022
Non-Company Direct Testimony	March 7, 2022
Rebuttal Testimony	March 31, 2022
Surrebuttal Testimony	April 12, 2022
Rejoinder Outline	April 18, 2022
Evidentiary Hearings	April 19-20, 2022
Main Briefs	May 10, 2022
Reply Briefs	May 20, 2022

V. DISCOVERY

The proposed litigation schedule provides time for discovery to be conducted in this proceeding on remand. To date, PGW has received one set of interrogatories in this proceeding. PGW does not oppose reasonable discovery modifications.

VI. WITNESSES

At this time, PGW anticipates submitting the testimony of the following witness(es), if necessary. PGW reserves the right to add additional witnesses or change the identity of its witnesses at any time upon appropriate notice to the ALJ and the parties.

Denise Adamucci
Philadelphia Gas Works
800 W. Montgomery Ave.
Philadelphia, PA 19122

Topics: PGW's Energy Burden Pilot Program

VII. SERVICE OF DOCUMENTS

PGW requests that all documents be served on:

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PGW also agrees to receive service of documents electronically in this proceeding. To the extent that materials are available electronically, it is requested that copies be served upon:

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For purposes of the December 20, 2021 Prehearing Conference, Lauren M. Burge will be the representative speaking on behalf of PGW.

VIII. SETTLEMENT

PGW would support the settlement of any or all issues in this proceeding, and is willing to work with the parties to attempt to reach a resolution.

Respectfully Submitted,

/s/ *Lauren M. Burge*

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Dated: December 20, 2021

Counsel for Philadelphia Gas Works