**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

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|  | Public Meeting held June 30, 2016 |
| Commissioners Present: Gladys M. Brown, Chairman, Joint Statement Andrew G. Place, Vice Chairman, Statements John F. Coleman, Jr.  Robert F. Powelson, Joint Statement David W. Sweet, Statement |  |
| 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 |  P-2014-2459362  |

**TENTATIVE OPINION AND ORDER**

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**BY THE COMMISSION:**

# I. Matter Before the Commission

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions filed by the Philadelphia Gas Works (PGW) on April 7, 2016, to the Recommended Decision (R.D.) of Administrative Law Judges (ALJs) Christopher P. Pell and Marta Guhl, issued on March 18, 2016, in the above captioned proceeding. On April 18, 2016, the following Parties filed Replies to Exceptions: the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA), the Commission’s Bureau of Investigation and Enforcement (I&E), and the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA).

On consideration of the Recommended Decision, the Exceptions submitted by PGW and the Replies to Exceptions filed by the various intervenors, we shall tentatively adopt the Recommended Decision, as modified, consistent with this Opinion and Order. The Exceptions of PGW shall be granted, in part, and denied, in part consistent with the discussion herein. In consideration of a Commission directed resolution of the PGW Low-Income Usage Reduction Program (LIURP) budget issue to be utilized during the Company’s Phase II DSM Plan, as discussed herein, we shall provide the Parties to this proceeding ten days in which to file comments with this Commission in response to this issue.

# II. Background

On July 29, 2010, the Commission issued an Order approving a settlement of a PGW base rate increase request filing at Docket No. R-2009-2139884 and of PGW’s *Revised Petition for Approval of Energy Conservation and Demand Side Management Plan* at Docket No. P-2009-2097639 (*July 2010 Order*), which included the creation of PGW’s initial five-year Demand Side Management Plan (Phase I DSM Plan). The Phase I DSM Plan provided for the implementation of six separate energy efficiency programs in PGW’s service territory, beginning on September 1, 2010, and expiring on August 31, 2015. [[1]](#footnote-1) Citing the success of the Phase I DSM Plan in providing significant benefits to its customers in a cost-effective manner, on December 23, 2014, PGW filed a Petition at Docket No. P-2014-2459362 seeking approval of a DSM Plan for 2015 through 2020 (Petition). This Petition served as a request to institute Phase II of PGW’s initial five-year DSM Plan (Phase II DSM Plan) beginning on September 1, 2015, and ending on August 31, 2020. PGW Petition at 1-2. Numerous Parties filed Answers to the Petition, Petitions to Intervene, and Notices of Intervention, and, as such, the Petition for the Phase II DSM Plan was assigned to the Office of Administrative Law Judge (OALJ).

PGW submitted that its Phase II DSM Plan has been designed to cost-effectively reduce customer bills, maximize customer value, and reduce harmful greenhouse gas emissions. In its Phase II DSM Plan, PGW proposed to continue, with improvement, the following five conservation programs, which it currently offers under its Phase I DSM Plan:

* *CRP Home Comfort* Program: This program provides comprehensive weatherization services to the highest usage customers in PGW’s Customer Assistance Program (CAP), the Customer Responsibility Program (CRP).[[2]](#footnote-2) It is through this program that PGW administers its statutorily-mandated residential low-income usage reduction program (LIURP).
* *Residential Equipment Rebates* Program: This program provides prescriptive residential-sized heating equipment rebates targeting the replacement of equipment at the end of its operational life
* *Commercial Equipment Rebates* Program: This program provides prescriptive commercial-sized heating and cooking equipment rebates targeting replacement at the end of its operational life
* *Efficient Building Grants* Program: This is a retrofit program which promotes natural gas energy efficiency retrofit investments by providing custom project grants to PGW’s multifamily residential, commercial, and industrial customers.
* *Efficient Construction Grants* Program: This program provides custom project grants for new and gut rehabilitated commercial and multifamily buildings, and single family homes.

PGW Petition at 3-4, 11, 13-14. PGW also proposed to phase out its Home Rebates Program, which is a retrofit program that provides incentives to single-family residential customers for implementing comprehensive natural gas conservation projects in their homes. *Id.* at 14.

Additionally, PGW proposed to add the following new programs:

* A new Low-Income Multifamily (LIME) Program as part of its CRP Home Comfort Program, consistent with our *USECP 2014-2016 Order.* This program would be targeted to low-income multifamily housing building owners.
* An Efficient Fuel-Switching Program, which it asserts will promote specific cost effective energy efficiency and conservation projects while also aligning DSM conservation goals with the goals associated with facilitating the growth of natural gas demand in Pennsylvania.

PGW Petition at 4-5, 15-17.

PGW also proposed to add the following cost elements to its Phase II DSM Plan:

* A Conservation Adjustment Mechanism (CAM), which would calculate the lost margin associated with reduced gas usage resulting from PGW’s DSM programs. PGW proposes to include the CAM in the costs of the programs recovered through its Efficiency Cost Recovery Surcharge (ECRS). However, PGW notes that it has developed its Phase II DSM Plan on the assumption that Commission approval of its CAM is unlikely.[[3]](#footnote-3)
* PGW proposes that the costs of its program measures include a Performance Incentive Mechanism wherein PGW would accrue performance incentives based on the Company meeting and surpassing targeted program goals. PGW submits that this would maximize its incentive to produce the greatest amount of energy efficiency possible.

PGW Petition at 5-6, 19-20, 23.

Consistent with our direction outlined in our *USECP 2014-2016 Order* at 74, PGW also has included in its Petition a request for waivers of certain provisions of Chapter 58 of our Regulations in Title 52 of the Pennsylvania Code (Regulations), which PGW asserted are necessary to implement its CRP Home ComfortProgram. Specifically, PGW sought waivers of 52 Pa. Code §§ 58.4 (a), 58.5, 58.9, 58.10 (a)(2), 58.10(a)(3), 58.11, and 58.16. PGW Petition at Appendix A.

# III. History of the Proceeding

The history of this proceeding that follows is summarized from the Recommended Decision of ALJs Pell and Guhl, the majority of which may be found on pages one through six of that decision.

As stated above, on December 23, 2014, PGW filed its Petition seeking approval of its Phase II DSM Plan and various waivers of Chapter 58 of our Regulations.

On January 12, 2015, the following Parties filed various pleadings: (1) I&E filed an Answer to PGW’s Petition; (2) CAUSE-PA filed a Petition to Intervene and Answer to PGW’s Petition; (3) the OCA filed a Notice of Intervention, Public Statement and an Answer to PGW’s Petition.

On January 13, 2015, the following Parties filed various pleadings: (1) Tenant Union Representative Network (TURN) and Action Alliance of Senior Citizens of Greater Philadelphia (Action Alliance) (collectively, TURN *et al.*), filed a Petition to Intervene; (2) the OSBA filed a Notice of Intervention and Public Statement; (3) the Philadelphia Industrial and Commercial Gas Users Group (PICGUG) filed a Petition to Intervene.

On January 16, 2015, the Clean Air Council (CAC) filed a Petition to Intervene.

On April 10, 2015, PGW filed a Petition to Extend Demand Side Management Plan at Docket No. P-2009-2097639 to implement a Demand Side Management Bridge Plan (DSM Bridge Plan) for its Phase I DSM Plan while the current matter is in litigation.

On May 4, 2015, PGW submitted its Direct Testimony in this matter.

On May 7, 2015, we issued an Order approving PGW’s DSM Bridge Plan for an interim period effective September 1, 2015, through either: (1) August 31, 2016; or, (2) upon the effective date of a Phase II compliance plan filed in response to a final Commission Order at Docket Number P-2014-2459362, whichever is earlier.

On June 23, 2015, I&E, the OCA, the OSBA, and CAUSE-PA, submitted Direct Testimony. On this same date, PICGUG and TURN *et al*. submitted letters indicating that they were not submitting Direct Testimony in this matter.

On July 21, 2015, PGW, the OCA, the OSBA, and CAUSE-PA submitted Rebuttal Testimony. On this same date, I&E, PICGUG, and CAUSE-PA all submitted letters indicating that they would not be submitting Rebuttal Testimony in this matter.

On August 5, 2015, PGW, I&E, the OCA, the OSBA, and CAUSE-PA submitted Surrebuttal Testimony. On this same date, PICGUG and TURN, *et al*. submitted correspondence indicating that they would not be submitting Surrebuttal Testimony in this matter.

On October 20, 2015, PGW submitted the Supplemental Testimony of Theodore Love, PGW Statement No. 3.

On October 22, 2015, PGW submitted Rejoinder Testimony.

On October 28, 2015, an evidentiary hearing was held as scheduled. During that hearing, counsel for each Party stated on the record that they agreed to waive cross-examination of all other party witnesses and moved to have their pre-served testimony and/or exhibits admitted into the record. Accordingly, all Parties’ testimony and/or exhibits were admitted into the record during the hearing.

The Parties, with the exception of the CAC and the OSBA, filed Main Briefs (M.B.) on November 19, 2015. On November 20, 2015, the OSBA filed its Main Brief. Additionally, the Parties, with the exception of PICGUG, filed Reply Briefs (R.B.) on December 8, 2015, when the record was then closed.

On March 18, 2016, the Commission issued the Recommended Decision of ALJs Pell and Guhl, in which the ALJs granted PGW’s Petition, in part, and denied it, in part.

As previously noted, PGW filed Exceptions on April 7, 2016. The OCA, the OSBA, I&E, and CAUSE-PA filed Replies to Exceptions on April 18, 2016. On this same date, TURN *et al.* filed a Letter in which it supported and adopted the Replies to Exceptions of CAUSE-PA.

# IV. Discussion

Initially, we note that any issue or Exception that we do not specifically address should be deemed to have been duly considered and rejected without further discussion. It is well settled that the Commission is not required to consider, expressly or at length, each contention or argument raised by the parties. *Consolidated Rail Corporation v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally*, *Univ. of Pa. v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

In their Initial Decision, the ALJs made seventy Findings of Fact and reached nineteen Conclusions of Law. I.D. at 6-15, 199-201. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

## A. Legal Standards

As the petitioner or moving party, PGW has the burden of proof in this matter. Section 332(a) of the Pennsylvania Public Utility Code (Code) requires the proponent of a rule or order “to bear the ultimate burden of persuading the Commission, by a preponderance of substantial evidence, that the relief sought is proper and justified under the circumstances.” 66 Pa.C.S. § 332(a); *Motheral, Inc. v. Duquesne Light Co.*, Docket No. C-00003926 (Order entered March 23, 2001), 2001 Pa. PUC LEXIS 4 at 9; citing *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1954). A “preponderance of the evidence” means that one party must present evidence which is more convincing by even the smallest amount, than the evidence presented by an opposing party. *See Se-Ling Hosiery*. Substantial evidence is “relevant evidence that a reasonable mind may accept as adequate to support a conclusion: more is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.” *Murphy v. Pa. Department of Public Welfare, White Haven Center,* 480 A.2d 382 (Pa.Cmwlth. 1984). R.D. at 15.

Additionally, any party that offers a proposal not included in the original filing bears the burden of proof for that proposal. S*ee* *Brockway Glass Co. v. Pennsylvania Public Utility Commission*, 437 A.2d 1067 (Pa.Cmwlth. 1981); s*ee also* *Pennsylvania Public Utility Commission v. Duquesne Light Company*, Docket Nos. R-2013-2372129, *et al.* (Opinion and Order entered April 23, 2014). R.D. at 16.

If a petitioner has met its burden by a preponderance of substantial evidence and met its *prima facie* case, the fact finder must then determine whether a respondent has submitted evidence of co-equal value or weight in order to counter or refute the applicant’s case. If a respondent has provided co-equal evidence in response to the applicant’s case, the burden of proof cannot be deemed to have been satisfied unless the party bearing the burden presents additional evidence causing its position to be supported by a preponderance of the evidence. Thus, with competing evidence, a petitioner must meet its burden of proof by a preponderance of evidence, based on the overall weight of the evidence. R.D. at 16.

## B. PGW’s Proposed Modification to its Total Resource Cost Test

###  1. Explanation of the Total Resource Cost

In evaluating the cost effectiveness of its DSM Plan, the primary test PGW utilizes is the Total Resource Cost (TRC)[[4]](#footnote-4) net benefits test. This test measures the gain in economic welfare from making an investment by comparing the present value of resource benefits with the present value of resource costs of the DSM Plan. Total resource costs are composed of, *inter alia¸* PGW’s expenditures on program measures and on administrative costs, as well as the customers’ direct contribution to the investments in efficiency measures. Total resource benefits consist of the avoided costs to consumers of gas, electric, and water costs. PGW’s natural gas avoided costs include commodity costs and charges for pipeline storage capacity. However, total resource benefits exclude other customer bill savings resulting from decreased volumetric delivery charges. Although the main emphasis when examining the TRC is on the cost-effectiveness of PGW’s DSM Plan as a whole, PGW conducts its own cost benefit analyses at the measure, program, and portfolio levels using formulas outlined in a Technical Reference Manual (TRM) based on industry best practices, including the Pennsylvania Act 129 TRM. PGW Exh. TML-4 at 48-50. Further, PGW conducts regular third-party pre and post impact evaluations of its programs to assess the actual savings and review program assumptions to aid PGW in identifying improvements to its Benefit-Cost analysis in subsequent implementation plans. PGW M.B. at 27.

###  2. Positions of the Parties

In its Phase II DSM Plan, PGW proposed to modify the calculation of its TRC Test by including the benefits of demand reduction induced price effect (DRIPE) and the internalized cost of carbon methodology into its cost benefit analysis of its DSM Plan going forward. PGW explained that DRIPE occurs when the reduction of gas usages triggers the reduction of the market price of natural gas on a continental basis, as well as a reduction in the market price of transportation to deliver natural gas to the city gate. According to PGW, the potential effect on the gas supply bill of PGW users as a result of one Dth reduction in gas consumption is $0.05 per Dth saved with an overall statewide savings projected at $0.233 per Dth. PGW stated that these reductions in supply-area gas prices also reduce electric prices and the costs of gas transportation. Therefore, PGW argued that DRIPE provides a societal benefit to utility customers in Pennsylvania and should be included in its TRC calculations because it more properly values the benefits that are occurring in a particular program. PGW M.B. at 26; PGW R.B. at 7-8; PGW Exh. TML-4 at 27.

As noted, PGW also proposed to modify the calculation of its TRC Test by using the internalized cost of carbon methodology, as opposed to the externalized cost of carbon methodology, in calculating its avoided costs. PGW explained that the internalized cost of carbon for both gas and electric avoided costs measures the value of energy efficiency on: (1) likely future carbon prices that may be applied economy-wide, including gas burned by PGW’s customers; (2) the social cost of carbon emissions; (3) the health costs of NOx and SO2 emissions from power plants; and (4) the emissions avoided by reducing electric usage. PGW submitted that the internalized cost of carbon methodology should be utilized and included in its TRC calculations because it measures the internalized benefit to PGW’s customers of not paying the forecasted carbon tax or allowance price. PGW M.B. at 26-27; PGW R.B. at 8; PGW St. 4 at 15-18; PGW Exh. TML-4 at 49. Finally, PGW emphasized that it follows industry best practices to provide regular inspections of installations and audits of invoices in all of its programs to ensure that the savings being counted are based on actual installments. PGW asserted that it conducts regular third-party pre and post impact evaluations of its programs to assess the actual savings and review program assumptions so that PGW can identify improvements to its cost benefit analysis in subsequent implementation plans. PGW M.B. at 27.

The OSBA argued that PGW’s proposed modifications to its TRC Test are inconsistent with Act 129 and Commission policy and precedent and should be denied. In the OSBA’s view, PGW’s proposed modifications would serve to increase the value of energy conservation measures as a result of recognizing theoretical market and hypothetical tax benefits, thereby making the TRC Test easier to pass. The OSBA submitted that although Act 129 is very specific in limiting the inputs included in the TRC test to monetary values, neither PGW’s proposed DRIPE nor its proposal to include a value for avoided carbon emissions qualifies as a monetary cost because each is difficult to quantify. OSBA R.B. at 7-12.

No other Party took a position regarding PGW’s proposed modification to its TRC Test.

###  3. ALJs’ Recommendation

The ALJs recommended that PGW’s proposal to modify its TRC Test calculation methodology by including the benefits of DRIPE and the internalized cost of carbon methodology into the Benefit-Cost analysis of its DSM Plan be approved. R.D. at 24. The ALJs pointed to the *2016 Total Resource Cost (TRC) Test,* Docket No. M‑2015-2468992, (Order entered June 22, 2015) (*2016 TRC Order*), wherein we explained that the TRC Test is a critical measuring tool in determining the cost effectiveness of an EDC’s EE&C Plan. The ALJs highlighted that in the *2016 TRC Order*, we acknowledged that the TRC Test is dynamic and ongoing in nature and that given the many issues involved in EE&C plans and EE&C program implementation, future updates and amendments to the TRC Test may be proposed as needed. *Id*. at 23-24 (Citing *2016 TRC Order* at 1, 5, 6, and 8). Additionally, the ALJs noted that because the established TRC Test pertains to an EDC offering a compulsory EE&C plan, and not to a Natural Gas Distribution Company (NGDC) offering a voluntary EE&C Plan, the TRC Test simply serves as a guideline for an NGDC and is not controlling. Therefore, the ALJs found PGW’s proposed modifications to be appropriate on the basis that they will more accurately depict the valuation of the costs and benefits of PGW’s Phase II DSM Plan. Further, the ALJs opined that PGW’s continued use of third party pre and post impact evaluations of its programs will provide reasonable safeguards to ensure the accuracy of these costs and benefits. R.D. at 24.

###  4. Disposition

No Party filed Exceptions regarding the ALJs’ recommendation on this issue. Nonetheless, we shall modify this recommendation consistent with the following discussion.

As noted above, DRIPE accounts for the price reduction effects that energy efficiency measures have on wholesale energy markets. Contrary to the position of the OSBA, the record indicates that PGW uses transparent and objective market indices to monetize the benefits realized by Pennsylvania customers in its DRIPE calculation. For example, the Company uses the TETCO M-3 gas trading point to determine the basis for gas delivery to the Philadelphia area. PGW Exh. TML-4 at 139-40. Therefore, we concur with the recommendation of the ALJs that PGW should be permitted to include the benefits realized from DRIPE in the calculation of its TRC.

On the other hand, we disagree with the ALJs’ recommendation that PGW be permitted to add the internalized cost of carbon to its benefit calculations in the TRC. Unlike the DRIPE, *supra*, the record indicates that PGW’s use of the internalized cost of carbon methodology will not be based on actual market indices, but rather, as the Company puts it, “. . . projection[s] of the costs of carbon that are likely to be incorporated in market costs for fuels.” PGW Exh. TML-4 at 143. We commend PGW for this progressive proposal. Nonetheless, we are of the opinion that prudence and Commission precedent dictate that the costs included in TRC calculations should be monetized based upon objective price indicators that exist for Pennsylvania utility customers. Because Pennsylvania does not presently operate in a carbon trading or allowance program, if we allowed PGW to reflect an estimate for carbon costs in the present TRC, we, as a Commission, would need to guess what the monetized value of carbon would be in the context of the Pennsylvania economy.

At present, this Commission currently has no objective resource against which to benchmark carbon costs as they relate to Pennsylvania. Until such time that the Commonwealth creates such a market or joins a regional carbon market, or until the federal government creates a national carbon market, any attempt by this Commission to assign costs to carbon would be speculative at best. Consequently, we shall direct PGW to retain its internalized cost of carbon calculations and to separately track these benefits in its Phase II DSM Plan. However, we reject PGW’s proposal to include these benefits in its TRC. If and when Pennsylvania enters into a system that monetizes carbon, PGW shall be permitted to propose the inclusion of carbon reduction benefits in the Company’s TRC calculation in a future request.

## C. DSM Cost Recovery

###  1. Positions of the Parties

PGW explained that pursuant to Sections 1307 and 1319 of the Code, 66 Pa. C.S. §§ 1307, 1309, it is permitted to recover all of the prudent and reasonable costs it incurs in developing, managing, financing, and operating its DSM programs via an automatic adjustment clause. PGW further explained that it currently recovers the costs of its non-LIURP DSM programs through its ECRS[[5]](#footnote-5) and that it currently recovers the costs associated with its CRP Home Comfort Program expenses via its Universal Services Surcharge (USC), which is assessed to all classes of PGW’s firm customers. PGW proposed to continue recovering the cost of its programs in the same manner that these costs are currently recovered. PGW asserted that it will file the computation of its ECRS surcharge for approval in conjunction with its annual 1307(f) Gas Cost Rate filing and that the surcharge will continue to be automatically adjusted effective March 1, June 1, September 1, and December 1 of each year in accordance with the Section 1307(f) quarterly adjustment procedures. PGW M.B. at 43-44.

The OCA stated that it does not oppose PGW’s proposed DSM cost recovery mechanism, in general. Nonetheless, the OCA emphasized that it disagrees with PGW’s proposal to recover the costs of its proposed Fuel Switching Program, proposed CAM, and proposed Performance Incentive Mechanism via its ECRS.[[6]](#footnote-6) Further, the OCA expressed concern regarding PGW’s plan to recover the costs of its proposed LIME program through its USC. Specifically, the OCA posited that this program may not solely benefit PGW’s low-income customers. OCA M.B. at 31-32.

The OSBA argued that because PGW proposed to continue recovering the costs for its LIURP program, as administered through its CRP Home Comfort Program, by assessing its USC on all firm service customers, including both residential and non-residential customers, the Commission must determine the primary beneficiary of this program. In this regard, the OSBA submitted that if the Commission determines that PGW’s non-CRP customers are significant beneficiaries of its CRP Home Comfort Program, then it must instruct PGW to recover the costs of this program solely from its residential customer class and through its ECRS surcharge, and not its USC surcharge. In the OSBA’s view, it would be inconsistent with cost causation and basic fairness principles to require non-residential ratepayers to fund programs that benefit many residential customers who have not demonstrated that they are low-income customers. On the other hand, the OSBA submitted that if the Commission instead determines that PGW’s CRP customers are the primary beneficiaries of its CRP Home Comfort Program, then it is clear that this program has been ineffective and that the Commission should instruct PGW to limit its spending on this program to the minimum necessary to meet its legal LIURP requirements until PGW can provide a credible explanation for the lack of success of the program. OSBA M.B. at 6-7, 12-14.

PICGUG submitted that PGW’s proposal to continue recovering the cost of its current DSM programs in a manner that is consistent with cost causation principles is reasonable. PICGUG M.B. at 4.

I&E stated that while it takes no position with PGW’s proposed DSM cost recovery mechanism, in general, it opposes the recovery of PGW’s proposed CAM and its proposed Performance Incentive Mechanism via its ECRS. I&E M.B. at 6-7. Additionally, in its Main Briefs, I&E, argued that PGW’s use of its USC to recover the costs associated with its LIME program should be rejected on the basis that this program may not primarily benefit low income families. *Id.* at 6-7, 15-18. However, in its Reply Briefs, I&E noted that it entered into a Joint Stipulation with PGW regarding the LIME program and, as a result, does not oppose the program, as modified by the Joint Stipulation. I&E R.B. at 4.

Neither TURN *et al*. nor CAUSE-PA took a position regarding PGW’s DSM cost recovery mechanism, in general. However, each emphasized its opposition to PGW’s inclusion of its proposed CAM and Performance Incentive Mechanism as cost components in its DSM cost recovery mechanism. TURN *et al.* M.B. at 7; CAUSE-PA M.B. at 15.

###  2. ALJs’ Recommendation

The ALJs rejected the OSBA’s arguments that if PGW’s LIURP program benefits more than just its low income customers, PGW should not use the USC as a cost recovery mechanism. The ALJs found that because the OSBA did not address this matter until it filed its Main Briefs, this matter was not properly raised. Additionally, the ALJs pointed out that this was a matter that was litigated in PGW’s 2006 base rate case. Additionally, the ALJs noted that PGW’s proposed DSM cost recovery mechanism is the same as has it has been in prior years. Therefore, the ALJs ruled that PGW’s USC is the appropriate cost recovery mechanism for its LIURP program. R.D. at 29.

The ALJs also acknowledged the positions of the OCA and I&E that because PGW’s proposed LIME Program may benefit more than just its low income customers, the costs of this program should not be recovered through PGW’s USC. The ALJs noted that as a result of these concerns, I&E and PGW entered into a Joint Stipulation related to the LIME program. The ALJs opined that although I&E and PGW both point out that this agreement runs contrary to our *USECP 2014-2016 Order*, the Joint Stipulation sufficiently addresses the concerns of the Parties regarding PGW’s LIME program. Accordingly, the ALJs recommended that PGW be permitted to continue to use its DSM cost recovery mechanism as currently structured with the modification presented in the Joint Stipulation of PGW and I&E. R.D. at 29-30.

###  3. Disposition

No Party filed Exceptions regarding the ALJs’ recommendation on this issue. Finding the ALJs’ recommendation to be reasonable, we adopt it without further comment.

## D. PGW’s Proposed Conservation Adjustment Mechanism

In addition to using its ECRS and USC surcharge mechanisms to recover the costs associated with its current DSM programs, in its Phase II DSM Plan, PGW proposed to include two new cost elements in its calculations of these surcharges: a CAM, discussed below, and a proposed Performance Incentive Mechanism, discussed in Section E, *infra.* PGW submitted that its proposed CAM and Performance Incentive Mechanism would, collectively, aid in removing a disincentive and in providing a positive incentive toward meeting and exceeding its EE&C program targets, thereby increasing customer benefits. PGW asserted that every dollar recovered through its proposed CAM and Performance Incentive Mechanism would be used toward its continued provision of safe and adequate service for its customers. PGW M.B. at 44-45.

###  1. Positions of the Parties

PGW submitted that its proposed CAM is designed to recover, on a prospective basis,[[7]](#footnote-7) the lost margin that results from its DSM program-induced gas conservation. PGW contended that as a result of its current inability to recover the costs associated with this reduced gas consumption, it faces a strong financial disincentive to offer its DSM programs. PGW argued that implementing its proposed CAM would remove this disincentive and would enable it to offer more robust DSM programs in a cost-effective manner. In addition, PGW noted that it is a municipally-owned utility that recovers most of its fixed costs through its volumetric delivery charges and that is regulated based on the cash flow methodology. As such, PGW argued that the lost margin it experiences is a direct cost of its DSM programs and may, therefore, be recovered by including the CAM as a cost element in its existing ECRS and USC surcharge mechanisms, consistent with Sections 1307 and 1319 of the Code. PGW M.B. at 45-47.

PGW asserted that if it is permitted to implement its proposed CAM, it would use every dollar it recovers to maintain and enhance service to its natural gas customers and to avoid future rate increases. PGW stated that it has developed factors that it will analyze and that it will use to compute the resulting lost revenues from each of its DSM program measures.[[8]](#footnote-8) PGW also noted that it would include its CAM in its DSM Plan filings and would include a reconciliation to ensure that the CAM costs it recovers through its ECRS and USC reflect actual program activities. PGW M.B. at 53-54. Additionally, PGW noted that its proposed CAM is projected to have only a nominal impact on its rates. *Id.* at 53, n.235 (citing PGW Exh. TML-4 at 37). Further, PGW emphasized that its proposed CAM is designed to recover the cost of the reduced delivery charges resulting from the implementation of all of its DSM programs, including its CRP Home Comfort Program. PGW reasoned that although it is required by Regulation and Statute to offer a LIURP program, it is, nonetheless, entitled to fully recoup all reasonable costs attributable to the program, including lost revenue. PGW M.B. at 53-54.

The OCA asserted that PGW’s proposed CAM should be denied on the basis that it constitutes improper single issue ratemaking and would result in rates that are not just and reasonable for PGW’s ratepayers. The OCA explained that single-issue ratemaking only adjusts rates for one factor without considering the Company’s financial picture as a whole and can result in a utility collecting excess revenues amid reduced scrutiny.

Specifically, the OCA reasoned that in the matter before us, PGW’s proposed CAM focuses solely on the lost contributions to PGW’s fixed costs that are a result of PGW’s energy efficiency programs without considering PGW’s overall financial health or its capital needs. The OCA noted that, generally, if an expense item is normally considered in a base rate case, singling that item out for recovery outside of a base rate case is prohibited. OCA M.B. at 34, 43-45. The OCA emphasized that in Act 129, the General Assembly explicitly rejected the recovery of lost revenues via an automatic adjustment mechanism such as the ECRS or the USC for the mandatory EE&C programs of an EDC. The OCA opined that although PGW is an NGDC offering a voluntary DSM program, Act 129, nonetheless, provides a policy foundation for the implementation of energy efficiency programs in Pennsylvania, regardless of whether the utility is gas or electric. The OCA argued that, as set forth in Act 129, lost revenue recovery is not necessary because other traditional regulatory options, including base rate cases, exist to align costs, sales, and revenues. In the OCA’s view, the lost margins PGW has experienced from sales reductions due to energy efficiency are not DSM program costs and should not be recovered through PGW’s ECRS. *Id.* at 35-39, 47.

The OCA also submitted that PGW’s proposal to use its proposed CAM to recover the cost of its CRP Home Comfort Program is inappropriate. The OCA emphasized that PGW is required by statute to implement a LIURP program and that no statutory provision or Commission Regulation provides any mechanism for the recovery of lost revenues associated with LIURP. Additionally, the OCA argued that because LIURP programs, by definition, are designed to aid residential low-income customers in reducing or managing their energy consumption in a cost-effective manner, they differ from traditional residential energy efficiency programs. In this regard, the OCA noted that in addition to reducing an individual customer’s load, LIURP programs also have the effect of preserving the load of the low-income customer for a utility because the low-income customer is better able to maintain service, is less likely to have this service terminated, and is less likely to be forced to move due to high energy bills. Accordingly, the OCA posited that LIURP contributes to PGW’s cost recovery because it helps to improve payment patterns and to prevent disconnection of service, negating the need for the CAM. OCA M.B. at 48-53.

The OSBA opposed PGW’s proposed CAM, arguing that it is wholly inconsistent with established Commission policy regarding a utility’s EE&C programs. In this regard, the OSBA pointed out that Act 129 specifically delineates that a utility is prohibited from using a surcharge mechanism to recover lost revenues resulting from the implementation of its DSM programs. The OSBA argued that although PGW claims that it offers its DSM programs on a voluntary basis, this does not absolve it from adhering to established policy. OSBA M.B. at 8. The OSBA also argued that although PGW articulated concerns related to the financial losses it has experienced as a result of the implementation of its DSM programs, PGW has not been financially harmed, as evidenced by its ability to materially reduce its long term debt and increase its equity in the time period since its last base rate case. OSBA St. 1 at 11-12. Further, the OSBA echoed the position of the OCA that PGW’s proposed CAM is nothing more than improper single-issue ratemaking and should be denied on that basis. OSBA M.B. at 8-9; OSBA R.B. at 2.

PICGUG submitted that PGW’s proposed CAM should be denied because it is akin to impermissible single-issue ratemaking and runs contrary to the EE&C goals outlined in Act 129. PICGUG M.B. at 5-6.

I&E contended that PGW’s proposed CAM should be rejected because the Commission already ruled in *Investigation into Demand Side Management by Electric Utilities*, Docket No. I-900005 (Order Entered December 13, 1993)(*December 1993 DSM Order*) that lost revenue related to DSM programs should be addressed in a base rate proceeding. I&E submitted that although our *December 1993 DSM Order* addressed electric utilities, the same principles apply to PGW in the instant case because, regardless of whether a utility is gas or electric, DSM program costs are more easily calculated than lost revenues. I&E further submitted that the voluntary nature of PGW’s DSM programs is immaterial and does not distinguish PGW in such a way that it can exempt PGW from established Commission precedent. I&E M.B. at 7-10.

CAUSE-PA concurred that PGW’s proposed CAM should be rejected because it constitutes single-issue ratemaking. CAUSE-PA pointed out that single-issue ratemaking is generally prohibited in Pennsylvania if it impacts a matter that is normally considered in the context of a base rate case. Therefore, CAUSE-PA argued that PGW’s CAM is best addressed in a base rate case when a utility’s revenues and expenses are thoroughly examined as a whole. CAUSE-PA M.B. at 16-17.

TURN *et al*., likewise, argued that PGW should not be permitted to implement its proposed CAM because its proposal fails to take into consideration any other impact on PGW’s revenues and is, therefore, tantamount to impermissible single-issue ratemaking. TURN *et al*. concurred with the OCA, the OSBA, PICGUG, I&E, and CAUSE-PA that the issue of lost revenue arising from a utility’s conservation efforts are best considered in the context of a base rate proceeding. TURN *et al.* M.B. at 8-9.

The CAC opined that PGW’s proposed CAM would eliminate disincentive towards attaining the most efficient and cost-effective result that exists due to the negative financial consequences PGW has experienced in implementing its DSM programs. The CAC argued that if PGW is permitted to include its CAM in its existing cost recovery mechanisms, it will be encouraged to improve its DSM program results, which will lead to additional energy reductions and greater environmental benefits. Further, the CAC argued that as an NGDC, PGW is not governed by the provisions of Act 129 and is not prohibited from recovering lost DSM revenues through a surcharge. Finally, the CAC argued that because PGW is seeking to recover its CAM via a Section 1307 surcharge, the issue of single-issue ratemaking is not applicable. CAC M.B. at 3-6.

###  2. ALJs’ Recommendation

The ALJs recommended that PGW’s proposed CAM be denied. The ALJs echoed the positions of the OCA, the OSBA, PICGUG, CAUSE-PA, and TURN *et al*. that PGW’s proposed CAM would result in impermissible single-issue ratemaking. The ALJs found merit in the positions of these Parties that PGW’s lost revenue resulting from its DSM programs is an issue that is more properly addressed in a base rate proceeding. The ALJs explained that while there are multiple factors that determine a utility’s revenue requirement, each of which must be examined in a general rate base filing, PGW’s CAM proposal isolates one factor that has had a negative impact on its revenue stream, *i.e.* the reduction in the number of ccfs of gas used by PGW’s ratepayers as a result of the implementation of PGW’s DSM programs. R.D. at 58-59.

The ALJs also found that the recovery of lost margins through a reconcilable adjustment clause runs contrary to both the Code and Commission precedent. Although the ALJs acknowledged that there is no specific Code provision regarding the recovery of lost margins that is specifically applicable to an NGDC’s EE&C plan, they found the Act 129 provisions applicable to an EDC’s EE&C plan to be persuasive. R.D. at 59. Citing Section 2806.1(k) of the Code, the ALJs noted that with regard to the recovery of lost revenues for EDCs as a result of reduced consumption or changes in energy demand, such costs are not recoverable under a reconcilable automatic adjustment clause. Instead, the recovery of such costs must be sought in a base rate proceeding. In addition, the ALJs cited the *Petition of UGI Utilities, Inc. - Electric Division for Approval of its Energy Efficiency and Conservation Plan*, Docket No. M-2010-2210316, (Order Entered October 19, 2011) (*UGI EE&C Plan Order*) wherein the Commission determined that lost revenues are not DSM program “costs” as defined in Section 1319 of the Code and, therefore, declined to allow for the recovery of lost revenue through a surcharge. The ALJs highlighted that in the *UGI EE&C Plan Order* the Commission noted that the General Assembly’s distinction between “costs” and “decreased revenues” in Act 129 confirms that the term “costs” does not include lost revenue. In light of the forgoing, the ALJs found it reasonable to extend the reasoning regarding the recovery of lost revenues for an EDC to an NGDC. *Id.* at 60-61.

###  3. Exceptions and Replies

In its Exceptions, PGW alleges that the ALJs erred in denying its proposed CAM and in concluding that its CAM would constitute impermissible single-issue ratemaking. According to PGW, the courts have ruled that the concept of single-issue ratemaking only applies when recovery for a single cost is sought in a base rate filing, and not via a surcharge mechanism. PGW emphasizes that it is not asking that its base rates be altered for a single issue in a proceeding under Section 1308 of the Code. Instead, PGW restates that it is seeking to recover lost revenues that result from offering its DSM programs by utilizing the cost recovery mechanisms permitted under Sections 1307 and 1319 of the Code. PGW contends that its DSM related lost revenues are a discrete, standalone, item that exists regardless of its other revenues and expenses and are directly attributable to its DSM programs. As a result, PGW submits that the single issue ratemaking doctrine is not applicable to the instant case. PGW Exc. at 23-24.

PGW also finds fault with the ALJs’ ruling that the provisions of Act 129 are persuasive and extend to NGDCs. PGW submits that there is no dispute that Act 129 applies only to EDCs, and not to NGDCs. In PGW’s view, by explicitly setting forth in Act 129 how costs should be recovered for large EDCs offering compulsory EE&C programs, but not for NGDCs offering voluntary EE&C programs, the statute implicitly gives the Commission authority to determine how costs for a gas utility’s voluntary DSM program may be recovered, including giving the Commission the discretion to permit the recovery of lost revenues associated with such EE&C programs. Similarly, PGW argues that because there is no requirement to apply the Act 129 definition of “cost” to an NGDC, the Commission is free to permit the inclusion of lost revenues resulting from an NGDC’s energy conservation program in the cost of the program. PGW reasons that the millions of dollars it will lose directly as a result of implementing its DSM programs to its end users is clearly a cost of these programs and is recoverable under Section 1319 of the Code. PGW Exc. at 25-26.

Additionally, PGW excepts to the ALJs’ citation to our *UGI EE&C Plan Order* as Commission precedent for rejecting its proposed CAM. PGW argues that in our *UGI EE&C Plan Order,* we denied UGI’s proposed rider to recover lost revenue based, in part, on our finding that UGI’s proposed lost revenue recovery calculation mechanism lacked the precision necessary for a dollar-for-dollar recovery. In contrast, PGW argues that the ALJs did not find that its own proposed lost recovery calculation mechanism was imprecise or unreasonable. Moreover, PGW points out that while UGI’s proposal for lost revenue recovery was for a new and untested DSM program, its own CAM proposal is based on five years of experience in implementing DSM programs, including actual activities and third-party evaluations and gas usage analyses. PGW notes that it is proposing to continue regular third-party evaluations going forward to ensure that its lost revenue calculations are continually monitored and adjusted as needed in order to reflect direct and proven impacts of its DSM programs. PGW Exc. at 26-27.

In its Replies to Exceptions, the OCA argues that the ALJs correctly concluded that PGW’s proposed CAM constitutes impermissible single-issue ratemaking, is barred by both the Code and Commission precedent, and is not consistent with the clear guidance provided by Act 129. The OCA submits that PGW’s citation to Sections 1307 and 1319 of the Code as authority to implement its proposed CAM is inapposite. Specifically, the OCA reasons that although PGW argues that the lost revenues it seeks to recover are directly attributable to its DSM programs, lost revenues associated with sales reductions due to the implementation of a DSM program are not synonymous with DSM costs under Section 1319. Accordingly, the OCA asserts that the ALJs correctly ruled that such revenues may not be recovered via PGW’s ECRS surcharge, but must instead be addressed in a general base rate proceeding. The OCA opines that the ALJs’ findings are supported by past Commission precedent, as outlined in our *UGI EE&C Plan Order* and our *December 1993 DSM Order*. OCA R. Exc. at 12-15.

The OCA also contends that even if PGW’s proposed CAM were legally permissible, PGW has not met its burden of proving its CAM is necessary. In this regard, the OCA submits that PGW has not been financially harmed by implementing its Phase I DSM Plan, nor has it filed for a rate increase in the five years since the filing of this Plan. OCA R. Exc. at 16-17. The OCA highlights that in our *July 2010 Order* approving the settlement agreement in PGW’s 2009 base rate case, the stay-out provision included in that settlement required only that PGW refrain from filing a base rate case for a period of two years. *Id.* at 17, n.9 (citing *July 2011 Order* at 48-52). Therefore, the OCA submits that because PGW could have filed for a base rate case at any point within the last three years but has not done so, it is evident that PGW is financially sound and is not in dire need of a CAM to recover lost revenues. OCA R. Exc*.* at 16.

In its Replies to Exceptions, the OSBA avers that the ALJs properly found PGW to be barred under Act 129 from implementing its proposed CAM. The OSBA asserts that none of the arguments PGW sets forth in attempt to differentiate itself from other Pennsylvania utilities are credible. The OSBA submits that PGW’s status as a utility regulated on a cash-flow basis is not relevant because the EE&C programs of other utilities are essentially managed on a cash-flow basis. Similarly, the OSBA argues that PGW’s contention that NGDCs are not explicitly prohibited under Act 129 from recovering lost revenues from DSM programs via a surcharge is also not relevant. The OSBA reasons that regardless of the type of utility at issue, it is more difficult to measure lost revenues than it is to measure DSM program costs. OSBA R. Exc. at 3-4.

The OSBA also argues that the ALJs properly ruled that PGW’s proposed CAM constitutes single-issue ratemaking. The OSBA submits that it is improper to implement a rate mechanism in between base rate proceedings that permits for adjustments to one type of load change but does not take into account all other factors affecting load and costs. Additionally, the OSBA contends that PGW’s CAM proposal is based on a calculation of savings which may or may not actually occur. In this regard, the OSBA notes that although PGW’s proposed calculations imply that it has experienced substantial reductions in CRP customer load, PGW’s actual data indicates that it has not experienced any actual reduction in CRP customer load and has, therefore, not experienced any loss of margin. OSBA R. Exc. at 3-4.

In its Replies to Exceptions, I&E, likewise, argues that the ALJs correctly concluded that Act 129 prohibits the implementation of PGW’s CAM. I&E submits that nothing PGW sets forth in its Exceptions alters the underlying ratemaking issue in the matter before us., *i.e*. that lost revenues are difficult to calculate and should not be subject to dollar-for-dollar recovery. I&E contends that in making its arguments, PGW disregards the fact that the Commission explicitly stated in the *UGI EE&C Plan Order* that the General Assembly’s distinction between “costs” and “decreased revenues” in Act 129 confirms that the term “costs,” as outlined in Section 1319 of the Code, does not include lost revenues. I&E posits that because the Commission has expressed concern regarding the difficulty involved in measuring lost revenues, it is clear that the intent of the Commission is to require utilities subject to rate base rate of return regulation to recover lost revenues through a base rate proceeding, regardless of whether or not they are covered by Act 129. In I&E’s view, the lost revenues of an NGDC are not sufficiently different from the lost revenues of an EDC to warrant a deviation in treatment. I&E R. Exc. at 3.

Also, I&E notes that in the *UGI EE&C Plan Order*, the Commission determined that although UGI was not required to implement an EE&C plan under Act 129, deviation from the cost recovery provisions of Act 129 was not justified. Thus, I&E asserts that PGW’s proposed CAM is nothing more than an attempt to circumvent the base rate case process and that PGW has presented no evidence to indicate why it should be permitted to forgo the proper regulatory process. I&E R. Exc. at 4-5.

I&E also rebuts PGW’s argument that the ALJs did not find its proposed calculation for its CAM to be imprecise or unreasonable. I&E asserts that it was simply not necessary for the ALJs to make such a finding because the Commission has already found the calculation of lost revenues, in general, to be imprecise. Additionally, I&E argues that because Commission precedent has established that lost revenues are not recoverable under Section 1319 of the Code, such a finding by the ALJs is not a necessary condition to prohibit implementation of the CAM. Finally, I&E points out that PGW’s Phase I DSM programs have been successful despite the lack of a CAM and that PGW has not submitted any evidence to indicate that this will change in the future. I&E R. Exc. at 6-7.

Similar to the OCA, the OSBA, and I&E, CAUSE-PA, in its Replies to Exceptions, asserts that the ALJs properly rejected PGW’s attempt to collect additional revenue outside of a base rate proceeding via its proposed CAM. CAUSE-PA contends that PGW incorrectly argues in its Exceptions that its CAM is not single-issue ratemaking. Moreover, CAUSE-PA submits that because PGW is already able to recover the costs for its low-income universal service programs via a surcharge on its customers’ bills, approval of its CAM would likely result in overlapping revenue streams. According to CAUSE-PA, this is the exact type of issue that the prohibition against single-issue rulemaking is designed to prevent. CAUSE-PA R. Exc. at 5, 16.

Additionally, CAUSE-PA argues that the ALJs correctly concluded that the policy concerns associated with an NGDC’s inclusion of a CAM in the costs of its EE&C programs are analogous to the outright prohibitions against the inclusion of any revenue adjustment mechanisms in an EDC’s EE&C plan, as outlined in Act 129. Specifically, CAUSE-PA reinforces that although Act 129 permits the recovery of all reasonable and prudent costs incurred in running EE&C programs, it explicitly prohibits the recovery of lost revenues that are a result of conservation efforts. CAUSE-PA submits that it is prudent to apply this reasoning to NGDCs. Finally, CAUSE-PA concurs with the OCA, the OSBA, and I&E that the ALJs were correct in applying past Commission precedent, including that which is outlined in the *UGI EE&C Plan Order*, in finding that PGW is prohibited from implementing a CAM in the context of the matter before us. CAUSE-PA R. Exc. at 6, 16-17.

###  4. Disposition

On consideration of the positions of the Parties, we reject PGW’s argument that the ALJs erred in denying its proposed CAM. In our view, the record provides ample support for the ALJs’ ruling that PGW’s proposed CAM constitutes impermissible single-issue ratemaking. As the ALJs, the OCA, the OSBA, I&E, and CAUSE-PA all noted, PGW’s proposed CAM is narrowly focused on its attempt to recover the reduction in revenues it has experienced as a result of the implementation of its DSM programs and the associated reduction in gas consumption by its ratepayers. We are not persuaded by PGW’s contention that because it seeks recovery of its proposed CAM via the automatic adjustment clause mechanism provisions outlined in Sections 1307 and 1319 of the Code, the doctrine of single-issue ratemaking is not applicable to the instant case. Instead, we find the Commission precedent cited by the ALJs in their Recommended Decision to be on point. Specifically, as the ALJs emphasized, in our *UGI EE&C Order,* we determined the following (emphasis added):

UGI avers that Section 1319(a) provides all of the legal authority necessary for the Commission to approve recovery of lost revenues as part of a voluntary EE&C Plan. However, we concur with IECPA that lost distribution revenues are not “costs” associated with development, management, financing or operation of UGI’s program and are not recoverable under Section 1319(a). In addition, the General Assembly made a distinction in Act 129 between the recovery of “costs” and “decreased revenues”. 66 Pa.C.S. § 2806.1(k)(2). **The General Assembly’s distinction between “costs” and “decreased revenues” in Act 129 confirms that the term “costs” in Section 1319(a) does not include lost revenue**.

R.D. at 60-61 (citing *UGI EE&C Order* at 23). We are of the opinion that the above-cited disposition provides a sound basis for the ALJs’ conclusion in the matter before us. The General Assembly has decided that lost revenues are not synonymous with DSM program costs. Therefore, PGW should not be permitted to include its proposed CAM in its ECRS and USC Riders. Accordingly, we shall adopt the ALJs’ ruling that the appropriate place for PGW to address its lost revenues is through a base rate proceeding and reject the proposed CAM.

We likewise find persuasive the arguments of the opposing Parties that Act 129 provides a policy foundation for the implementation of energy efficiency programs in Pennsylvania, regardless of the type of utility. Consequently, we must also reject PGW’s attempt to distinguish gas and electric utilities in support of the CAM. As noted by the ALJs in their Recommended Decision, Act 129, as set forth in Sections 2806.1 and 2806.2 of the Code, includes the following provisions which address the recovery of costs for an EDC’s EE&C Program (emphasis added):

**§ 2806.1. Energy efficiency and conservation program.**

\* \* \*

**(k) Recovery**

 (1)An electric distribution company shall recover on a full and current basis from customers, through a reconcilable adjustment clause under section 1307, all reasonable and prudent costs incurred in the provision or management of a plan provided under this section. This paragraph shall apply to all electric distribution companies, including electric distribution companies subject to generation or other rate caps.

 (2) **Except as set forth in paragraph (3), decreased revenues of an electric distribution company due to reduced energy consumption or changes in energy demand shall not be a recoverable cost under a reconcilable automatic adjustment clause.**

 (3)Decreased revenue and reduced energy consumption may be reflected in revenue and sales data used to calculate rates in a distribution-base rate proceeding filed by an electric distribution company under section 1308 (relating to voluntary changes in rates).

66 Pa.C.S.A. § 2806.1(k). The record indicates that regardless of the utility, measuring lost revenues is more difficult than measuring program costs. Therefore, we concur with the ALJs that PGW’s proposed CAM is not consistent with the policy guidance provided in Act 129, which states that a utility should not be permitted to implement a surcharge mechanism to recover lost revenues lost that result from the implementation of DSM programs. We likewise agree with the ALJs that it is reasonable to apply these provisions to NGDCs offering voluntary DSM programs.

Finally, we are further persuaded by the arguments of the OCA and the OSBA that even if PGW’s CAM were legally permissible, PGW has failed to meet its burden of proving that its CAM is necessary. In this regard, both Parties provided evidence to rebut PGW’s assertion that it would be financially harmed if it is not permitted to implement its CAM. Specifically, the OCA pointed out that PGW had the opportunity to file a base rate case following the expiration of the stay-out provision that was included in its 2009 base rate case, but, to date, it has not done so. Similarly, the OSBA highlighted that in the time period between its last base rate case in 2009 and the filing of its Phase II DSM Plan in 2014, PGW has been able to significantly reduce its long-term debt and increase its equity. Thus, we agree that PGW’s claimed need for a CAM is inconsistent with the record developed in this proceeding.

For all of the above reasons, PGW’s Exceptions as they relate to its proposed CAM are denied and we shall adopt the recommendation of the ALJs to reject the Company’s proposed CAM.

## E. PGW’s Proposed Performance Incentive Mechanism

###  1. Positions of the Parties

As previously noted, PGW proposed to include a Performance Incentive Mechanism as an additional cost of its DSM programs. PGW reasoned that including its proposal as a recoverable program cost is analogous to allowing recovery of the cost of financially rewarding contractors for meeting certain timing or other targets. PGW noted that such costs are designed to improve the overall program and are permitted for that purpose. Therefore, PGW submitted that including its proposed Performance Incentive Mechanism as part of its Section 1307 surcharge is appropriate and legally permissible. PGW M.B. at 55-56. PGW stated that its proposed Performance Incentive Mechanism would apply to all of its DSM programs, including its CRP Home Comfort Program, and would include the following components:

* A total cap of ten percent (10%) of its annual DSM program budget (equivalent to $2.27 Million over the five years of Phase II).
* The requirement that in order to trigger the performance incentive, a minimum TRC benefit-cost ratio of 1.0 or higher must be attained in a given year.
* The requirement that PGW achieve at least seventy percent (70%) of its energy reduction targets.
* The stipulation that PGW may only receive the maximum incentive by exceeding its natural gas savings and benefit-cost ratio goal by twenty percent (20%).

*Id*. at 57.

PGW reasoned that given the negative financial impact that it has experienced from implementing its voluntary DSM programs, it has no monetary incentive to make any extra effort to ensure that these programs are as successful as possible. Therefore, PGW argued that having a Performance Incentive Mechanism in place would encourage it to pursue superior program designs and implementation approaches and to produce greater savings and greater benefits at lower costs, thereby maximizing its ratepayers’ return on investment. Further, PGW pointed out that because its proposed Performance Incentive Mechanism includes a component that requires a minimum threshold to trigger such incentives, its DSM Plan will remain cost effective if its proposal is approved. PGW M.B. at 56-58.

The OCA argued that PGW’s proposed Performance Incentive Mechanism should be denied and should be considered only in the context of a base rate proceeding. The OCA reasoned that because PGW is not an investor owned utility (IOU) who must answer to its shareholders, it does not have the same profit motive and does not need an incentive to implement energy efficiency services which encourage customers to reduce the wasteful use of natural gas. The OCA opined that, while promoting energy efficiency is in the best interest of PGW’s ratepayers, PGW’s proposed Performance Incentive Mechanism runs contrary to this interest because it would add to the costs of PGW’s DSM programs without PGW’s ratepayers realizing any corresponding benefits. Further, the OCA submitted that with respect to PGW’s CRP Home Comfort Program*,* PGW should not be permitted to collect an “incentive” for offering a universal service program that it is obligated to provide. OCA M.B. at 54-61.

Similar to its position regarding PGW’s proposed CAM, the OSBA submitted that PGW’s proposed Performance Incentive Mechanism should be considered only in the context of a base rate proceeding, and not an EE&C petition. In addition, the OSBA contended that Act 129 expressly states that the proper incentive mechanism to encourage utilities to meet their EE&C program benchmarks is a penalty for non-compliance. Accordingly, the OSBA posited that in lieu of permitting PGW to include a Performance Incentive Mechanism in its Phase II DSM Plan, the Commission should impose a penalty structure on PGW consistent with the provisions set forth in Act 129. OSBA M.B. at 9; OSBA R.B. at 2.

PICGUG submitted that PGW’s proposed Performance Incentive Mechanism should be rejected because it would generate unnecessary revenue at the expense of ratepayers. PICGUG M.B. at 6.

I&E argued that PGW should not be permitted to implement a Performance Incentive Mechanism for offering energy efficiency programs that, aside from its mandatory LIURP program, it is under no obligation to offer. I&E pointed out that although PGW outlines the criteria it developed that would trigger the payment of performance incentives, it has not specified how it intends to spend any of the resulting proceeds nor has it specifically demonstrated how its customers will benefit. I&E M.B. at 13. Additionally, I&E submitted that PGW does not need a Performance Incentive Mechanism to meet and achieve its energy efficiency goals or to maximize energy efficiency. I&E reasoned that although PGW argued that its lost revenues resulting from the implementation of energy efficiency programs serve as a disincentive, PGW has the ability to recover such revenues in the context of a base rate proceeding. Therefore, I&E submitted that no actual disincentive to promote energy efficiency exists. Moreover, I&E emphasized that Section 523 of the Code bars the recovery of performance incentives outside of the context of a base rate proceeding. I&E M.B. at 10-13.

CAUSE-PA contended that PGW should not be given the opportunity to utilize a Performance Incentive Mechanism for successfully operating its DSM programs. CAUSE-PA M.B. at 17. Specifically, CAUSE-PA pointed to the testimony of I&E witness Maurer that utility customers are limited in the income they have available and that PGW has not specifically demonstrated what benefits its customers will receive from paying PGW a performance incentive. *Id.* at 17 (citing I&E St. 1 at 7-8).

TURN *et al*. opposed PGW’s proposed Performance Incentive Mechanism on the basis that, along with its proposed CAM, it fails to consider PGW’s overall financial picture and would allow PGW to recover additional revenue from its customers even if PGW has no additional need for such revenue. Therefore, TURN *et al.* contended that PGW’s proposal should be denied. TURN *et al.* M.B. at 10.

The CAC submitted that PGW’s proposal would provide the Company with a positive incentive to produce greater energy savings and benefits for its ratepayers and to attain the most efficient and cost-effective results. Further, the CAC submitted that permitting PGW to include its proposed Performance Incentive Mechanism in its DSM cost recovery mechanisms would make PGW more likely to view investments in cost-effective DSM programs as attractive business opportunities. CAC R.B. at 6-7.

###  2. ALJs’ Recommendation

The ALJs recommended that PGW’s proposal to include its Performance Incentive Mechanism as part of its Phase II DSM Plan be denied. Although the ALJs recognized PGW’s position that it has experienced a negative financial impact as a result of implementing its voluntary DSM programs, the ALJs agreed with the opposing Parties that this issue is properly addressed within the context of a base rate proceeding, and not in the matter before us. The ALJs quoted Section 523 of the Code, 66 Pa. C.S. § 523, regarding the criteria for the Commission to consider when evaluating a utility’s performance. Citing *Pennsylvania Indus. Energy Coal v Pa. Pub. Util. Comm’n,* 653 A.2d 1336, 1351 (Pa. Cmwlth. 1995) *aff’d,* 543 Pa. 307, 670 A.2d 1152 (1996)(*PIEC*), the ALJs noted that the Commonwealth Court has previously held that this section of the Code does not permit the recovery of incentives for EDCs outside of a base rate proceeding. The ALJs concurred with I&E that Section 523 of the Code places a similar restriction on NGDCs. Further, the ALJs opined that because PGW is legally obligated to offer a LIURP program, permitting PGW to receive an incentive to offer something it is required to provide would not be appropriate. R.D. at 78-79.

At the same time, however, the ALJs declined to adopt the proposal of the OSBA that a penalty structure be imposed on PGW if it fails to meet its DSM program targets. The ALJs pointed out that with the exception of PGW’s LIURP Program, as administered through its CRP Home Comfort Program, PGW has no legal obligation to offer any DSM programs. Therefore, the ALJs reasoned that imposing a penalty structure on PGW for failure to meet program targets would not be in the best interest of PGW’s ratepayers. R.D. at 79.

###  3. Exceptions and Replies

In its Exceptions, PGW disagrees with the ALJs’ finding that Section 523 of the Code prohibits the Commission from granting its proposal to include its Performance Incentive Mechanism as part of its Phase II DSM Plan. PGW emphasizes its position that the costs it seeks to recover through its proposed Performance Incentive Mechanism are not the same as what the Commission could award PGW in a rate case pursuant to Section 523 of the Code. In this regard, PGW argues that it seeks authority to implement its proposal pursuant to Sections 1307 and 1319 of the Code. PGW restates that these sections permit all prudent and reasonable costs for developing, managing, and operating DSM programs to be recovered through an automatic adjustment clause. According to PGW, the purpose of Section 523 is to reward or sanction a utility’s performance by adjusting the specific components of the utility’s claimed cost of service. Therefore, PGW asserts that while exercising this discretion in a base rate case for a traditional IOU would result in increasing the utility’s allowed return on equity, the ALJs failed to address the fact that PGW is a municipally-owned utility with its rates set based on the cash-flow methodology, and with no allowance for a return on equity. Accordingly, PGW reasons that Section 523 of the Code does not bar the Commission from adopting its proposed Performance Incentive Mechanism because exercising the discretion permitted by Section 523 for PGW would mean that any such allowed increase would be used toward the cost of providing service and, therefore, would not provide a return on investment. PGW Exc. at 28-29.

PGW also submits that its proposed Performance Incentive Mechanism is akin to the current rule that permits NGDCs to retain twenty-five percent of their off-system sales or capacity release revenues.[[9]](#footnote-9) PGW reasons that, like its proposed Performance Incentive Mechanism in the instant case, this rule provides an NGDC with an incentive to maximize ratepayer benefit by exploring all possible avenues to reduce net natural gas costs. *Id.* at 29.

In its Replies to Exceptions, the OCA argues that the ALJs were correct in denying PGW’s proposed Performance Incentive Mechanism. The OCA concurs with the ALJ and I&E that Section 523 of the Code prohibits the recovery of performance incentives outside of a base rate proceeding. On this point, the OCA further submits that Section 523 addresses energy conservation programs. Citing *PIEC*, the OCA notes that the Commonwealth Court ruled that permitting the recovery of an incentive outside of a base rate proceeding for operating an energy conservation program, such as PGW’s in the matter before us, is impermissible. OCA R. Exc. at 19-20.

The OCA also asserts that performance incentives have usually been employed to reward IOUs for exemplary performance in the implementation of cost-effective energy efficiency programs, based on the premise that the IOU would not otherwise have the motivation to implement measures to conserve energy because such measures would reduce the IOU’s profits. In contrast, the OCA restates that as a municipally owned utility, PGW does not have the same profit motive as that of an IOU and, therefore, does not need a financial incentive to act in the best interest of its ratepayers. The OCA points out that PGW completed its Phase I DSM programs without the use of a CAM or a Performance Incentive Mechanism and without a base rate proceeding. In the OCA’s view, PGW’s proposed Performance Incentive Mechanism would result in PGW’s ratepayers paying more costs for PGW’s DSM programs with only PGW reaping any benefit. OCA R. Exc. at 20-21.

In its Replies to Exceptions, the OSBA asserts that the ALJs properly denied PGW’s proposal to include a Performance Incentive Mechanism in its Phase II DSM Plan. Like the OCA, the OSBA argues that in *PIEC*, the Commonwealth Court ruled that Section 523 of the Code does not permit the recovery of performance incentives for instituting conservation programs unless such incentives are sought within the context of a base rate proceeding. The OSBA submits that regardless of its status as a municipally-owned, cash-flow utility, PGW is not exempt from Section 523. The OSBA restates its position that with respect to offering its DSM programs, PGW is not unique because the EE&C programs of any utility are essentially managed on a cash flow basis. Further, the OSBA argues that PGW’s attempt to seek authority for its proposed Performance Incentive Mechanism under Sections 1307 and 1319 of the Code is inapposite. The OSBA points out that PGW fails to set forth any legal basis for the recovery of performance incentives under these sections of the Code. OSBA R. Exc. at 5-6.

In its Replies to Exceptions, I&E, likewise, argues that the ALJs correctly concluded that Section 523 of the Code bars PGW from recovering its proposed Performance Incentive Mechanism outside of a base rate case. I&E notes that in *PIEC,* the Commonwealth Court held that permitting the recovery of performance incentives through a surcharge is beyond the Commission’s authority. Additionally, similar to the OSBA, *supra,* I&E submits that although PGW cites to its ability to implement its proposed Performance Incentive Mechanism pursuant to Sections 1307 and 1319 of the Code, it fails to offer any legal precedent for this claimed ability. I&E contends that even if Sections 1307 and 1319 permitted PGW to recover performance incentives, PGW fails to meet the standards specified in these Code provisions. In this regard, I&E asserts that PGW fails to show how the receipt of performance incentives would be “prudent and reasonable costs” of its DSM programs. To the contrary, I&E argues that rather than seeking to recover the cost of operating its DSM programs, PGW’s proposed Performance Incentive Mechanism is nothing more than an attempt to earn a reward for meeting self-determined targets. As such, I&E emphasizes that PGW’s proposal would result in an imprudent and unnecessary use of ratepayer funds for which only PGW receives any benefit. I&E R. Exc. at 8-9. Moreover, I&E highlights the OCA’s argument that as a publicly-owned utility, PGW should not need a financial incentive to act in the best interests of its ratepayers because it does not need to balance the interest of its ratepayers with the interests of shareholders. *Id.* at 9-10 (citing OCA M.B. at 57).

I&E also submits that there is no benchmark included in PGW’s proposal that would measure any ratepayer benefits or that outline how much of any proceeds would be used toward PGW’s cost of service. I&E refutes PGW’s argument that its proposal is analogous to the current rule that permits NGDCs to retain twenty-five percent of their off-system sales or capacity release revenues. I&E notes that under the off-system sales scenario, ratepayers gain a guaranteed, measurable benefit of seventy-five percent of net revenues from off-system sales. In contrast, I&E restates that under PGW’s proposal, ratepayers would spend money to fund a Performance Incentive Mechanism without receiving any defined benefit. PGW R. Exc. at 10-11.

In its Replies to Exceptions, CAUSE-PA points out that although PGW offers its non-LIURP DSM programs on a voluntary basis, PGW is legally obligated to offer its LIURP program, as administered through its CRP Home Comfort Program. Therefore, CAUSE-PA opines that the ALJs correctly concluded that, with respect to PGW’s LIURP program, it would be inappropriate to permit PGW to recover an incentive for offering a program that it is already required by Regulation and Statute to provide. CAUSE-PA R. Exc. at 6, 17-19.

###  4. Disposition

Like the ALJs, we are cognizant of the voluntary nature of PGW’s DSM programs, aside from its statutorily mandated LIURP program. Nonetheless, we are not persuaded by PGW’s arguments in its Exceptions that the ALJs erred in either the law or the facts. Although PGW argues that it seeks authority to implement its proposed Performance Incentive Mechanism under Sections 1307 and 1319 of the Code, the record indicates that PGW has not demonstrated that its proposed Performance Incentive Mechanism is prudent. Specifically, as the OCA pointed out, PGW was able to complete Phase I of its DSM programs without the aid of a CAM or PI. As previously noted, PGW cited to the success of its Phase I DSM programs when it filed its proposed Phase II DSM Plan. Therefore, aside from its assertion that a Performance Incentive Mechanism would motivate it to provide superior programs, PGW has provided no evidence that a Performance Incentive Mechanism would be necessary for it to complete Phase II, nor has it demonstrated what benefits its ratepayers would receive by paying a performance incentive.

Additionally, as the ALJs and the opposing Parties emphasized, PGW’s proposed Performance Incentive Mechanism, like its proposed CAM, is narrowly focused and does not consider PGW’s financial condition as a whole. Thus, we agree that PGW has failed to set forth a legal basis to justify the implementation of its proposed Performance Incentive Mechanism under the above sections of the Code. To the contrary, the record supports the ALJs’ ruling that Section 523 of the Code bars the recovery of performance incentives outside of a base rate proceeding. While PGW submits that it is exempt from Section 523 because it is a municipally-owned utility with its rates set on the cash-flow methodology, we find this argument to be inapposite. As the ALJs noted, Section 523 of the Code states the following, in pertinent part:

**§ 523. Performance factor consideration**

**(a) Considerations. -** The commission shall consider, in addition to all other relevant evidence of record, the efficiency, effectiveness and adequacy of service of each utility when determining just and reasonable rates under this title. On the basis of the commission’s consideration of such evidence, it shall give effect to this section by making such adjustments to specific components of the utility’s claimed cost of service as it may determine to be proper and appropriate. Any adjustment made under this section shall be made on the basis of specific findings upon evidence of record, which findings shall be set forth explicitly, together with their underlying rationale, in the final order of the commission.

66 Pa. C.S. § 523(a). Additionally, as both the ALJs and I&E highlighted, the Commonwealth Court in *PIEC* stated as follows:

Whether or not incentives are “necessary” to encourage DSM programs is irrelevant, where the agency lacks authority to award those incentives. Because this section permits adjustments within a base rate case, a mechanism permitting incentives through a surcharge is beyond the authority of the PUC. As to the incentive mechanism of deferring recovery until the base rate case, there is nothing to prohibit the determination of a calculation of incentives, but the PUC is bound to follow the requirements of Section 523 at the time of the base rate case in exercising its discretion of whether to make adjustments based on specific findings.

R.D. at 79 (citing *PIEC* at 1351). PGW’s proposal in the matter before us, if implemented, would run contrary to the Commonwealth Court’s ruling above. Therefore, we concur with the ALJs and the opposing Parties that, like its proposed CAM, PGW must seek to recover any performance incentives within the context of a base rate proceeding and not through its automatic adjustment surcharge mechanisms.

In light of the above, we reject PGW’s arguments. Accordingly, we shall deny PGW’s Exceptions as they relate to its proposed Performance Incentive Mechanism and adopt the recommendation of the ALJs on this issue.

## F. DSM Phase II Budget

### 1. PGW’s Proposed Budget

The table below indicates the budget proposed by PGW regarding all DSM Phase II programs, including the CRP Home Comfort (LIURP) and Non-LIURP programs. The table includes the increased budget for the LIURP program that PGW proposed in its Rejoinder testimony and the expanded scenario should the Commission approve the CAM and the Performance Incentive Mechanism proposed by the Company.

|  |  |  |
| --- | --- | --- |
| **DSM Budgets (Nominal $)** | **Phase II Rejoinder*****Base Scenario if CAM not approved*** | **Expanded Scenario*****if CAM approved*** |
| CRP Home Comfort | $15,945,846  | $>$15,945,846 |
| *Low Income Multifamily Efficiency* *(included within CRP Home Comfort numbers)* | *$1,028,706*  | *$1,028,706* |
| Residential Equipment Rebates | $3,800,000  | $4,167,500 |
| Home Rebates | $213,419  | $3,820,606 |
| Efficient Construction Grants | $1,019,000  | $1,082,000 |
| Efficient Building Grants | $1,985,500  | $1,985,500 |
| Commercial Equipment Rebates | $1,762,250  | $2,630,000 |
| Portfolio-wide Costs | $4,476,000 | $4,530,000 |
| **Total Gas Conservation Budget** | **$29,202,015** | ***>$34,161,452****(factors in $15,945,846 budget for CRP Home Comfort)* |
| Efficient Fuel Switching Program | $2,290,750 | $2,290,750 |

PGW M.B. at 60; PGW R.B. at 48.[[10]](#footnote-10)

### 2. Non-LIURP Program Budget

#### a. Positions of the Parties

PGW indicated that losses resulting from unrecovered costs in the form of lost margin have caused the Company to propose a scaled back version of its DSM Plan. PGW maintained that if the Company’s proposed CAM were approved, it could support a more robust DSM Plan that could include increased budgets, planned participation growth, continuation of the Home Rebates Program, and a pathway to a potential On-Bill Repayment (OBR) Program. PGW M.B. at 62.

Based on its over five years of experience with the DSM programs, PGW asserted that it has proposed a DSM program budget that can be supported taking into consideration the unrecovered losses the Company has incurred to date and based on the assumption that it may not be able to recover them in the future, unless the Commission approves its CAM proposal. PGW R.B. at 48-49.

The OCA recommended a budget of $56.2 million for the five year Phase II DSM Plan. The OCA stated that its budget proposal would adopt the Expanded DSM budget as a starting point and make three key modifications. First, the OCA argued that there should be no inclusion of costs for the CAM or the Performance Incentive Mechanism in the budgets. Second, the OCA contended that the $2.29 million for the Fuel-Switching program should be redirected to the CRP Home Comfort budget. Third, the OCA asserted that the CRP Home Comfort budget should remain at the currently existing funding level of $7.6 million per year for a total of $38 million over the five year Phase II DSM Plan. OCA M.B. at 61-62.

The following table presents a comparison of the Company’s proposed budget and the OCA’s recommended budget.[[11]](#footnote-11)

|  |  |  |  |
| --- | --- | --- | --- |
| **Program/Portfolio****(Millions $)** | **Base Plan** | **Expanded Plan** | **OCA Recommendations** |
| CRP HOME COMFORT (LIURP) | $10.15 | $13.96 | $38.00 |
| Residential Equipment Rebates | $3.80 | $4.17 | $4.17 |
| Efficient Building Grants | $1.99 | $1.99 | $1.99 |
| Commercial Equipment Rebates | $1.763 | $2.63 | $2.63 |
| Efficient Building Grants | $1.02 | $1.08 | $1.08 |
| Home Rebates | $0.213 | $3.82 | $3.82 |
| Portfolio Wide Costs | $3.784 | $4.53 | $4.53 |
| Five-Year Total | $22.70 | $32.2 | $56.20 |

The OCA argued that its proposed recommended budget provides significant TRC benefits, and as a total package including the CRP Home Comfort budget of $7.6 million, the OCA’s recommended budget provides even more benefits to the system. The OCA noted that its recommended budget would still be less than the Phase I budget of $63.7 million for the period of 2011 through 2015. OCA M.B. at 63.

PGW argued that the OCA’s proposal that the budget for the non-LIURP programs should be consistent with PGW’s expanded scenario without simultaneous approval of PGW’s CAM was untenable. PGW R.B. at 48-49.

I&E, the OSBA, CAUSE-PA and TURN *et al.* took no position on PGW’s proposed budgets for its non-LIURP DSM programs. I&E M.B. at 14; I&E R.B. at 18; CAUSE-PA M.B. at 18; CAUSE-PA R.B. at 9; and TURN *et al.* M.B. at 11.

#### b. ALJs’ Recommendation

In their Recommended Decision, the ALJs recommended the approval of the PGW proposed budget for Non-LIURP programs, with the exception of the Efficient Fuel-Switching program which they stated would be discussed later in their Recommended Decision. The ALJs noted that only the OCA disputed the non-LIURP budget proposal of PGW. The ALJs explained that they agreed with the Company that if the Company’s proposed CAM or Performance Incentive Mechanism are not approved, the Company’s proposed reduced budgets for all of the Non-LIURP programs, as well as the phase out of the Home Rebates program after six months, should be adopted. The ALJs opined that as these Non-LIURP programs are voluntary in nature, and there is no statutory authority to require the Company to maintain these programs at all, they could not compel PGW to increase funding of these programs. The ALJs also opined that the OCA failed to take into account the financial consequences of these programs on PGW as well as the consequences on all of PGW’s ratepayers. R.D. at 83.

#### c. Disposition

No Party filed Exceptions regarding the ALJs’ recommendation on this issue. Finding the ALJs’ recommendation to be reasonable, we adopt it without further comment.

### 3. CRP Home Comfort Program (LIURP) Budget

#### a. Positions of the Parties

PGW stated that its proposed budget for CRP Home Comfort far exceeds pre-DSM levels but is less than the current DSM Bridge Plan budget of $7.6 million. PGW maintained that the proposed budget meets statutory requirements that its LIURP be “appropriately funded” and significantly exceeds the regulatory requirement that LIURP programs shall be at least 0.2% of a utility’s jurisdictional revenues.[[12]](#footnote-12) PGW explained that its proposed CRP Home Comfort Budget, as increased in rejoinder, of $15,945,846 would be implemented even if PGW’s proposed CAM is not approved. According to PGW, this proposed budget would result in a LIURP budget of 0.45% of PGW’s forecasted revenue and would be consistent with the 0.45% statewide average for LIURP spending as calculated based on the data available during this proceeding. PGW M.B. at 62-63.

PGW noted that historically, the Company’s Commission approved LIURP funding was at or close to the required regulatory minimum with an average actual money spent that was 0.28% of PGW’s actual average revenues in 2008-2010. PGW further noted that its initial LIURP program, which was known then as the Conservation Works Program, was included as part of PGW’s restructuring filing and subsequently modified as part of a comprehensive settlement approved in 2010 regarding PGW’s DSM Phase I Plan and its rate case in which PGW agreed to a significant increase in funding for its CRP Home Comfort program upon its inclusion within the DSM Plan.[[13]](#footnote-13) PGW maintained that this proposal was based on PGW’s interest in testing a pilot DSM program that would include a large LIURP program and was not based on a needs assessment nor was the final agreed-to LIURP budget intended as a permanent funding level from which PGW could never be released. Thus, PGW asserted that there is no basis upon which to support a claim that PGW is somehow required to maintain the DSM Phase I settlement budget level for its LIURP. PGW M.B. at 64.

PGW also noted that the Commission’s actions during PGW’s recent approval of its *USECP 2014-2016* *Order* further support the fact that there is no pre-determined starting point for PGW’s going-forward LIURP budget. While PGW was required to provide enrollment and budget information for the LIURP program during fiscal years 2015 and 2016 in response to the Commission’s direct request during its review of PGW’s *USECP 2014-2016 Order*, PGW maintained it made clear that that the FY 2016 DSM Implementation Plan was not yet finalized and would be updated upon the filing of the new proposal under this proceeding.[[14]](#footnote-14) Thus, PGW concluded the budget numbers presented as part of that review process do not represent a pre-determined starting point here for the LIURP budget. PGW M.B. at 65.

PGW noted that the Natural Gas Choice and Competition Act (*Gas Competition Act*) requires that “universal service and energy conservation policies” are “appropriately funded and available” and “operated in a cost-effective manner.”[[15]](#footnote-15) PGW argued that its CRP Home Comfort program and the budget it proposed going forward satisfy these statutory requirements. First, PGW asserted that its proposed budget allows the CRP Home Comfort program to remain available to participants at a significant level such that PGW’s LIURP would be funded in an amount higher than every other NGDC, with the exception of Columbia. Second, PGW maintained that its proposed budget provides reasonable and prudent funding that strikes the appropriate balance among all the financial stressors related to costs while still continuing to offer a thorough and cost-effective LIURP program. PGW R.B. at 55.

PGW indicated that its proposed funding level for CRP Home Comfort would result in a LIURP budget of 0.45% of PGW’s forecasted revenue which meets and far exceeds the 0.2% minimum funding requirement of Section 58.4(a). PGW R.B. at 56.

Next, PGW argued that the prior level of funding is not a relevant basis for considering LIURP funding going forward because the current LIURP budget was approved by the Commission as part of the DSM Bridge Plan, which continued, on an interim basis, and in the interests of reaching settlement, the prior LIURP budget which was part of a comprehensive settlement approved in 2010 regarding PGW’s Phase I DSM Plan and its base rate case. PGW contended that to suggest that these compromise levels of LIURP budget are somehow binding on PGW is unfair and also violates the basis on which the Commission approved the settlement. According to PGW, the 2010 rate case settlement specifically stated that “[i]t is understood and agreed among the Joint Petitioners that the Settlement is the result of compromise and does not necessarily represent the position(s) that would be advanced by a party in this or any other proceeding, if it were fully litigated”.[[16]](#footnote-16) PGW R.B. at 56-57.

I&E opposed any increase in the DSM II budget beyond the as-filed amount set forth in PGW’s Petition. I&E asserted that the OCA’s recommended budget of $56.2 million over the life of the five-year DSM II plan,[[17]](#footnote-17) which reflects an increase of LIURP funding to $38 million,[[18]](#footnote-18) should be rejected. I&E noted that this increase in Phase II DSM programming costs is far beyond that which was set forth in PGW’s Petition, and would impose undue financial costs upon PGW’s non-CRP customers. I&E contended that CAUSE-PA’s recommendation to increase the LIURP budget and to add additional programming into the Phase II DSM Plan will serve to increase PGW’s budget beyond the as-filed amount, and I&E opposed these recommendations. Finally, I&E also opposed PGW’s last-minute increase of its CRP Home Comfort budget from $10,155,000 to $15,945,846, as set forth in its Rejoinder testimony.[[19]](#footnote-19) I&E asserted that such an increase deviates from PGW’s original request and escalates Phase II DSM programming costs to the detriment of its non-CRP customers. Although PGW maintained that this increase will place its LIURP spending on par with the state-wide average,[[20]](#footnote-20) I&E argued that PGW’s budget must be built on a basis specific to PGW. I&E R.B. at 16-17.

 I&E stated that it agreed with PGW’s initial position that the proposals for PGW to increase the DSM II budget are not sustainable for PGW. Specifically, I&E indicated that PGW recognized that increasing its budget by expanding its CRP Home Comfort costs would be detrimental for all of PGW’s ratepayers as PGW is not an IOU.[[21]](#footnote-21) As PGW does not have shareholders to help absorb any impact of an increased budget, I&E asserts that the burden to shoulder the resulting increased debt would undoubtedly fall upon the already overburdened non-CRP ratepayers. I&E R.B. at 18.

The OCA recommended that PGW’s LIURP budget be maintained at the historic levels of $7.6 million per year to meet the needs in PGW’s service territory. The OCA maintained that the Commission has previously held that the standard is not a minimum of 0.2% but the needs of the service territory. The OCA noted that in the recent *UGI EE&C Plan Order*, the Commission stated that “the 0.2% of ‘jurisdictional revenues’ is a starting point or floor for LIURP budgets, rather than a ceiling.”[[22]](#footnote-22) OCA M.B. at 63-64.

The OCA maintained that Section 2203(8) of the *Gas Competition Act* requires that universal service programs, including the usage reduction program, must be “appropriately funded and available in each natural gas distribution service territory.”[[23]](#footnote-23) OCA M.B. at 64-65.

The OCA argued that in order to reduce its budget, Section 58.4(a) of the Code requires that the Company must file a petition with the factors identified in Section 58.4(c).[[24]](#footnote-24) According to the OCA, Section 58.4(c) of the Code provides that a revision to the LIURP funding levels must be computed based upon the following factors:

(1) The number of eligible customers that could be provided cost-effective usage reduction services. The calculation shall take into consideration the number of customer dwellings that have already received, or are not otherwise in need of, usage reduction services.

(2) Expected customer participation rates for eligible customers. Expected participation rates shall be based on historical participation rates when customers have been solicited through approved personal contact methods.

(3) The total expense of providing usage reduction services, including costs of program measures, conservation education expenses and prorated expenses for program administration.

(4) A plan for providing program services within a reasonable period of time, with consideration given to the contractor capacity necessary for provision of services and the impact on utility rates.[[25]](#footnote-25)

OCA M.B. at 65-66.

The OCA noted that instead of filing the required factors, PGW instead requested a waiver of Section 58.4.[[26]](#footnote-26) Furthermore, the OCA argued that PGW’s proposal is contrary to the budget presented in PGW’s most recent USECP. The OCA pointed out that in its *USECP 2014-2016 Order*, the Commission noted the “proposed budget levels for 2014-2016” as follows for LIURP: 2014: $7,600,000; 2015: $7,600,000; and 2016: $7,600,000.[[27]](#footnote-27) OCA M.B. at 67.

 The OCA asserted that the information provided by PGW to the Commission in its USECP filing in support of its $7.6 million budget did include the necessary information.[[28]](#footnote-28) The OCA noted that the Commission also directed that the Company develop a stakeholder group to increase its CRP outreach.[[29]](#footnote-29) The OCA maintained that the proposed 75% reduction to the LIURP budget is inconsistent with the needs assessment presented in the Company’s most recent USECP proceeding. OCA M.B. at 68.

TURN *et al.* also opposed PGW’s proposal to reduce funding to its LIURP contending that the proposed LIURP budget reduction fails to take into consideration the substantial need for PGW’s LIURP services. TURN *et al.* argued that PGW should not be permitted to use its LIURP budget as a bargaining chip for its proposed CAM, especially in light of the overwhelming need for LIURP. TURN *et al.* indicated that the success of PGW’s LIURP programs and the savings that it has brought and will bring to PGW customers are likely to contribute to a positive public perception of PGW’s CRP. TURN *et al.* M.B. at 11-12.

TURN *et al.* asserted that instead of proposing a LIURP budget with the intention to meet the need in its service territory, PGW based its budget wholly on a comparison to the budgets of gas utilities serving other territories, and excluding Columbia Gas.[[30]](#footnote-30) TURN *et al.* argued that this is not an appropriate method for determining the funding status of a universal service program. According to TURN *et al.*,PGW’s current annual LIURP budget permits it to serve 2,108 of its approximately 70,000 CRP customers per year.[[31]](#footnote-31) TURN *et al.* stated thatthrough 2014, PGW’s DSM has provided direct weatherization to approximately 7,500 low-income customers’ homes.[[32]](#footnote-32) TURN *et al.* asserted that the proposed funding reduction will result in significantly fewer low income households receiving treatment under PGW’s LIURP. TURN *et al.* M.B. at 12.

CAUSE-PA stated that PGW proposes to significantly reduce its LIURP budget without any analysis on the impact it would have on its low-income CRP customers or any assessment of the needs within its service territory. CAUSE-PA contended that the budget for PGW’s LIURP must remain at or above the current funding levels for LIURP activities and any Commission approval of PGW’s DSM Plan must be contingent upon the Commission ordering PGW, at a minimum, to continue the current funding level of CRP Home Comfort. CAUSE-PA asserted that the Commission must reject PGW’s proposal to reduce funding to CRP Home Comfort by its proposed 75%. CAUSE-PA M.B. at 18.

CAUSE-PA maintained that reducing the LIURP budget in this proceeding would undermine the Commission’s recent triennial review and approval of PGW’s USECP and, thus, the Commission’s statutory obligation to ensure that Universal Service programs are appropriately designed and adequately funded to meet the needs of the economically vulnerable low-income households within PGW’s service territory.[[33]](#footnote-33) CAUSE-PA M.B. at 18-19.

 CAUSE-PA noted that in this proceeding, the Company proposed a LIURP budget of only $2.0 million in 2016; $2.075 million in 2017; $2.0 million in 2018; $2.080 in 2019; and $2.0 million in 2020.[[34]](#footnote-34) However, according to CAUSE-PA, in PGW’s *USECP 2014-2016 Order*, the Commission approved PGW’s proposed LIURP budget of $7,600,000 in 2014; $7,600,000 in 2015; and $7,600,000 in 2016.[[35]](#footnote-35) As such, CAUSE-PA explains that the five-year PGW proposed Phase II DSM Plan would result in an approximately 75% reduction in LIURP funding. CAUSE-PA alleged that PGW’s LIURP budget proposals within the PGW USECP are comparable to PGW’s actual LIURP expenditures within its DSM Plan. According to PGW’s recent annual DSM reports, CAUSE-PA noted that the Company spent $7.898 million on LIURP in 2014 and $7.538 million in 2013.[[36]](#footnote-36) CAUSE-PA M.B. at 19.

CAUSE-PA further argued that the Commission, in its review of the UGI Gas LIURP budget, recently rejected a similar assertion by UGI Gas and noted that the 0.2% of “jurisdictional revenues” is a starting point or floor for LIURP budgets, rather than a ceiling.[[37]](#footnote-37) CAUSE-PA also asserted that the Universal Service program component budgets are driven by the need within each service territory and the funding necessary to meet those needs. CAUSE-PA alleged that PGW’s current annual LIURP budget of approximately $7.6 million permits it to serve only 2,108 of its approximately 70,000 CRP customers per year.[[38]](#footnote-38) CAUSE-PA M.B. at 21-22.

Next, CAUSE-PA asserted that Chapter 58 requires funding to remain at the same levels unless there is a specific proceeding, with notice to the public and opportunity for review, to reduce the funding levels.[[39]](#footnote-39) CAUSE-PA argued that regardless of how its LIURP budget was established, PGW cannot reduce it without following the requirements set forth in 52 Pa. Code § 58.4(c). CAUSE-PA noted that Section 58.4(a) of the Commission’s Regulations provide that any proposal to reduce the existing LIURP budget “shall” be subject to public notice and input.[[40]](#footnote-40) CAUSE-PA R.B. at 10-12.

The OSBA supported only a “relatively modest” budget but provided no proposed dollar amount. The OSBA indicated that this position is based on its analysis that the program has failed by not resulting in load reduction for CRP customers. The OSBA’s argument is offered only if the Commission makes a determination that the Company’s LIURP spending provides the vast majority of benefits to CRP customers. According to the OSBA, it may very well be the case that the reason CRP spending has failed to reduce CRP customer consumption is that the benefits go to customers who are not CRP customers and have not qualified as low-income. If that is the case, the OSBA averred that the costs must be recovered solely from Residential customers. OSBA M.B. at 17-18.

However, the OSBA maintained that if the Commission determines that the vast majority of LIURP spending relates to CRP customers and that those costs should be recovered in the USC, then PGW has an obligation to demonstrate that those programs are cost effective, which OSBA alleged PGW has failed to do. OSBA M.B. at 17.

The OSBA further asserted that the massive spending for energy conservation measures for CRP customers over the past fifteen years has resulted in virtually no reduction in load.[[41]](#footnote-41) In contrast, the OSBA opined that non-CRP residential customers, who for the most part received no energy conservation subsidies from PGW, achieved material reductions in load over that period. Thus, the OSBA stated that CRP customer load substantially exceeds non-CRP customer consumption, by an ever increasing amount. OSBA M.B. at 17.

#### b. ALJs’ Recommendation

In their Recommended Decision, the ALJs stated that they agreed with the OCA, CAUSE-PA and TURN, *et al.* that the budget in place under PGW’s Phase I DSM Plan for the LIURP Program must be maintained. The ALJs noted that these Parties recommended that PGW’s LIURP budget be maintained at the historic levels of $7.6 million per year to meet the needs in PGW’s service territory. According to the ALJs, the Commission has previously held that the standard of Section 58.4(a), 52 Pa. Code § 58.4(a), of our Regulations is not a minimum of 0.2%, but the needs of the service territory. R.D. at 105.

Next, the ALJs reasoned that they were guided by Section 2203(8) of the *Gas Competition Act*, which requires that universal service programs, including the usage reduction program, must be “appropriately funded and available in each natural gas distribution service territory.”[[42]](#footnote-42) The ALJs noted that PGW could not identify a single utility (gas or electric), or a single year, in which the Commission had approved a LIURP budget at the “regulatory minimum” as being a program that is “appropriately funded and available.”

Furthermore, the ALJs maintained that Section 58.4(c), 52 Pa. Code § 58.4(c), of the Code provides that a revision to the LIURP funding levels must be computed based upon the following factors:

(1) The number of eligible customers that could be provided cost-effective usage reduction services. The calculation shall take into consideration the number of customer dwellings that have already received, or are not otherwise in need of, usage reduction services.

(2) Expected customer participation rates for eligible customers. Expected participation rates shall be based on historical participation rates when customers have been solicited through approved personal contact methods.

(3) The total expense of providing usage reduction services, including costs of program measures, conservation education expenses and prorated expenses for program administration.

(4) A plan for providing program services within a reasonable period of time, with consideration given to the contractor capacity necessary for provision of services and the impact on utility rates.

R.D. at 106.

 The ALJs explained that instead of meeting the above-cited required factors of Section 58.4(c), PGW has requested a waiver of that Section. The ALJs noted their agreement with the OCA that PGW has not shown that “the number of eligible customers” that could be provided cost-effective usage reduction services has decreased. Further, the ALJs found that PGW has not shown that the number of customer dwellings that are “otherwise in need of, usage reduction services” is decreasing or that the “total expense of providing usage reduction services, including costs of program measures . . . and prorated expenses for program administration” benefits from a reduced budget. According to the ALJs, the demonstration has been that program cost-effectiveness, the costs of program measures, and the prorated expenses for program administration, all benefit from the existing LIURP budget as contrasted to the substantially reduced budget proposed by PGW. R.D. at 107.

 The ALJs next stated that PGW’s proposal is contrary to the budget presented in PGW’s most recent USECP. In its *USECP 2014-2016 Order*, the Commission noted “proposed budget levels for 2014-2016” as follows for LIURP: 2014: $7,600,000; 2015: $7,600,000; and 2016: $7,600,000.[[43]](#footnote-43) The ALJs explained that as noted in the *USECP 2014-2016 Order*, PGW’s ELIRP [LIURP] is designed to assist its CRP customers in reducing their energy usage and bills through cost-effective weatherization services and energy conservation education. R.D. at 107-108.

 The ALJs also stated that they disagreed with I&E’s argument that PGW is not sound enough to support the current fund. The ALJs explained that they were suspicious that PGW would have to make cuts in other areas, including pipeline replacement, since the Company was just recently granted an increase to its Distribution System Improvement Charge to 7.5%.[[44]](#footnote-44) According to the ALJs, PGW can address any further economic concerns in a future base rate case. R.D. at 108-109.

 Next, the ALJs concluded that the OSBA’s argument regarding the lack of efficiency of PGW’s LIURP program did not convince them that funding to the program should be drastically reduced. The ALJs agreed with the OCA that the spending levels currently in place have resulted in a reduction of the CRP subsidy. The ALJs opined that a reduction in the LIURP budget will result in higher distribution bills to be paid by all PGW ratepayers, and that the reduction in the CRP subsidy benefits all non-CRP customers. R.D. at 109.

In conclusion, the ALJs found that the LIURP program is a cost-effective program which provides a significant benefit to both CRP participants and to the ratepayers who pay the costs of the program. According to the ALJs, PGW has not demonstrated that the need for the LIURP program has decreased and the Company also has not met the requirements of Section 58.4(c) of the Commission’s Regulations or Section 2203(8) of the *Gas Competition Act* for a reduction in its LIURP budget. Therefore, the ALJs recommended that the Commission maintain the current LIURP program budget and move forward with that budget for the remaining term of the DSM Phase II Plan. R.D. at 109.

#### c. Exceptions and Replies

In its Exceptions, PGW states that the ALJs erred by recommending that PGW’s proposed LIURP budget be increased by nearly 140% more than the Company proposal and 436% more than the required regulatory minimum. PGW asserts that requiring it to implement that amount of a LIURP budget without addressing the very real impact that decision will have to increase the amount of PGW’s unrecovered costs will require the Company to reconsider its entire DSM Plan to assess whether to limit the size and scope of the energy efficiency and conservation programs that it has voluntarily offered since 2011. PGW points out that it sought approval of a five-year LIURP budget of $15,945,846, which was offered during rejoinder, and is approximately 16% greater than the budget it initially proposed in this proceeding. The Company asserts that due to the negative impact of increased lost revenues, the Company cannot support a higher LIURP budget. PGW Exc. at 9-11.

Next, PGW states that the proposed budget is not dependent on the Commission approving the Company’s proposed CAM, but it is consistent with the Company’s needs assessment filed in this proceeding and is 125% greater than the required 0.2% regulatory minimum. PGW avers that the ALJs’ recommendation to maintain the existing LIURP budget ignores the fact that this most recent historic LIURP budget was not established based on need or any other assessment of its reasonableness as PGW agreed to it as part of a settlement of its last base rate case. According to PGW, the ALJs’ recommendation is a significant expansion beyond the required regulatory minimum amount, statewide precedent and levels that PGW believes the Company and its ratepayers can afford given the direct impact of weatherization services on reducing the Company’s distribution charges. PGW Exc. at 11-12.

Next, PGW notes that the ALJs cite the *Gas Competition Act’s* requirement that LIURP programs must be “appropriately funded and available”. *See* 66 Pa. C.S. § 2203(8). PGW avers that it is unaware of the Commission ever applying Section 2203(8) to suggest that a utility’s LIURP budget could never be modified downward. Furthermore, PGW states that this analysis completely ignores the rest of the words in the *Gas Competition Act* which also requires that the Commission “shall ensure that the programs are operated in a cost-effective manner.” According to PGW, focusing only on ensuring that LIURP is “appropriately funded and available” by alleging that this somehow mandates PGW’s LIURP to fully address all the needs of its entire low income population at the quickest possible pace is unreasonable and illogical. PGW maintains that, contrary to the conclusion reached by the ALJs, its proposed LIURP fully satisfies the requirements of the *Gas Competition Act*. PGW asserts that its proposed budget allows LIURP benefits to remain available to participants at a significant level by providing LIURP weatherization services to about 3,216 customers over the next five years and is proportionally higher than every other Pennsylvania NGDC except Columbia Gas. PGW Exc. at 13-15.

Next, PGW notes that the ALJs also consider the Commission’s regulatory requirements regarding program funding as set forth in Section 58.4(a) of the Commission’s Regulations. PGW states that the plain text of this Section provides that “the annual funding for [LIURP] shall be at least 0.2% of a covered utility’s jurisdictional revenues” and that the Commission considers this level as a starting point or floor for LIURP budgets.[[45]](#footnote-45) PGW asserts that it did not seek a waiver of this minimum funding requirement as the ALJs erroneously state. PGW maintains that its proposed funding level would result in a LIURP budget of 0.45% of PGW’s forecasted revenues, which far exceeds the 0.2% minimum funding requirement. PGW excepts to the ALJs’ recommendation to move the starting point to PGW’s historic funding level as it is not based on the plain text of the regulation. PGW Exc. at 15-17.

Next, PGW points out that it is important to remember that PGW’s most recent historic LIURP budget relied upon by the ALJs was first implemented as part of a comprehensive settlement approved in 2010 regarding the Company’s DSM Phase I Plan and its rate case. PGW claims it agreed to the LIURP budget based on its interest in testing a pilot DSM program that would include a large LIURP. PGW explains that the LIURP budget was not based on a needs assessment nor was ever portrayed or intended as a permanent funding level from which PGW could never be released. PGW opines that it is clear that the historic LIURP budget upon which the ALJs erroneously recommend that the Commission judge PGW’s current LIURP budget proposal makes no sense and that using the historic budget as a starting point is meaningless. PGW Exc. at 17-18.

Moreover, PGW asserts that accepting the ALJs reasoning that a prior agreed-to LIURP budget resulting from a settlement should form the baseline for all LIURP budgets going forward would negatively impact all future LIURP programs. PGW opines that utilities would be discouraged from agreeing to increased LIURP budgets as part of a settlement for fear that they would never be able to reduce that budget in the future. Similarly, PGW posits that such a decision would likely further discourage utilities from proposing pilot LIURP expansions in any way if that would mean they would be held to those levels going forward. PGW states this would stifle innovation which is not a good result for customers. PGW Exc. at 18-19.

In its Replies to Exceptions, the OCA submits that the ALJs were correct in finding that PGW’s proposal to drastically reduce its current LIURP budget should be denied. The OCA states that as the ALJs pointed out, Section 2203(8) of the *Gas Competition Act* requires that universal service programs, including the usage reduction program, must be “appropriately funded and available in each natural gas distribution service territory.” 66 Pa. C.S. § 2203(8). The OCA asserts that in order to be “appropriately funded and available” the Company must provide a LIURP budget that is designed to address the needs of the service territory. According to the OCA, as the ALJs correctly found, the Commission has previously held that the standard is not a minimum of 0.2% of jurisdictional revenues but rather the needs of the service territory. *See UGI EE&C Plan Order.* The OCA explains that the central issue here is whether PGW’s proposed reduction in LIURP funding would adequately address the needs within its service territory. The OCA submits that the ALJs correctly found that it would not. OSA R. Exc. at 2-5.

Next, the OCA asserts that PGW’s arguments as to the cost effectiveness of the LIURP program are without merit. The OCA opines that the LIURP program provides cost-effective benefits to both CRP and non-CRP customers as PGW’s own TRC calculation demonstrated that the LIURP programs are, in fact, cost-effective. According to the OCA, PGW’s LIURP at the historic budget levels have been determined to be a cost-effective program with increasing cost-effectiveness over time. The OCA noted that the January 16, 2015, DSM Annual Report reported that LIURP had a benefit-cost ratio of 1.26 which was an increase from the benefit-cost ratio of 1.22 from the prior year. The OCA asserts that, contrary to PGW’s arguments, both non-CRP customers and CRP customers will realize benefits from the LIURP weatherization measures. The OCA notes that the ALJs correctly identified that “a secondary goal of the program is to help reduce the overall long-term cost of the CRP program paid by all PGW customers.” As comprehensive weatherization will reduce the usage levels of CRP participants, the OCA opines that this reduction in usage translates into a benefit for non-CRP customers who pay the costs of the program. As such, the OCA avers that PGW’s arguments on this issue lack merit and should be rejected. OCA R. Exc. at 5-7.

Next, the OCA asserts that the ALJs correctly determined that PGW failed to meet the requirements for revising its LIURP budget funding pursuant to Section 58.4(c) of the Commission’s Regulations. The OCA asserts that none of the factors upon which a change in the PGW LIURP budget must be based have been shown to exist in this proceeding. The OCA further submits that PGW’s proposal ignored the budget presented in PGW’s most recent Universal Service and Energy Conservation Plan (USECP) which were as follows for LIURP: 2014 - $7,600,000; 2015 - $7,600,000; and 2016 - $7,600,000. Furthermore, the OCA points out that the ALJs had identified that in each of the years from 2013-2014, PGW had spent from 99-104% of its LIURP budget. According to the OCA, PGW has failed to meet the standards required by Section 58.4(c) for a reduction in its current LIURP funding levels and did not present any factors that reflected a reduced need for LIURP. OCA R. Exc. at 7-9.

In conclusion, the OCA states that the fact PGW’s $7.6 million budget was established as part of a base rate case settlement is immaterial. According to the OCA, even though the $7.6 million budget was agreed to as part of the Company’s last base rate proceeding does not mean that the budget is not needed to meet the needs of the service territory. The OCA maintains that the Company did present a needs assessment as part of its most recent USECP Plan which PGW has chosen to ignore. The OCA states that in that USECP Plan, PGW told the Commission that “assuming that all CRP customers are eligible for ELIRP leads to a substantial ELIRP needs assessment.” The OCA submits that the proposed 75% reduction to the LIURP budget is inconsistent with the needs assessment presented in the Company’s most recent USECP. OCA R. Exc. at 9-11.

In its Replies to Exceptions, CAUSE-PA states that the ALJs appropriately rejected PGW’s proposal to reduce its LIURP budget by 75% from the existing levels approved by the Commission and agreed to by the Company. CAUSE-PA asserts that the ALJs correctly interpreted the *Gas Competition Act* as requiring the continuation of LIURP at the funding and production levels approved by the Commission in its *USECP 2014-2016 Order*. CAUSE-PA explained that LIURP budgets are determined based on need, a decision which is wholly independent of any other program budget determinations and must be considered in accordance with specific requirements set forth in regulation. According to CAUSE-PA, the ALJs required only that PGW’s LIURP continue at its current funding and production levels which is sufficient to treat an estimated 2,108 of the 71,625 potentially eligible households in Philadelphia. CAUSE-PA maintains that, contrary to PGW’s assertions, the ALJs fulfilled the multiple requirements set forth in the *Gas Competition Act* to carefully consider the need in PGW’s service territory, and to ensure that cost-effective programs are appropriately funded and available to low income households within its territory. CAUSE-PA R. Exc. at 5-10.

Next, CAUSE-PA states that the ALJs correctly applied 52 Pa. Code Section 58.4(a), and subsequent Commission precedent, to require continuation of LIURP funding at the current level, which was approved by the Commission in its *USECP 2014-2016 Order.* CAUSE-PA avers that PGW’s decision to pick and choose which sections of the regulations to cite is misleading. CAUSE-PA states that based on this section of the Code, while LIURP funding is initially based on 0.2% of jurisdictional revenues at the program’s inception, funding determinations are made thereafter in one of two ways: (1) a utility seeks a funding change through a petition which is subject to public notice and input,[[46]](#footnote-46) or (2) the Commission reviews the relative need and revises the funding level in a Commission Order which addresses cost recovery. According to CAUSE-PA, the ALJs looked at the full provision of this Section and concluded that it does not permit approval of PGW’s proposed reduction of its LIURP budget. CAUSE-PA R. Exc. at 10-12.

Next, CAUSE-PA states that the ALJs correctly concluded that the LIURP budget set through the Settlement in PGW’s last base rate proceeding established a minimum funding level for PGW’s LIURP pursuant to 52 Pa. Code Section 58.4(a) which cannot be reduced absent public notice and input. CAUSE-PA notes PGW’s explanation that it agreed to the LIURP budget in the Settlement “based on its interest in testing a pilot DSM program that would include a large LIURP.” CAUSE-PA asserts that this reasoning is not contained in any of the statements filed in support of that Settlement. CAUSE-PA opines that PGW cannot point to its previously un-asserted logic in joining a Settlement without looking to the stated logic of the other settlement parties as well as the logic of the Commission in approving the Settlement. According to CAUSE-PA, the budget from the Settlement represented a balancing of the needs and the costs and represented a Commission-approved compromise to meet the needs of low income populations within PGW’s service territory. CAUSE-PA R. Exc. at 12-14.

#### d. Disposition

Based upon our review of the evidence of record, we are not in agreement with the recommendation of the ALJs that the budget of $7.6 million currently in place under PGW’s Phase I DSM Plan for its LIURP Program should remain in place during the Phase II DSM Plan. We find that this particular budget amount is not based upon a needs assessment within PGW’s service territory, but would simply continue an agreed upon budget amount that the Company implemented within the context of the settlement of its most recent base rate case. We conclude that this is not a reasonable, nor prudent approach under the circumstances. As such, we shall reject the recommendation of the ALJs and grant the Exceptions of PGW, in part, on this issue.

However, we are also not convinced by PGW that its LIURP budget proposal presented within the evidence of this proceeding of $15,945,846, in the rejoinder stage, is the appropriate amount as it also is not based upon a needs assessment within the Company’s service territory. Furthermore, adoption of this level of funding would result in an unacceptable decrease from the currently existing budget amount of $7.6 million per year. Therefore, we shall also reject this proposal of the Company and deny its Exceptions, in part, on this issue.

Upon further consideration of an appropriate and reasonable amount for PGW’s LIURP budget going forward, we conclude that it is prudent at this time for this Commission to perform an independent needs assessment to guide our decision on this difficult and controversial issue. Specifically, we hereby propose to **perform a needs assessment for PGW based upon information contained within the most recent USECP Program filings for each of our major jurisdictional NGDCs.** Our review of these filings provides information related to the number of eligible LIURP jobs, the number of anticipated jobs completed per year, the cost per job,[[47]](#footnote-47) the total LIURP budget, and the job completion rate.[[48]](#footnote-48) The following table contains a summary of this pertinent information:[[49]](#footnote-49)



 Using this information, we shall perform two separate calculations that directly take into account the four factors of a needs assessment contained within our Regulations which we shall utilize to determine the appropriate LIURP budget for PGW on a going forward basis. The first calculation we propose to be utilized in this determination is the calculation of the Job Completion Rate. This methodology utilizes PGW’s total number of eligible customers, the rate of job completion for the entire state, and PGW’s historical costs per project to determine a reasonable budget approximation for the Company. In this calculation we first determine the expected number of completed jobs per year by multiplying PGW’s total number of eligible LIURP Customers of 71,625 by the state’s average job completion rate which is 2.5%. Then, we utilize this result, 1,791 jobs, and multiply it by the average cost per job for PGW of $3,605. This needs based calculation method results in a total estimated LIURP budget result for PGW of $6,455,203.

 The second calculation we propose to be utilized in this determination is the Historical Cost Budget calculation. In this methodology we shall utilize PGW’s historical program cost, the average cost of a job in the state, and PGW’s average cost per job to determine a reasonable budget approximation for the Company. In this calculation we first determine the expected number of jobs to be completed each year by dividing the state average cost per job of $5,203 into the historical total program cost for PGW of $7,600,000. Then we utilize this result and multiply it by the average cost per job for PGW of $3,605. This needs based calculation method results in an estimated total LIURP budget result for PGW of $5,265,808.

We shall next determine the average of the results of the two calculations explained above which results in an estimated calculated LIURP budget amount of $5,860,506 for PGW. Therefore, we shall direct PGW to utilize this amount for its future LIURP budget as it represents a reasonable result which is in the public interest. Consistent with the Commission’s Regulations at 52 Pa. C.S. § 5.408, we direct that official notice of these new facts and calculations be placed on the record of this proceeding and that the Parties to this proceeding be afforded the opportunity to comment on this $5,860,506 LIURP budget directive for PGW. We hereby direct that interested Parties shall submit any comments within ten days of the date of entry of this Tentative Opinion and Order. Absent the receipt of any comments on this Tentative Opinion and Order, it shall become final by operation of law.

Furthermore, we would encourage the Parties to address PGW’s LIURP budget based upon the total cost of LIURP eligible projects and set a reasonable expectation of the time necessary to meet that need. In this way, the budget would be driven by the timeline needed to accomplish total saturation of eligible LIURP customers. The Parties should also consider the rate impact of the higher budget on PGW’s customers in their comments. We note that it is a matter of public record that PGW already has the highest universal service budget of any public utility in this Commonwealth, and that its customers have the heaviest burden in paying for these programs.

Additionally, we conclude that it is important to consider how the Commission should address PGW’s LIURP funding on a going forward basis. By way of background, LIURP is administered under Chapter 62 of our Regulations,[[50]](#footnote-50) which requires NGDCs to file USECP Plans every three years on a staggered basis.[[51]](#footnote-51) However, it is important to note that PGW’s LIURP funding is treated differently as a result of the *July 2010 Order.* In that proceeding, the Commissionapproved the settling parties’ request that the LIURP funding level for PGW be addressed in the DSM case, and not as part of the normal USECP process.

In our *USECP 2014-2016 Order*, the Commission addressed whether to continue this unique treatment of LIURP. In that proceeding, the OCA argued that consideration of LIURP funding for PGW should once again be included in the USECP process not the DSM Plan filings. The Commission responded by agreeing to “reserve judgment as to whether PGW may continue its [LIURP] program as part of its DSM, or revert it back to LIURP as part of its USECP, pending our review of PGW’s DSM proposal to be filed later this year…”[[52]](#footnote-52)

 In the instant filing, PGW proposed that LIURP should remain within the DSM process for various reasons. The other Parties did not specifically express a position on this issue and, as such, the ALJs recommended that PGW’s request be approved.[[53]](#footnote-53) However, as the Commission noted in PGW’s USECP proceeding, the carving-out of the LIURP issue in the DSM settlement has limited the scope of our USECP review for this Company.[[54]](#footnote-54) Moreover, as evidenced by this Tentative Opinion and Order, and the administrative notice taken herein, there are many facts that were not developed on the record of this proceeding that are relevant to the funding of PGW’s LIURP. We note that this lack of record evidence in this DSM Plan proceeding makes it more difficult for the Commission to make a well informed decision regarding LIURP funding for this Company. This fact alone suggests that a more appropriate proceeding for the Commission to consider the LIURP funding issue in the future would be in PGW’s next USECP proceeding. We find that doing so would also promote consistency of the Commission’s approach to LIURP across all NGDCs under our jurisdiction. Accordingly, we shall encourage PGW to consider this in the future and request interested Parties to address this potential revision in their filed Comments to this Tentative Opinion and Order.

Finally, we further note that PGW has stated in both its testimony and its filed Exceptions that, to the extent its preferred cost-recovery mechanisms were rejected, and a larger budget for its LIURP Program was approved by the Commission, the Company may need to reevaluate the recommended budget for the voluntary portion of its Phase II DSM Plan. We hereby acknowledge PGW’s position on this matter, and recognize that the Company may need to request some revision to its proposed voluntary DSM programs to ensure that its pipeline replacement program and other core operations are adequately funded.

G. PGW Phase II Proposed DSM Prog**rams**

### 1. Efficient Fuel-Switching Program

a. Positions of the Pa**rties**

PGW has requested approval of a pilot Efficient Fuel-Switching load management and conservation program to complement the existing Phase I DSM Plan programs, which is designed to provide support for the installation of cost-effective energy conservation measures for small to medium commercial and industrial applications. PGW explained the program as follows:

As opposed to other source-derived energy generation options, natural gas provides more efficient transmission, distribution, and on-site generation processes. By combining new natural gas applications with the right-sizing of on-site natural gas usage, PGW expects to help its customers achieve even greater overall energy savings and emissions reductions, all while supporting a growing industry in our Commonwealth.

[PGW’s Fuel-Switching program will] help commercial customers to improve the overall net energy efficiency of their buildings by switching to cost-effective natural gas technologies. PGW will begin to offer new prescriptive incentives for customers to invest in micro-combined heat and power systems (CHP) applications that provide onsite generation of electricity and heat for hot water or space heating that combine to offer greater efficiencies than

available from off-site generation. Additionally, a custom measure path will be offered for individual new gas load projects that meet program criteria.

PGW St. 3 at Exh. TML-4 at 2. PGW explained that the goal of this new program is to help the targeted customers improve the overall net energy efficiency of their buildings by realizing the greatest on-site energy reductions through full fuel cycle usage analyses, including all fuel types, rather than strictly on-site natural gas reductions. PGW further noted that there is no dispute that natural gas has many important advantages as an end-use fuel source in terms of efficiency and environmental benefits. PGW opined that it is well positioned to assist consumers in capitalizing on these advantages in an affordable manner, consistent with the overall goals of the DSM Plan. PGW M.B. at 38; PGW R.B. at 10-11.

 Based on PGW’s initial analysis, only cost-efficient CHP projects that achieve greater overall energy-efficiency by making use of the waste heat from electricity production that is not utilized in typical electric generation are currently included in the proposed program. Additionally, PGW maintained that CHP is a way in which states can meet the goals of Section 111(d) of the Environmental Protection Agency’s Clean Air Act[[55]](#footnote-55) and, therefore, a program in place that can start counting towards these goals immediately will be a benefit for all Pennsylvanians. By focusing on seeding effective and practical nascent technologies in order to facilitate swifter market adoptions, PGW opined that this proposed program aligns with broader market goals of facilitating growth of natural gas demand markets in the Commonwealth. PGW M.B. at 38-39.

Additionally, PGW explained that to implement the Efficient Fuel-Switching program, PGW would mainly utilize existing resources and anticipates a six-month ramp-up period before the program is fully operational. PGW asserted that the program would be tracked and reported on separately from the energy efficiency programs but be held to the same energy efficiency TRC cost-effectiveness standards as the rest of the PGW DSM portfolio while also needing to meet the requirement of net energy reduction. PGW projected that this new program will cost $2.3 million over the five-year period, lead to a 42.6 BBTu reduction in net primary energy usage during the continuing DSM Plan, and avoid the emission of 5,285 tons of carbon dioxide. According to PGW, the program is expected to provide net total resource benefits of $5,685,095, with a TRC Benefit Cost Ratio (BCR) of 2.07. PGW M.B. at 39-40.

The OCA objected to the initiation of this program based on its position that PGW’s proposed Fuel-Switching program is a load growth program and not a DSM program. The OCA also asserted that PGW should address the inefficiencies in its existing load growth program. Accordingly, the OCA maintained that PGW can provide a Fuel-Switching program, which is a load growth program, outside of its DSM program and the special cost recovery mechanism afforded for DSM programs. The OCA further maintained that, based upon the way that PGW has designed its proposed Fuel-Switching program, the program would act as a load growth program for PGW and not reduce the Company’s existing natural gas usage. The OCA averred that on the electric side, fuel switching has been considered to be an energy efficiency program because fuel switching, in that case, moves electric usage off of the electric grid to natural gas. The OCA asserted that, contrary to this scenario, PGW’s proposal would instead grow its own load by switching electric, propane and oil customers to natural gas. OCA M.B. at 17; OCA R.B. at 7.

The OCA maintained that the purpose of energy efficiency should be to reduce the utility’s own energy demand and consumption and referenced the General Assembly’s definition of energy efficiency for electric utilities at Section 2806.1:

The commission shall, by January 15, 2009, adopt an energy efficiency and conservation program to require electric distribution companies to adopt and implement cost-effective energy efficiency and conservation plans to reduce energy demand and consumption within the service territory…

66 Pa. C.S. 2806.1(a). The OCA noted that the Code also defines “program measures” in the electric utility context for LIURP as “measures designed to reduce energy consumption.”[[56]](#footnote-56) According to the OCA, PGW’s proposal does not fit either of these definitions as it does not reduce natural gas demand within PGW’s service territory, but instead has been designed to increase that demand. OCA M.B. at 18.

Next, in response to PGW’s position that the Fuel-Switching program is designed to aid customers in accomplishing more efficient use for their overall energy loads, the OCA argued that the purpose of this program should instead be to reduce PGW’s own natural gas load. The OCA asserted that this program has no place within PGW’s Phase II DSM program since it grows rather than reduces usage. OCA M.B. at 19.

 The OCA also opposed this new PGW program because the proposed method of cost recovery is inappropriate. The OCA noted that, although PGW proposed to recover the costs of this program through its established funding mechanism, the ECRS, PGW does not propose to include the results of the program with its energy savings. The OCA asserted that this program should be funded, if at all, through a mechanism designed to recover costs of programs which increase gas consumption, not a mechanism for programs designed to reduce natural gas consumption. The OCA further opined that if this program cannot offer savings towards the energy efficiency standards then it should not be included within PGW’s DSM program and cost recovery. OCA M.B. at 18-19.

Finally, the OCA argued that, since the Fuel-Switching program is solely designed as a load growth program, it does not meet the requirements for a DSM program. Accordingly, the OCA maintained that, rather than invest in load growth programs, the DSM program goals would be better met by directing the proposed budget of $2.29 million towards the CRP Home Comfort Program. OCA M.B. at 21; OCA R.B. at 8.

#### b. ALJs’ Recommendation

In their Recommended Decision, the ALJs found that they agreed with the OCA that PGW’s proposed Efficient Fuel-Switching program will increase gas demand and consumption within PGW’s service territory and, as such, should not be part of PGW’s Phase II DSM Plan. The ALJs stated that while they understood that PGW’s goal for this program is to help small and mid-sized commercial and industrial customers improve the overall net energy efficiency of their buildings, they agreed with the OCA that this proposal is a load growth program for PGW that would increase, rather than reduce, existing natural gas usage. The ALJs concluded that unlike EDCs such as UGI Electric or PECO, who shifted load off of themselves to natural gas as part of their energy efficiency plans, the end result of PGW’s proposal will be to shift load away from PECO Electric (the EDC in PGW’s service territory) to itself. According to the ALJs, this is clearly a load growth program. R.D. at 126.

The ALJs maintained that the General Assembly has established that the purpose of an EDC’s energy efficiency program is “to reduce energy demand and consumption within the service territory of each electric distribution company in this Commonwealth.” 66 Pa. C.S.A. § 2806.1(a). The ALJs concluded that, although PGW is an NGDC rather than an EDC, they agreed with the OCA that the stated purpose of energy efficiency, even as it relates to PGW, should be to reduce the utility’s own energy demand and consumption. The ALJs found that since PGW’s proposal will only have the effect on PGW of increasing gas demand and consumption, it will not meet the objective of reducing gas demand and consumption within PGW’s service territory. The ALJs also concluded that funding for such a program should not come from a cost recovery mechanism for programs designed to reduce natural gas consumption. The ALJs also adopted the OCA’s suggestion that the proposed budget for the Efficient Fuel Switching program should be redirected towards PGW’s CRP Home Comfort Program. R.D. at 126-127.

#### c. Exceptions and Replies

In its Exceptions, PGW states that the ALJs erred by recommending that the Commission deny the proposed Efficient Fuel-Switching pilot. First, PGW asserts that a more broad and reasonable assessment of its proposed pilot program shows that it is designed to provide customers greater overall energy and emissions reductions consistent with the core purpose of its DSM program. PGW states that the ALJs adoption of the OCA’s narrowly focused description of this pilot ignores the fact that PGW’s proposal would offer a holistic approach to overall energy savings. PGW maintains that this pilot program is a load management program that requires selected equipment: (1) to be more efficient than the existing market baseline; (2) to be cost-effective on a TRC basis; and (3) to reduce total energy usage. As such, PGW opines that its proposal is much more than just a load growth program. PGW explains that while there may be some load growth present in the Efficient Fuel-Switching pilot, such load growth can only occur if the program ensures overall reductions in energy consumption and TRC cost-effectiveness. According to PGW, by focusing on only the load growth aspect and not giving any consideration to the overall cost-effectiveness and reduction in total energy usage requirements, the ALJs rely on an unreasonable mischaracterization of the program results. PGW Exc. at 31-33.

Next, PGW states that there are no statutory, legislative or policy directives requiring that a utility engaging in a DSM program can only offer programs that reduce the customer’s usage of the type of energy provided by the utility. PGW notes that while the ALJs correctly acknowledge that Act 129 does not apply to PGW, they still rely on the language in Act 129 to support their erroneous view that PGW’s Efficient Fuel-Switching pilot must reduce natural gas demand and consumption to qualify as an appropriate program for the DSM plan. PGW opines that even if Act 129 did apply, the overall context of this statute is not as restrictive as the ALJs conclude noting that Act 129 requires an energy efficiency plan to reduce “energy demand and consumption within the service territory.” 66 Pa. C.S. § 2806.1(a). PGW asserts that Act 129 seeks to encourage and promote the efficient use of energy and does not simply mandate reduction targets. According to PGW, the plain language of Act 129 supports a broader interpretation than the one posited by the ALJs. PGW Exc. at 33-36.

Next, PGW claims that with regard to cost recovery, Section 1319(a) of the Code specifically ties together conservation and load management programs and, therefore, provides the necessary authority to allow cost recovery for PGW’s pilot within the DSM Plan. PGW asserts that the ALJs do not reference any statutory support for their conclusion that funding for this pilot should not come from a cost recovery mechanism for programs designed to reduce natural gas consumption. PGW maintains that its Efficient Fuel-Switching program is a load management program and it proposes to recover the costs of such through Section 1319(a) just as it recovers the costs of its current DSM programs. PGW opines that this is completely consistent with the applicable governing statutory authority. PGW Exc. at 36-37.

Lastly, PGW asserts that approving this pilot program supports the Commission’s recently stated policy to encourage utilities to make CHP systems an integral part of their energy efficiency plans. PGW cites to the Joint Motion approved at the Commission’s February 25, 2016, Public Meeting directing the issuance of a tentative order to implement a policy statement intended to promote CHP investments and encourage EDCs and NGDCs to make CHP an integral part of their energy efficiency plans. According to PGW, its Efficient Fuel-Switching pilot program is consistent with the Commission’s stated objectives as it is proposing to target cost-effective Micro-CHP projects that achieve greater overall efficiencies by making use of the waste heat from on-site electricity production, as well as a path for custom measures that meet program cost-effectiveness and net energy reduction criteria. PGW opines that adopting the ALJs’ recommendation to not permit PGW to implement this pilot program would directly contravene the objectives stated by the Commission in the proposed policy statement. PGW further opines that approving the pilot program is a great opportunity to enable the Commission to further advance its stated goals regarding CHP development in Pennsylvania. PGW Exc. at 37-38.

 In its Replies to Exceptions, the OCA first states that it is not opposed to an Efficient Fuel Switching program, but avers that this program is out of place in this filing because it is not a DSM program that should be subject to the special cost recovery afforded for a DSM program. The OCA points out that PGW has proposed to recover the costs of the program through the ECRS, but the Company does not propose to include the results of the program with its energy savings. The OCA posits that if PGW cannot offer savings towards the energy efficiency standards, then it should not be included within PGW’s DSM program and cost recovery. The OCA maintains that PGW is free to pursue this initiative through other channels, but avers that the ALJs were correct on this issue that a load growth program has no place in this proceeding. OCA R. Exc. at 22-23.

The OCA points out that on the electric side, fuel switching has been considered an acceptable part of a conservation program because the fuel switching, in that case, moves electric usage off the electric grid as that usage is replaced with natural gas. According to the OCA, in this instance, PGW has proposed instead to grow its own load by switching electric, propane and oil customers to natural gas. As such, the OCA reiterates that PGW’s proposed Fuel-Switching program is a load growth program as the evidence of record that PGW’s proposal would serve to increase natural gas usage in PGW’s service territory and does not meet the requirements for a DSM program. OCA R. Exc. at 23-25.

Next, the OCA states that PGW’s arguments with regard to Act 129 mischaracterize this statute. The OCA submits that PGW’s interpretation of this statute as encompassing all fuel sources within the service territory is inconsistent with the language of the statute itself. The OCA points out that the references to the reductions to energy demand and consumption within Act 129 specifically relate to electric demand and consumption because they reference the Company’s own load. The OCA notes that the language in Sections 2806.1(c) and (d) specifically identifies the load that the EDC serves and not all load within the EDC’s service territory, including another NGDC’s load. According to the OCA, PGW’s proposed broader interpretation of the statute does not fit within the plain language requirements of the statute. The OCA maintains that by definition, a load management program is designed to reduce the load for the utility, which cannot be accomplished if the Company is switching customers to its own fuel source. OCA R. Exc. at 25-29.

Lastly, the OCA states that PGW’s reliance on a proposed policy statement as support for its proposed Efficient Fuel-Switching program is misplaced. The OCA submits that the issue here is not whether the Efficient Fuel-Switching program supports a CHP initiative, but rather is whether PGW’s Efficient Fuel-Switching program can be considered a part of the energy efficiency and conservation program before the Commission for review. The OCA explains that neither the ALJs nor itself has stated that PGW should not implement an Efficient Fuel-Switching or Micro CHP program. According to the OCA, the issue is that the Efficient Fuel-Switching proposal does not meet the requirements for a natural gas energy efficiency and conservation program and should not be included within these programs nor allowed to be recovered through the special cost recovery mechanisms within the DSM Plan. The OCA opines that if PGW wishes to implement a load growth initiative the program should be filed as a separate petition and the Company should propose a cost recovery mechanism other than the EE&C surcharge. The OCA asserts that the ALJs’ recommendation to deny PGW’s Efficient Fuel-Switching program was the correct decision. OCA R. Exc. at 29-30.

In its Replies to Exceptions, CAUSE-PA states that while it did not take a position on PGW’s Efficient Fuel-Switching pilot it avers that it would be inappropriate for the Commission to sanction PGW’s attempt to create and fund a voluntary EE&C program while concurrently proposing to slash funding for LIURP. CAUSE-PA points out that PGW is obligated to run LIURP. CAUSE-PA states that while it supports PGW’s voluntary EE&C programs, no such program should be run at the expense of PGW’s mandatory obligations. Simply stated, CAUSE-PA opines that full funding and appropriate implementation of mandatory programs must be prioritized over voluntary and discretionary programs. CAUSE-PA R. Exc. at 19.

#### d. Disposition

Based upon our review of the evidence of record, we are in agreement with the recommendation of the ALJs to adopt the position of the OCA that PGW’s proposed Efficient Fuel-Switching program is in effect a load growth program that would result in increased natural gas usage in PGW’s service territory and, as such, is not properly included within this voluntary energy efficiency and conservation plan proposal of the Company. As pointed out by the OCA, on the electric side fuel switching has been considered an acceptable part of an energy conservation program because in that instance, the fuel switching results in reducing electricity usage as that usage is replaced by other energy sources. However, under the scenario in this proceeding, PGW’s proposal would instead result in an increase in the demand for natural gas in the Company’s service territory as alternative energy load transitions to natural gas usage. Considering that the overall purpose of a DSM energy conservation plan of a utility should be to reduce that utility’s existing energy demand requirements, we shall deny the implementation of PGW’s Efficient Fuel-Switching program in the context of this proceeding.

It is important to note however that our rejection of PGW’s innovative pilot program proposal in the instant proceeding should not be interpreted that the Commission is categorically opposed to similar proposals in the future. We are in agreement with the expressed position of the OCA which stated that it is not opposed to such programs and that PGW is free to pursue such initiatives through other Commission filings. We conclude however that this demand-side management proceeding is not the appropriate mechanism to implement such endeavors as we would prefer to have such unique proposals examined within a separate regulatory submission where the issues inherent in such a proposal can be more fully developed.

Accordingly, we shall adopt the recommendation of the ALJs on this issue and deny the Exceptions filed by PGW on this issue.

### 2. On-Bill Repayment Program

#### a. Positions of the Parties

PGW stated that approval of its CAM would not only provide for the recovery of full program costs to PGW, it would also position PGW to work on customer financing in an attempt to address a significant hurdle to delivering program services and ramping up participation levels. PGW maintained that through a properly structured OBR mechanism, the Company would partner with a third party lender to provide seamless financing repayments for customers for the projects of the DSM Plan. PGW opined that this approach can offer its customers a simple and accessible financing option which would render customer participation in the DSM programs more attractive. PGW indicated that it had identified some key considerations that would need to be addressed in structuring an OBR mechanism and proposed to chair a working group of stakeholders and industry experts to analyze an appropriate OBR mechanism for PGW’s customers who would then develop an eventual petition to the Commission for review and approval. PGW further indicated that it did factor into its consideration the work of the Commission’s On Bill Financing Working Group (OBFWG) which identified two potential models to consider for implementation in Pennsylvania. PGW M.B. at 40-41; PGW R.B. at 15-16.

PGW indicated that it is not asking the Commission to pre-judge that ultimate determination here or to otherwise “pre-approve” an OBR mechanism. However, PGW noted that, given the Parties’ opposition to discussing OBR, Commission direction that a collaborative process should be explored, if PGW’s CAM is authorized, could be useful to incent stakeholders to participate. Furthermore, PGW asserted that, given the technical issues and concerns identified by the opposing Parties in this proceeding, it opined their participation in a collaborative process might be beneficial to designing a useful OBR that benefits customers by enabling them to participate in the DSM Plan. PGW R.B. at 17.

Only the CAC agreed with PGW, acknowledging that while 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. CAC R.B. at 8.

In response to PGW’s proposal, the OCA recommended that PGW’s proposed OBR program should not be adopted. The OCA asserted that if the Company develops an OBR program for non-residential customers, the OBR should not include any residential customer component to the program. OCA M.B. at 22; OCA R.B. at 9.

The OCA stated that OBR programs are complicated and present a variety of issues that must be resolved prior to a decision regarding such a program’s implementation. The OCA maintained that OBR is not the type of program for which the details can be worked out in the future, as PGW has proposed in this proceeding. The OCA further maintained that there are significant legal issues, consumer protection issues, fairness issues, and rate implications that have not even been considered or discussed, and that these issues must be resolved prior to any determination on the merits of an OBR program. The OCA opposed the program on the grounds that: (1) the proposed “bill neutrality” is not possible; (2) the bill neutrality would conflict with the stated goal of achieving deep retrofits; (3) there would be a conflict between the consumer protections provided for a residential utility consumer and the consumer protections provided for an OBR participant; and (4) PGW’s filing does not show the benefits of the program and the cost of the program. OCA M.B. at 23-24; OCA R.B. at 9-10.

TURN *et al.* stated that the Code prohibits a utility from terminating service for nonpayment of nonbasic charges for leased or purchased merchandise, appliances or special services including, but not limited to, merchandise and appliance installation fees; rental and repair costs; meter testing fees; special construction charges; and other nonrecurring or recurring charges that are not essential to delivery or metering service.[[57]](#footnote-57) According to TURN *et al.*, the Code would prohibit a utility from terminating utility service for nonpayment of OBR charges without express and specific authorization from the Commission.[[58]](#footnote-58) TURN *et al.* maintained that PGW has failed to provide any details on its potential OBR offerings and whether it intends to seek authorization from the Commission to terminate service in situations where a customer falls behind on payment of OBR charges. TURN *et al.* questioned the wisdom of authorizing loans for low and moderate income customers and opined that the Commission should deny PGW’s OBR proposal as it pertains to residential customers. TURN *et al.* M.B. at 6.

CAUSE-PA also opposed PGW’s proposed OBR for PGW’s residential customers. CAUSE-PA noted that PGW would implement a final OBR model developed through the discussions of the proposed working group if “all critical PGW criteria are met.”[[59]](#footnote-59) CAUSE-PA is concerned that PGW has not defined which criteria it considers to be critical and under what circumstances it would utilize its “veto” to not pursue the OBR proposed by the working group. CAUSE-PA urged rejection of this proposal, in part because it is contingent upon CAM approval, and in part because the proposal does not define the “critical criteria” PGW would use in its decision making. CAUSE-PA M.B. at 12-13; CAUSE-PA R.B. at 7.

#### b. ALJs’ Recommendation

In their Recommended Decision, the ALJs stated that while they understood the opposing Parties’ concerns that there are a variety of issues that must be resolved before an OBR program can be implemented, they believed that a collaborative process would be a positive start to pursuing an OBR proposal that all Parties might find agreeable and beneficial to PGW’s ratepayers. The ALJs asserted that they would be inclined to recommend the direction of such a collaborative process. However, the ALJs concluded that as PGW had specifically stated that its OBR proposal is contingent upon approval of the CAM, and since they recommended that PGW’s proposed CAM be denied, the OBR issue is moot. R.D. at 127.

#### c. Disposition

No Party filed Exceptions regarding the ALJs’ recommendation on this issue. Finding the ALJs’ recommendation to be reasonable, we adopt it without further comment. As we have previously denied the implementation of the CAM, we conclude that this issue is moot.

## H. OCA Confirmed Low Income Outreach Proposal

### 1. Positions of the Parties

The OCA recommended that PGW develop and file specific plans to market its non-LIURP energy efficiency programs to confirmed low-income customers. The OCA submitted that low-income homeowners, in particular, would potentially benefit from this outreach proposal. According to the OCA, confirmed low-income customers should have the same eligibility to participate in non-LIURP DSM programs as any other residential customers. The OCA maintained that a customer’s low-income status has been a substantial barrier to investment in energy efficiency measures, even if they are otherwise cost-effective. The OCA noted that PGW reported that only 145 confirmed low-income customers participated in a non-LIURP DSM program in the past four years, that for the years 2011-2013, PGW had an annual average number of more than 155,000 confirmed low-income customers, and that PGW’s penetration rate of non-LIURP activities within the confirmed low-income population was only 0.09%. The OCA further noted that PGW has determined that the percentage of low-income customers participating in non-LIURP programs to actually be five percent. The OCA opined that, regardless of the percentage of low-income population used (be it 0.09% or five percent), this still does not represent significant low-income customer participation, especially since PGW’s customer base is approximately 31% low-income (155,000 confirmed low-income customers out of approximately 500,000 PGW customers). OCA M.B. at 28-29; OCA R.B. at 11-12.

 The OCA asserted that the population of non-CRP confirmed low-income customers, in particular homeowners, represents a significant untapped group that may otherwise benefit from the residential customer programs. The OCA maintained that non-CRP confirmed low-income customers, including homeowners, are essentially excluded from any opportunities to receive energy efficiency measures because they do not participate in CRP and PGW does not market its other residential customer programs to them. The OCA opined that non-CRP confirmed low-income customers may benefit from participation in PGW’s residential DSM programs. The OCA recommended that the Company develop an outreach plan to be directed towards non-CRP confirmed low-income customers, in particular confirmed low-income homeowners, in order to address this gap. OCA M.B. at 31; OCA R.B. at 13.

 PGW responded that OCA’s reason for this proposal, that confirmed low-income customers are not participating in PGW’s DSM, is not correct. According to PGW, the OCA’s calculation of the penetration rate is based on a faulty analysis which misconstrues the true penetration rate of these customers. PGW asserted that OCA improperly compares the number of non-CRP confirmed low-income DSM participants against the total universe of confirmed low income customers rather than comparing the percentage of confirmed low income customers against the number of DSM participants. PGW argued that by doing this, the OCA’s analysis is skewed to result in a low penetration rate by ignoring the limited number of total DSM projects available and broadly defining the universe of the low-income population. PGW maintained that the more accurate way to calculate the participation rate would be to divide the number of projects available by the number of low income customers availing themselves of the projects. PGW asserted that using this proper analysis of PGW’s low income participation rate shows that confirmed low income customers consist of five percent of the total number of DSM customers and this figure rises to as high as twenty-five percent for some programs. PGW R.B. at 19-20.

Additionally, PGW maintained that it already engages in DSM marketing that targets all potential customers, including low-income customers. PGW explained that its customer service representatives have been provided with DSM talking points for customers with high-bills and receive training on the DSM programs. PGW opined that adopting the OCA’s proposal here would be a wasteful use of DSM resources and have the negative effect of increasing costs needlessly in an area where such activities are unwarranted and at the expense of better uses of funding and overall portfolio cost-effectiveness. PGW M.B. at 42; PGW R.B. at 19-20.

 I&E, the OSBA, and TURN *et al.* all indicated that they took no position on OCA’s Low-Income Outreach Proposal. I&E M.B. at 6; I&E R.B. at 4; OSBA M.B. at 11; TURN *et al.* M.B. at 7. For its part, CAUSE-PA indicated that, while it takes no position on whether to approve OCA’s Low-Income Outreach Proposal, if adopted by the Commission, this type of outreach should not usurp or undermine Universal Service program outreach. CAUSE-PA maintained that confirmed low-income populations should, first and foremost, be encouraged to enroll in CRP as doing so would enable the customer to also enroll in CRP Home Comfort. CAUSE-PA averred that together, these programs are designed to meet the unique needs of low-income customers, and should be utilized to the fullest extent possible before directing economically vulnerable customers to other residential DSM programming. CAUSE-PA M.B. at 15.

### 2. ALJs’ Recommendation

The ALJs recommended that the OCA’s Confirmed Low Income Outreach Proposal be denied. The ALJs stated that they understood the concern raised by the OCA as regardless of which penetration rate computation is used, the end result is that there are a significant number of non-CRP confirmed low-income customers in PGW’s service territory who are not participating in PGW’s non-LIURP DSM programs. However, the ALJs found that considering these non-LIURP DSM programs are voluntary in nature, that PGW is under no obligation to offer them, and that there is limited funding available under each program, they did not believe that redirecting any of the funding available to these programs to a marketing campaign to be a proper use of these resources. The ALJs concluded that doing so would lessen the number of PGW customers who might participate in these programs even further. Moreover, the ALJs concluded that PGW’s current marketing efforts, through its customer service representatives dealing with high bill customers, is a sufficient means of reaching out to potential participants. R.D. at 130-131.

###  3. Disposition

No Party filed Exceptions regarding the ALJs’ recommendation on this issue. Finding the ALJs’ recommendation to be reasonable, we adopt it without further comment.

## I. CRP Home Comfort Program

### 1. Continuation of CRP Home Comfort as PGW’s LIURP Within DSM II Portfolio

#### a. Positions of the Parties

PGW explained that in the *USECP 2014-2016 Order*, the Commission reserved judgment as to whether PGW should be permitted to continue the CRP Home Comfort program as part of its DSM Phase II Plan or “revert it back” to its USECP Plan and require PGW to provide its LIURP proposal to BCS so that it would be “expressly reviewed by [the Commission’s Bureau of Consumer Services (BCS)].”[[60]](#footnote-60) PGW took the position that the CRP Home Comfort Program should remain with PGW’s DSM Plan for several reasons. PGW M.B. at 67.

First, PGW asserted that its LIURP program has been operating within its DSM Plan since officially launched in 2011 and PGW’s proposal here would allow it to continue to operate as part of the DSM Plan. PGW argued that not only has this resulted in administrative efficiencies, well-established reporting requirements, reviews and assessments as the Commission described in its *USECP 2014-2016 Order*, information about the LIURP program is more comprehensive since it is a part of the DSM Plan and cost efficiencies are gained by having it as part of the DSM process. PGW M.B. at 67.

Next, PGW asserted that as part of the DSM Plan, the design, successes and impacts of PGW’s LIURP will be examined through more updated approaches to conservation than is currently contemplated in the currently static LIURP regulations. According to PGW, this enables the Company and the Commission to manage and update a program that is operating in the modern conservation environment. PGW maintained that removal of CRP Home Comfort from the DSM, or a dual review in both the DSM docket and future USECP dockets could result in requirements for CRP Home Comfort that conflict with the requirements of the DSM proceeding and would be unnecessarily confusing and wasteful of resources. PGW M.B. at 68.

Finally, PGW maintained that since its DSM Plan operates on a fiscal year basis while the USECP operates on a calendar year basis, multiple reporting on the same program for different reporting cycles will create additional inefficiencies in terms of staff and consultants’ time and labor. For these reasons, PGW submitted that the continued inclusion of the CRP Home Comfort Program in the DSM is appropriate and should be maintained. PGW M.B. at 68.

The other Parties in this proceeding did not have a particular position with respect to whether the LIURP program remains as part of PGW’s Phase II DSM Plan as long as it does not affect the funding levels, and is not an attempt on PGW’s part to circumvent the requirements of the program. *See* I&E M.B. at 15; OCA M.B. at 72; PICGUG M.B. at 6; TURN *et al.* M.B. at 14; CAUSE-PA M.B. at 23 and CAUSE-PA R.B. at 15.

#### b. ALJs’ Recommendation

The ALJs concluded that as there was no real opposition to PGW regarding the continuation of the LIURP program within DSM Phase II, they agreed with PGW on this proposal. The ALJs found that there was nothing in the record, nor any compelling arguments, that would suggest that PGW is trying to circumvent the requirements of the program. Therefore, the ALJs recommended that the LIURP program move forward within the construct of PGW’s DSM Phase II. R.D. at 133-134.

#### c. Disposition

No Party filed Exceptions regarding the ALJs’ recommendation on this issue. Finding the ALJs’ recommendation to be reasonable, we adopt it without further comment. However, consistent with our discussion *infra*, we seek further comments from interested Parties on whether the LIURP program should be separated from the DSM Plan in the near future.

### **2. CRP Home Comfort Eligibility Crit**eria

#### a. Positions of the Parties

As part of its Phase II DSM Plan, PGW indicated that it proposed to: (1) extend the pool of eligible high gas usage CRP customers beyond the top thirty percent of CRP users, potentially up to the top fifty percent, in order to identify sufficient cases suitable for weatherization; (2) update quality assurance training protocols; and, (3) explore new ways to leverage data and provide additional cost-effective treatment opportunities where full weatherization is prevented due to health, safety and/or structural issues at a home. Also, and consistent with the directive in the *USECP 2014-2016 Order* that PGW reconsider its LIURP eligibility criteria,[[61]](#footnote-61) PGW asserted that it will no longer exclude CRP customers with program arrearages greater than two months from CRP Home Comfort eligibility. PGW M.B. at 70.

 The OCA argued that PGW’s current policy to limit eligibility to CRP participants excludes a substantial portion of the confirmed low-income customer population in the Company’s service territory. The OCA’s position is that the LIURP budget should include a specific set-aside so that up to twenty percent of the total budget is available for, and targeted toward, confirmed low-income customers who are not CRP participants. The OCA stated that PGW’s existing program is directed exclusively to low-income customers who participate in the Company’s CRP program. The OCA alleged that there is a significant unmet need for energy efficiency measures for the non-CRP low-income population within Philadelphia. According to the OCA, the opportunities for energy efficiency measures for low-income customers should be driven primarily by the customer’s usage levels and need. As such, the OCA proposed that the program be structured so that usage levels are within the top thirty to fifty percent of the target population eligible to participate. OCA M.B. at 72-73.

TURN *et al.* maintained that there should be an expansion of the CRP Home Comfort program to include *de facto* electric heating customers[[62]](#footnote-62) and former CRP customers. TURN *et al.* M.B. at 14.

Similar to TURN *et al.*, CAUSE-PA argued for the expansion of the CRP Home Comfort program to include *de facto* heating customers and former CRP customers. CAUSE-PA asserted that *de facto* and former CRP customers are currently ineligible for PGW’s LIURP, despite strong evidence that these programs are capable of producing deep savings for low-income customers and residential ratepayers alike, and could resolve significant public health and safety issues which persist in vulnerable, low-income communities. CAUSE-PA M.B. at 23-24.

Neither I&E nor the OSBA took a particular position on this issue.

PGW opposed the recommendation of the OCA and CAUSE-PA to expand the eligibility requirements of CRP Home Comfort to include more customers, non-CRP customers, and some non-customers. PGW argued that expanding eligibility requirements for CRP Home Comfort: (1) would be administratively complex; (2) will provide no additional value given what the program is already achieving the existing opportunities within the currently targeted population; and, (3) will result in a large influx of customers that would significantly dilute the total pool of eligible customers drawing resources away from those most in need and potentially harming program effectiveness as a result. PGW M.B. at 70-71.

#### b. ALJs’ Recommendation

The ALJs recommended that the eligibility requirements of the LIURP program be based on the proposal of PGW. The ALJs noted that while the OCA, CAUSE-PA and TURN *et al.* all argued that the criteria for the LIURP program should be expanded to include customers who are low-income but do not qualify for the Company’s CRP program, *de facto* heating customers and non-customers, the Company asserted that this was not feasible and would dilute the efficiencies and effectiveness of the LIURP program. The ALJs noted their agreement with PGW in this regard. R.D. at 139-140.

The ALJs concluded that the LIURP program has a sufficient pool of participants drawing upon the CRP program. According to the ALJs, the CRP program provides an established method to verify the low income status of customers, which helps to keep costs down. Further, the ALJs opined that there are still a number of CRP customers that are eligible for LIURP that have not received those services yet. The ALJs stated that they agreed that the best way to provide a positive impact for the non-CRP customers in this context is by appropriately sizing the CRP Home Comfort Program to provide value to the non-CRP customers in terms of the CRP subsidy rather than expanding the program to offer weatherization services to customers in different circumstances and with different effects on costs and benefits. R.D. at 139-140.

#### c. Disposition

No Party filed Exceptions regarding the ALJs’ recommendation on this issue. Finding the ALJs’ recommendation to be reasonable, we adopt it without further comment.

### 3. PGW Proposed New Low-Income Multifamily (LIME) Program

#### a. Positions of the Parties

PGW proposed to include a new Low-Income Multifamily (LIME) program as part of its CRP Home Comfort program in compliance with the *USECP 2014-2016 Order*. PGW noted that the Commission directed PGW to include such a plan within its LIURP program to specifically serve low-income multifamily properties.[[63]](#footnote-63) According to PGW, the Commission also directed that PGW “designate a portion of the [LIURP] budget” for the new program.[[64]](#footnote-64) PGW noted that the Commission recognized that multifamily accounts include commercial ratepayers but indicated that recovering costs through LIURP was deemed appropriate since PGW recovers costs for its LIURP program, in part, from non-residential ratepayers.[[65]](#footnote-65) PGW M.B. at 72-73.

PGW maintained that the LIME program will provide no-cost limited scope energy usage assessments for building owners and will implement cost-effective direct install energy efficiency measures based on the results of energy assessments. PGW asserted that this approach will allow the inclusion of both individually-metered accounts and master-metered properties consistent with PGW’s interpretation of the intent of the USECP *2014-2016 Order*. PGW stated it will select a conservation service provider (CSP) to implement the LIME program. PGW indicated the majority of installations will likely include low cost measures such as low flow faucet aerators, low flow showerheads, programmable thermostats, hot water heater turndowns and pipe wrap, though the potential exists for additional measures, such as air-sealing, insulation and heater or domestic hot water heater replacements, where cost-effective. PGW noted that the LIME program will be included in PGW’s existing third-party evaluator process to perform regular pre- and post-usage impact evaluations which are then used to update savings calculations. PGW M.B. at 73.

PGW asserted that the LIME program will target low-income multifamily buildings with at least fifty percent of residents at or below 150 percent of the Federal Poverty Level, targeting facilities in the top-third tier of usage at the outset of the program. PGW proposed that its primary eligibility criteria are that a property must qualify as publicly subsidized housing. In order to be consistent with the Commission’s *USECP 2014-2016 Order*, PGW indicated that the LIME program will be included within the CRP Home Comfort program and PGW’s initial pilot phase for LIME is proposed at approximately 6.45% of the total proposed budget for CRP Home Comfort.[[66]](#footnote-66) PGW M.B. at 74.

In its Reply Brief, PGW, consistent with a Stipulation reached between it and I&E (the PGW/I&E Stipulation), modified its original proposal as follows: (1) PGW will convene a stakeholder collaborative to receive input from interested parties about the program; (2) A seventy-five percent confirmed low income residency will be required for properties to be eligible for LIME treatments; and, (3) 100 percent of the costs for confirmed low income customer usage will be recovered through the USC, while thirty-three percent of the costs for all other customer usage, whether commercial or non-low-income customers, will be recovered through the ECRS and the remaining costs for this other customer usage will be funded by property owners.[[67]](#footnote-67) PGW R.B. at 69.

PGW noted that the other Parties raised the following concerns about PGW’s LIME program:

(1) the manner in which PGW proposed to designate property as low-income (I&E, OCA);

(2) the proposed measures to be provided (CAUSE-PA, TURN *et al.*);

(3) recovering the costs of the program through the USC (I&E, OCA, OSBA); and,

(4) designating a portion of the CRP Home Comfort program to fund the program (OCA, CAUSE-PA, and TURN *et al.*).

The Company explained that the revision of its original proposal is consistent with the PGW/I&E Stipulation which addresses concerns raised by the Parties regarding the designation of eligible properties and cost recovery. PGW proposed that to the extent there are still issues regarding the measures, they should be discussed in the collaborative process agreed to in the PGW/I&E Stipulation. Finally, PGW contended that its inclusion of LIME as part of the CRP Home Comfort budget is consistent with the *USECP 2014-2016 Order* and it does not support removing the program from this budget. PGW R.B. at 69-70.

 I&E supported PGW’s LIME program as modified by the Stipulation. I&E R.B. at 19-20.

 The OCA supported the development of a multi-family program and recommended that such a program be directed to tenant-metered multi-family housing with a significant percentage of low-income families. However, the OCA opposed PGW’s LIME program as it was originally structured. The OCA explained that its two major concerns were: (1) the manner in which the housing is designated as low-income and; (2) how the costs are recovered.[[68]](#footnote-68) The OCA maintained that any LIME program which is treated as a universal service program should serve tenant-metered low-income multi-family housing units only, and should have at least seventy-five percent of its residents defined as low-income by PGW’s LIURP program and the Commission’s Regulations.[[69]](#footnote-69) OCA M.B. at 75; OCA R.B. at 29.

CAUSE-PAstated thatitwas in accord with PGW’s proposal, made in compliance with the *USECP 2014-2016 Order*, to initiate a pilot program to serve low-income multifamily properties. While CAUSE-PA supported LIME, it recommended that PGW should extend the program’s reach by providing a greater level of comprehensive measures. CAUSE-PA M.B. at 24.

CAUSE-PA further supported the development of an independent LIME budget, which would add value to the DSM program without reducing the available funding and effectiveness of current DSM program components like CRP Home Comfort. CAUSE-PA asserted that the importance of maintaining required LIURP program funding and service at current levels also means that the development and implementation of new initiatives such as LIME will negatively impact the reach of current budgets and services. CAUSE-PA maintained that budget allocations to LIME should be developed as a supplement and an addition to the currently existing LIURP/CRP Home Comfort budget. CAUSE-PA indicated that PGW should not replace or dilute currently existing funding addressing low-income residential energy efficiency as part of LIURP. CAUSE-PA M.B. at 24-25.

TURN *et al.* supported PGW’s proposal to initiate a pilot program to serve low-income multifamily properties. TURN *et al.* agreed with the recommendations of CAUSE-PA on how the proposal can be improved. TURN *et al.* argued for the establishment of a LIME program that does not replace or diminish LIURP funding. However, TURN *et al.* maintained that it was concerned with the LIME program’s ability to compromise the LIURP budget when record evidence shows that significant need remains for single family LIURP even at the existing higher LIURP funding levels. TURN *et al.* M.B. at 14-15.

The other Parties did not take any position on this issue.

#### b. ALJs’ Recommendation

In their Recommended Decision, the ALJs recommended that the Commission adopt the LIME program as modified by I&E and PGW in their Joint Stipulation. The ALJs found that while the OCA, CAUSE-PA and TURN *et al.* had concerns with the program as structured, they believed that I&E and PGW found an adequate solution within the Joint Stipulation. The ALJs concluded that the Joint Stipulation resolved the specific OCA concern that those properties covered by LIME should have at least seventy-five percent of the apartments occupied by low-income customers. R.D. at 155-156.

The ALJs noted that the OCA also argued that the LIME program costs should not be recovered from the USC, while CAUSE-PA indicated that a separate fund should be created to fund the LIME program so that it does not dilute the funding for the LIURP program. According to the ALJs, the PGW/I&E Stipulation indicates that program costs for the LIME will be recovered through PGW’s USC applicable to all volumes of firm gas delivered and LIME project costs will be recovered: (i) 100 percent for confirmed low income customer usage through the USC; (ii) thirty-three percent of project costs for all other customer usage through the ECRS; and, (iii) the remainder of project costs will be funded by property owners. R.D. at 156.

Therefore, the ALJs recommended that the Commission approve the LIME program as set forth by PGW and modified by the PGW/I&E Stipulation in terms of eligibility and funding for the LIME program. The ALJs concluded that it was in the public interest to approve the LIME program as proposed. R.D. at 156.

#### c. Exceptions and Replies

In its Exceptions, PGW notes that while it does not object to the ALJs’ recommendations regarding the proposed LIME program, two findings of fact erroneously characterize the program and requests that these be corrected. PGW notes that Finding of Fact Number 62 states that there would be no direct benefit of the LIME program for PGW’s residential low-income customers. PGW further points out that Finding of Fact Number 64 states that the election criteria for the properties selected for the LIME program will be based only on income status of the residents not billed for gas service and building usage criteria. PGW asserts that pursuant to the Stipulation entered into between itself and I&E, the initial proposal was modified to treat only those properties that qualify as publicly subsidized housing in which the residents include at least seventy-five percent that are confirmed low-income. Thus, according to PGW, the LIME program will target low-income customers. PGW maintains that while some buildings will be master metered, others may be individually metered with non-CRP customers who would receive energy savings benefit from treatment. Also, PGW avers that there is no reason to believe that only the residents not billed for gas service will be included in the review of properties for eligibility. Additionally, PGW claims that the use of publicly subsidized housing ensures that the selection criteria will be based on income status of all residents in the building. PGW Exc. at 49-50.

Next, PGW seeks clarification that although the ALJs recommend approving the LIME cost recovery provisions set forth in the PGW/I&E Stipulation, they do not specifically recommend that the Commission modify or revise the *USECP 2014-2016 Order* to authorize implementation of the proposed cost recovery provisions. PGW requests that the Commission do so in its final order. PGW notes that the Commission’s *USECP 2014-2016 Order* required a portion of the LIURP budget to be allocated to the LIME program and recognized that the LIURP budget is funded through the USC. According to PGW, because the PGW/I&E Stipulation would allocate some of the costs through the USC and some of the costs through the ECRS and the property owners, it requests that the Commission modify or revise its prior directive to the extent necessary to approve the proposed resolution. PGW Exc. at 50-51.

In its Replies to Exceptions, CAUSE-PA does not take a position on PGW’s request for clarification, except to state that it supports PGW’s adoption of a multifamily program. CAUSE-PA asserts that the carefully reasoned decision of the ALJs approving that program should not be disrupted. CAUSE-PA R. Exc. at 23.

In its Replies to Exceptions, I&E states that it is responding to this PGW Exception only for the sake of providing clarity to the record. I&E opines that, in light of the ALJs’ recommendation to approve the LIME program as modified by the PGW/I&E Stipulation, the ALJs implied a recommendation for the Commission to modify or revise the *USECP 2014-2016 Order* to authorize implementation of the proposed cost recovery provisions. According to I&E, this implication is derived from the fact that the PGW/I&E Stipulation, which the ALJs recommended be approved, contains the following at ¶ 1(d):

The Stipulating Parties acknowledge that the LIME cost recovery provisions are not consistent with the Commission’s Final Order approving PGW’s Universal Service and Energy Conservation Plan for 2014-2016 and ask the Commission to modify or review its prior directive to the extent necessary to approve this proposed resolution.

I&E points out that PGW’s Exception correctly notes that the Recommended Decision does not specifically recommend that the Commission modify or revise the *USECP 2014-2016 Order* to authorize implementation of the LIME’s proposed cost recovery provisions. As such, I&E states that it joins with PGW’s request that the Commission modify or revise the *USECP 2014-2016 Order* in accordance with the PGW/I&E Stipulation in its final order. I&E R. Exc. at 12-13.

 I&E also states that it concurs in PGW’s request for the Commission to modify Finding of Fact Numbers 62 and 64 for the reasons set forth in PGW’s Exceptions, which explain that application of the PGW/I&E Stipulation negates these findings. I&E R. Exc. at 13.

#### d. Disposition

Based upon our review of the evidence of record, we shall adopt the recommendation of the ALJs to adopt PGW’s proposed LIME program as modified by the I&E/PGW Joint Stipulation. We conclude that PGW’s proposed implementation of this program to be reasonable and in the public interest. However, we shall also adopt the requested clarifications within the Exceptions of the Company that request that we correct Findings of Fact Numbers 62 and 64, and to modify the *Universal Service and Energy Conservation Plan for 2014-2016 Order* to permit the proposed LIME cost recovery mechanisms to be implemented.

We note that the ALJs’ Finding of Fact Number 62 states as follows:

62. There would be no direct benefit of the program for PGW residential low-income customers. OCA St. 2 at 34-35.

R.D. at 14.

We find that pursuant to the PGW/I&E Stipulation, PG&W’s LIME program proposal was modified to treat only those properties that qualify as publicly subsidized housing in which the residents include at least seventy-five percent that are confirmed low-income. Therefore, the LIME program will target and benefit low income customers and, as such, we shall modify Finding of Fact Number 62, accordingly.

 Next, we note that the ALJs’ Finding of Fact Number 64 states as follows:

64. The selection criteria for the properties will be based only on income status of the residents not billed for gas service and building usage criteria. OCA St. 2 at 35-36.

R.D. at 14.

We conclude that this Finding of Fact should also be modified as we are in agreement with PGW that the Stipulations use of “subsidized housing with 75% confirmed low income” as the selection criteria renders this Finding of Fact to be erroneous.

 Next, we note that in our *USECP 2014-2016 Order* we required that a portion of the LIURP budget be allocated to the LIME program and recognized that the LIURP budget is funded through the USC. *See USECP 2014-2016 Order* at 57. We find that as the Stipulation agreed to by the Company and I&E would allocate some of the costs through the USC and some of the costs through the ECRS and the property owners, we are in agreement with PGW and shall modify this prior directive to be consistent with the PGW/I&E Stipulation.

Accordingly, we shall grant the Exceptions filed by PGW on this issue and adopt the recommendation of the ALJs, as modified by the PGW Exceptions.

## J. Chapter 58 Waiver Requests

PGW is seeking Commission approval of waivers from Chapter 58 of the Commission’s LIURP Regulations, to the extent necessary, to permit its CRP Home Comfort program to satisfy the regulatory requirements associated with the program, or in the alternative, issue an order exempting PGW’s CRP Home Comfort program from certain provisions of Chapter 58. Petition at 27-28.

PGW’s CRP Home Comfort program is designed to be consistent with currently accepted standards for energy efficiency programs focusing on programs that produce positive total resource cost/benefit ratios. According to PGW, the Commission, in its *USCEP 2014-2016 Order* approving its current Universal Service Plan, directed PGW to specifically request a waiver of Sections 58.11(a) and 58.5 of the LIURP Regulations. PGW, in compliance with this directive, has reviewed all the LIURP Regulations and has requested, to the extent necessary, an exemption and/or waivers of the sections discussed herein. PGW indicated that as part of its DSM Plan, its LIURP is assessed through more updated approaches to conservation than is currently contemplated in the Commission’s LIURP Regulations. PGW opined that this would enable the Company and the Commission to perform updates and revisions to its CRP Home Comfort program that is operating in the modern conservation environment. PGW M.B. at 75-76.

Specifically, PGW requested waivers from the following Sections of Chapter 58: (1) 58.4 (relating to public notice of funding services); (2) 58.5 (relating to program funding); (3) 58.9 (relating to targeted mass mailings); (4) 58.10 (relating to prioritization for receipt of LIURP services); (5) 58.11 (relating to performance of an energy survey for installed program measures); (6) 58.14(c)(1) (relating to electricity usage and reduction); and, (7) 58.16 (relating to usage reduction program advisory panels). The requested waivers and the justification for the waivers are set forth in Appendix A to the Petition. Petition at 13.

No Party opposed PGW’s waiver request for 52 Pa. Code §§ 58.9, 58.11, and 58.16. However, several Parties were opposed to PGW’s waiver request for 52 Pa. Code §§ 58.4(a), 58.10, and 58.14. Specifically, the OCA, CAUSE-PA, TURN, *et al.* and the CAC opposed PGW’s waiver request of 52 Pa. Code § 58.4(a). The OCA, CAUSE-PA and TURN, *et al.* opposed PGW’s waiver request of 52 Pa. Code § 58.10, while only the OCA opposed PGW’s waiver request of 52 Pa. Code § 58.14.

With regard to PGW’s requested waiver of 52 Pa. Code § 58.5 (relating to program funding), while no Party objected to this waiver request, the OCA expressed concerns about PGW’s administrative cost levels. Nonetheless, because PGW’s CRP Home Comfort program is projected to yield a positive TRC and because PGW expects a rise in the percentage of LIURP funds for customer installations once cost reductions are identified and implemented, the OCA’s concern became a non-issue. PGW M.B. at 79.

### 1. Exemption Pursuant to 52 Pa. Code § 58.18

PGW’s waiver request relies on the exemption provision set forth in Section 58.18 of the Commission’s LIURP Regulations. Section 58.18 allows a covered utility alleging special circumstances to seek an exemption for its usage reduction program from the LIURP Regulations. 52 Pa. Code § 58.18.

#### a. Positions of the Parties

PGW averred that its LIURP has operated within the DSM Plan since its inception in 2011, and is consistent with the goals set forth in the Commission’s LIURP Regulations at 52 Pa. Code § 58.1. According to PGW, its CRP Home Comfort program is designed and evaluated according to the currently accepted standards for energy efficiency programs and has produced significant benefits to program participants. PGW maintained that the Commission’s more dated LIURP Regulations (first effective in 1993, and most recently updated in 1998) is in conflict with the currently accepted standards for energy efficiency programs. PGW, therefore, argued that special circumstances exist pursuant to 52 Pa. Code § 58.18, for the Commission to exempt its CRP Home Comfort program from Chapter 58 or, at the very least, grant specific waivers to particular sections of the Chapter. PGW M.B. at 76-77.

No Party opposed PGW’s reliance on 52 Pa. Code § 58.18 for its waiver requests.

#### b. ALJs’ Recommendation

The ALJs acknowledged PGW’s argument that special circumstances exist pursuant to 52 Pa. Code § 58.18, for the Commission to exempt the CRP Home Comfort program from Chapter 58 or, at the very least, grant the specific waivers to particular sections of Chapter 58 of the Commission’s Regulations. The ALJs, however, found that while a waiver of some sections of Chapter 58 may be appropriate, they did not believe it was proper to grant a blanket waiver of all sections of Chapter 58. R.D. at 171-172.

#### c. Disposition

No Party filed Exceptions regarding the ALJs’ recommendation on this issue. Finding the ALJs’ recommendation to be reasonable, we adopt it without further comment.

###  2. Unopposed Waiver Requests - 52 Pa. Code §§ 58.9, 58.11 and 58.16

#### a. Positions of the Parties

PGW seeks waivers of Sections 58.9, 58.11 and 58.16 of the LIURP Regulations and no Party opposed these waiver requests. PGW M.B. at 77.

With regard to PGW’s request for a waiver of Section 58.9,[[70]](#footnote-70) PGW averred that it selects targeted CRP customers that can benefit from participating in the CRP Home Comfort program and ensures that the program is limited to its highest usage customers in order to control its administrative costs. According to PGW, the selected customers are then informed about the CRP Home Comfort program at the time they sign up for CRP and selection letters are then mailed to the assigned customers. PGW stated that it is also exploring new communication tools like the use of email and text messages, to inform customers about the CRP Home Comfort program requirements and appointments. PGW, therefore, requested a waiver of Section 58.9(a)(1), which requires a utility to undertake a targeted mass mailing. *Id.*

With regard to PGW’s request for a waiver of Section 58.11(a),[[71]](#footnote-71) PGW averred that it uses TRC cost-effectiveness to determine what measure to include in a project rather than a twelve-year simple payback criteria as identified in Section 58.11(a). PGW noted that its TRC cost-effectiveness measure is effective and is consistent both with the current industry standards and the approach used by the Commission for Act 129 electric programs. PGW, therefore, requested a waiver of Section 58.11(a) of the Commission’s Regulations. *Id.*

Lastly, with regard to PGW’s request for a waiver of Section 58.16 (a),[[72]](#footnote-72) PGW stated that it is in the process of establishing an Advisory Panel. PGW, therefore, requested a waiver of Section 58.16 (a) of the Commission’s Regulations, pending the establishment of the panel. *Id.* at 78.

As noted, no Parties opposed PGW’s proposed waivers of Sections 58.9, 58.11 and 58.16 of the Commission’s Regulations.

#### b. ALJs’ Recommendation

The ALJs, after considering the reasons presented by PGW, found PGW’s waiver request of Section 58.9 of the Commission’s LIURP Regulations, to be reasonable and in the public interest. The ALJs, therefore, granted the waiver of 52 Pa. Code § 58.9. R.D. at 172.

With regard to PGW’s waiver request of Section 58.11(a), the ALJs agreed with PGW’s assessment of the cost-effectiveness of its TRC. The ALJs, therefore, granted PGW’s waiver request of Section 58.11 of the Commission Regulations. *Id.*

With regard to PGW’s requested waiver of Section 58.16 of the Commission’s Regulations, the ALJs acknowledged that PGW is in the process of establishing an Advisory Panel, as required in Section 58.16(a). The ALJs opined that a waiver is in the public interest pending the establishment of the Advisory Panel by PGW. As such, the ALJs granted PGW’s request for a waiver of Section 58.16 of the Commission’s Regulations. *Id.*

####  c. Disposition

No Party filed Exceptions regarding the ALJs’ recommendation on this issue. Finding the ALJs’ recommendation to be reasonable, we adopt it without further comment.

### 3. PGW’s Requested Waiver of 52 Pa. Code § 58.5

Section 58.5 of the Commission’s Regulations deals with the amount of the LIURP budget that may be spent on administrative costs. Section 58.5, provides in part, that “not more than 15% of a covered utility’s annual budget for its usage reduction program may be spent on administrative costs, as defined in § 58.2 (relating to definitions). The costs associated with approved pilot programs are exempt from the 15% cap.” 52 Pa. Code § 58.5.

#### a. Positions of the Parties

PGW averred that its CRP Home Comfort program design allows payment to CSPs for annual administrative expenses, costs not directly related to the provision of program services, such as office overhead, to not exceed fifteen percent of the budget category “Total Cost.” PGW stated that the Company also allows its CSPs to charge up to ten percent of the CRP Home Comfort program budget category “Total Cost” for variable program support expenses which, according to PGW, are not administrative expenses. PGW alleged that in addition to the administrative costs, it also charges its own overhead costs, and therefore, arguably exceeds the administrative cost cap. PGW M.B. at 78.

 Additionally, PGW asserted that it evaluates and reallocates funding for its contractors based on the cost-effectiveness and the level of energy savings of the contractors’ projects. According to PGW, this methodology controls costs because it is designed to meet or exceed industry standard TRC cost-effectiveness targets. PGW opined that this is a more effective way to protect ratepayer dollars than a strict adherence to administrative cost caps. PGW noted that it is also actively exploring ways to reduce the ongoing overhead costs for the CRP Home Comfort program. Therefore, PGW requested a waiver of Section 58.5 of the Commission’s Regulations. *Id.* at 78-79.

The OCA did not object to this waiver request but expressed concern with PGW’s administrative cost levels, which are in excess of twenty percent of the program budget. The OCA, however, noted that PGW provided adequate support for the high administrative costs. Specifically, the OCA acknowledged the successful process used by PGW to reallocate the LIURP budget between CSPs based on “high performance.” The OCA stated that it is not opposed to this waiver request as long as PGW’s existing CRP Home Comfort program budget of $7.6 million is maintained. The OCA noted that with PGW’s high administrative costs, a significantly reduced budget may impact the effectiveness of the program. OCA R.B. at 34-35.

#### b. ALJs’ Recommendation

The ALJs recognized the existing performance-based measures used by PGW to address high administrative costs and to ensure cost-effectiveness and maximum energy savings. The ALJs also acknowledged PGW’s active exploration of ways to reduce its ongoing overhead costs for the CRP Home Comfort program. The ALJs opined that their recommendation that PGW’s current LIURP budget of $7.6 million be maintained at the current level, and the fact that PGW’s CRP Home Comfort program is projected to enjoy a positive TRC, should address the OCA’s concern regarding PGW’s high administrative costs. Therefore, the ALJs recommended that PGW’s request for a waiver of Section 58.5 of the Commission’s Regulations be granted. R.D. at 172-173.

#### c. Disposition

No Party filed Exceptions regarding the ALJs’ recommendation on this issue. Finding the ALJs’ recommendation to be reasonable, we adopt it without further comment.

### 4. 52 Pa. Code § 58.4 (a) Waiver Request

Section 58.4(a) addresses the minimum funding requirements of 0.2% for a LIURP program and provides for public notice in the event of a reduction in program funding. Section 58.4 (a) provides: “[p]roposed funding revisions that would involve a reduction in program funding shall include public notice found acceptable by the Commission’s Bureau of Consumer Services (BCS), and the opportunity for public input from affected persons or entities.” 52 Pa. Code § 58.4(a).

#### a. Positions of the Parties

PGW is seeking a waiver of Section 58.4(a) of the Commission’s LIURP Regulations. PGW opined that this section does not apply because there is currently no reduction in its LIURP program funding and because its proposed CRP Home Comfort program funding is in excess of the required 0.2% minimum.[[73]](#footnote-73) PGW, nonetheless, noted that to the extent that the Commission contemplates that PGW’s proposed budget going forward requires public notice, PGW would work with BCS on the appropriate notification process.[[74]](#footnote-74) PGW M.B at 79-80.

PGW further contended that its current Petition containing a proposed budget for LIURP was filed more than a year ago, on December 23, 2014. PGW stated that it has provided responses to numerous rounds of discoveries from the Parties regarding the Petition. PGW maintained that affected Parties in this proceeding and the proceeding involving its DSM Bridge Plan that was approved on May 7, 2015, have had every opportunity to request a public input hearing or public notice but have failed to do so. PGW disputed the allegation that it did not provide the affected Parties due process or full and fair opportunity for them to express their views about its proposal. PGW, therefore, requested that the Commission dismiss the arguments presented by the Parties opposing its waiver request. PGW R.B at 75-76.

The OCA is opposed to PGW’s waiver request. According to the OCA, per the *USCEP 2014-2016 Order*, PGW is required to submit a LIURP investment plan that adequately reflects the needs of its service territory, and provide an opportunity for public input. The OCA emphasized the need for public input in PGW’s LIURP, as expressed in the *USCEP 2014-2016 Order*. The OCA stated as follows:

Part of that “appropriate regulatory review” is the solicitation and consideration of stakeholder input. That opportunity for public input, particularly, in light of PGW’s LIURP needs

assessment (which PGW has not even introduced into evidence in this proceeding) is an ongoing task that would continue to be an essential part of any regulatory review of LIURP.

OCA M.B. at 81, citing *USCEP 2014-2016 Order* at 74.

The OCA also disputed PGW’s claim that there will be no funding reduction in PGW’s proposal.[[75]](#footnote-75) The OCA argued that while the funding reduction is from the Phase I to Phase II DSM Plans, PGW, nevertheless, is proposing a seventy-five percent reduction for the LIURP program from 2015 to 2016. OCA M.B. at 81-82. The OCA asserted that due to the significant reduction in PGW’s LIURP budget, PGW needs to provide notice and an opportunity for public input. According to the OCA, this is a fundamental principle of the law that should not be waived. *Id.*, OCA R.B. at 33.

 CAUSE-PA is also opposed to PGW’s request for a waiver of Section 58.4(a) of the LIURP Regulations. CAUSE-PA argued that PGW has not presented any “special circumstances” that warrants a waiver of the critical protections contained in this regulation, especially, since PGW will be significantly reducing its LIURP budget. CAUSE-PA M.B at 25. CAUSE-PA contended that the arguments presented by PGW as justification for its waiver request are without merit, insubstantial, unpersuasive, are based on convoluted and circular reasoning, and should therefore be rejected. *Id.* at 26. CAUSE-PA disagreed with PGW’s argument that Section 58.4 (a) does not apply to PGW’s DSM Phase II proposal to reduce the LIURP budget simply because a future LIURP budget has not been approved. CAUSE-PA opined that this argument is flawed because PGW is attempting to dramatically reduce its current program funding levels by approximately seventy-five percent. *Id.* at 26-27.

CAUSE-PA also asserted that PGW’s requested waiver circumvents an important due process in the Commission’s LIURP Regulations which requires meaningful public notice and an opportunity for public input when there is a proposed program funding reduction. CAUSE-PA disagreed with PGW’s claim that providing such a notice now is inappropriate because there is no LIURP budget for the 2016-2020 period. CAUSE-PA opined that public notice and an input process is required in order for the Commission to make a meaningful determination of PGW’s proposed budget, especially, because of the potential impact of PGW’s proposed funding reduction on its LIURP program. CAUSE-PA noted that the fact that PGW is willing to work with BCS concerning public notice and input, makes PGW’s waiver request unnecessary. CAUSE-PA concluded that PGW has not demonstrated “special circumstances” which would warrant a waiver of Section 58.4(a) of the Commission’s LIURP Regulations. *Id.* at 27‑28.

 TURN *et al.* is also opposed to PGW’s request for a waiver of Section 58.4(a) of the Commission’s LIURP Regulations. TURN *et al.* argued that a waiver would deprive the public from having a meaningful opportunity to weigh in on the adequacy of PGW’s LIURP budget and the appropriateness of a budget reduction. TURN *et al.* agreed with CAUSE-PA that PGW’s arguments for a waiver of Section 58.4(a) are unpersuasive and amount to circular reasoning. TURN *et al.* M.B. at 15-16. According to TURN *et al*., even if the Commission agrees that the LIURP budget must be approved before the requirements of Section 58.4(a) become applicable, PGW has failed to provide a persuasive explanation to justify granting a waiver of this provision of Section 58.4(a). *Id.* at 16.

The CAC noted that PGW has agreed to work with BCS regarding an appropriate public notice consistent with 52 Pa. Code § 58.4(a). The CAC strongly supported public notice and participation in all forms. CAC R.B. at 8.

#### b. ALJs’ Recommendation

The ALJs found merit with the OCA’s argument that the public needs to be notified and should be given an opportunity to comment on the reduction in PGW’s program funding. R.D. at 173-174. Although PGW argued that it filed its Petition more than a year ago, and the public advocates could have requested a public input hearing during the period of this proceeding, the ALJs disagreed. According to the ALJs, public notice and due process are fundamental requirements of Section 58.4(a), and PGW has not established any “special circumstances” that warrants a waiver of this section. The ALJs, therefore, denied PGW’s request for a waiver of Section 58.4(a) of the Commission’s Regulations. *Id.*

#### c. Exceptions and Replies

 In its Exceptions, PGW disagrees with the ALJs’ recommendation regarding its waiver request of 52 Pa. Code § 58.4(a). PGW requests that the Commission reject or clarify the ALJs’ recommendation regarding this issue. PGW faults the ALJs for relying on the due process principle and the “special circumstances” requirement in their denial of PGW’s waiver request. PGW Exc. at 45-46.

PGW reiterates the two reasons it believes the public notification requirements of 52 Pa. Code § 58.4(a) do not apply in this case. First, PGW contends it is not seeking a reduction of an already approved budget, because there is currently no approved LIURP budget beyond the expiration of the *DSM Bridge Plan.*[[76]](#footnote-76) Secondly, PGW asserts that its proposed funding level for LIURP far exceeds the 0.2% minimum requirement. PGW notes while it is not seeking a waiver of the entire regulation, out of an abundance of caution, and to the extent the Commission disagrees with its waiver request, it sought a limitedwaiver of just the public notice requirement of Section 58.4 of the LIURP Regulations. PGW states that it has committed to working with BCS going forward in implementing an appropriate public notice process as may be directed by the Commission. *Id.*

PGW also questions the ALJs’ conclusion regarding the public notice and due process requirements, despite the ALJs’ acknowledgement that PGW filed its current Petition in December 2014, during which time, five public interest advocacy groups including the OCA, CAUSE-PA, TURN, *et al.,* the CAC, and the OSBA have actively participated in the proceeding. PGW asserts that it provided notice in its USECP 2014-2016 proceeding regarding its planned LIURP budget proposal. PGW claims it also served a copy of the current Petition with BCS, and invited BCS to participate in settlement discussions. Pursuant to all these actions it has taken, PGW retorts that it has complied with the public notice and due process requirements of Section 58.4 of the Commission’s Regulations. *Id.* at 46-47.

In its Replies to Exceptions, the OCA disagrees with PGW. The OCA believes PGW is trying to deprive its customers the due process required by law by attempting to mischaracterize the reality of its proposal, which significantly reduces the level of its LIURP funding. According to the OCA, PGW’s proposed DSM Plan involves a seventy-five percent reduction of the LIURP program funding from 2015 to 2016, which is less than what the Company has been spending for the past six years. The OCA believes PGW’s contention that its proposal does not reduce the LIURP funding is based solely on semantics. Therefore, the OCA requests that the Commission uphold the ALJs’ recommendation denying PGW’s waiver request of 52 Pa. Code § 58.4(a). OCA R. Exc. at 35-36.

In its Replies to Exceptions, CAUSE-PA also asserts that the ALJs’ were correct in rejecting the waiver request, which CAUSE-PA believes is an attempt by PGW to circumvent the due process requirements of Section 58.4 (a) of the Commission’s Regulations. CAUSE-PA posits that the ALJs were right in their explanation that “the public has a need and an interest to provide comment on such reductions in the program funding.” CAUSE-PA avers that PGW has failed to provide any “special circumstances” to warrant a waiver of this critical protection mechanism. Therefore, CAUSE-PA

requests that the Commission deny PGW’s waiver request of 52 Pa. Code § 58.4(a). CAUSE-PA R. Exc. at 21-22.

#### d. Disposition

Upon our consideration of the record evidence, as well as the arguments put forth by the Parties in this proceeding, we shall deny PGW’s waiver request of 52 Pa. Code § 58.4(a). We are in agreement with the recommendation of the ALJs that the public notice and due process requirements are fundamental requirements of Section 58.4 of the LIURP Regulations. Contrary to PGW’s claim, the ALJs supported the OCA and CAUSE-PA who have both indicated that PGW’s proposal will significantly reduce its LIURP program funding. We conclude that despite the involvement of the public advocacy groups in this fully litigated proceeding, there is still a need for public notice and due process as required in 52 Pa. Code § 58.4(a), especially, because PGW is proposing a reduction in its program funding. Further, we find that PGW has not established any “special circumstances” to justify a waiver request of Section 58.4 of the LIURP Regulations at this time. Therefore, we shall deny the Exceptions of PGW on this issue and adopt the ALJs’ recommendation that denies PGW’s waiver request of Section 58.4 of the Commission’s LIURP Regulation.

### 5. 52 Pa. Code § 58.10 Waiver Request

Section 58.10(a)(2) and (3) of the Commission’s LIURP Regulations establish prioritization for receipt of program services based on arrearages and income. Prioritization for LIURP program services is determined first by the customers with the largest usage and greatest opportunities for bill reductions. 52 Pa. Code § 58.10(a)(1). Among those customers with the same standing, the LIURP Regulations then prioritize those customers with the greatest arrearages and in particular, customers with the largest arrears in relation to the lowest percentage of income. 52 Pa. Code § 58.10(a)(2). Finally, all things being equal, those customers whose incomes place them “farthest below the maximum eligibility” are then prioritized. 52 Pa. Code § 58.10(a)(3).

#### a. Positions of the Parties

PGW, to the extent necessary, seeks a waiver of Section 58.10 of the Commission’s LIURP Regulations. PGW stated that its prioritization targets the highest usage CRP customers and not customers with the highest arrearages or lowest incomes. PGW averred that its current eligibility and prioritization strategies were developed to target the program’s key performance indicators, which are total gas savings and total cost-effectiveness. PGW opined that total gas savings produce the greatest reductions to the CRP subsidy that is paid by all other PGW customers. According to PGW, it does not prioritize selections based on the highest arrearage or lowest income customers because its CRP customers only pay a percentage of their income and are not impacted financially by their LIURP participation or asked-to-pay bill.[[77]](#footnote-77) PGW M.B. at 80. PGW clarified that it is only seeking the waiver that requires PGW to prioritize customers for LIURP treatment based on arrearages and income deficits and not a waiver of the requirement to prioritize customers for the receipt of LIURP benefits. PGW R.B. at 77.

The OCA, in opposition to PGW’s waiver request, criticized PGW’s prioritization approach. OCA M.B. at 82. The OCA stated the following regarding PGW’s prioritization approach:

Even within the population served by CRP, which is a percentage of income-based program, the ability of CRP participants to maintain their payments is based, in part, on their pre-existing level of arrearages and on their income deficit. Whether or not prioritizing LIURP investments based on arrearages and income deficits helps the Company to achieve its DSM-related objectives, using such a prioritization within those customers who are equally eligible would help the Company meet its universal service objectives.

*Id.* at 82-83.

The OCA maintained that PGW’s LIURP prioritization should be based on the LIURP Regulations. The OCA, therefore, requested that PGW’s request for the waiver of Section 58.10 of the Commission Regulations be denied. *Id.*

TURN *et al.* also opposed PGW’s requested waiver. TURN *et al.* asserted that PGW did not explain why, as PGW claimed, further prioritization among customers who have already been identified for receipt of services would lead to imagined negative impacts. TURN *et al.* M.B. at 16-17. TURN *et al.* agreed with the OCA that PGW’s prioritization should be based on arrearages and income deficits among equally eligible customers. TURN *et al.* argued that the Commission’s position on this issue was clearly expounded in the *USECP 2014-2016 Order*, which states as follows:

The LIURP Regulations clearly establish a priority for selecting customers to receive weatherization services under the program. Although the PGW [LIURP] program is operating within the DSM portfolio of programs, the selection method for customers should not change from what it would be if [LIURP] were part of PGW’s USECP.

*Id.* at 17, citing *USECP* *2014-2016 Order* at 55.

CAUSE-PA also opposed PGW’s waiver request. CAUSE-PA asserted that PGW did not provide any support for its hypothesis that the prioritization requirements of LIURP Regulations involving customers who have already been identified for receipt of services, would lead to negative impacts. Similar to TURN *et al.,* CAUSE-PA posited that it is appropriate to use arrearages and income deficits to prioritize investments among equally eligible customers. CAUSE-PA further noted that the Commission’s position is clear on this issue as demonstrated in the Commission’s *USECP 2014-2016 Order*. CAUSE-PA M.B. at 28-29, citing *USECP 2014-2016 Order* at 55.

#### b. ALJs’ Recommendation

After considering the arguments of the Parties regarding this waiver request, the ALJs agreed with the OCA stating that “within the pool of CRP customers who are eligible for LIURP services, it would be helpful to further prioritize eligible customers based on arrears and on income deficit.” R.D. at 174. According to the ALJs, even in a percentage of income based program such as the CRP, payments of eligible customers are based in part, on their pre-existing arrears and income deficit. The ALJs further opined that prioritization based on arrearages and income deficit would help PGW meet its universal service objectives. The ALJs, therefore, denied PGW’s request for a waiver of Section 58.10 of the Commission’s Regulations. *Id.*

#### c. Exceptions and Replies

In its Exceptions, PGW disagrees with the ALJs’ recommendation. PGW questions the ALJs’ denial of its waiver request despite their recognition of the fact that the receipt of LIURP treatment generally does not have a financial impact on the CRP customer who receives the treatment. PGW argues that the ALJs’ suggested prioritization should be rejected because adopting such a recommendation would erode the effectiveness of its LIURP and would produce no greater financial benefit for the CRP customers receiving the LIURP services. PGW Exc. at 39-40.

First, PGW asserts that its current prioritization strategy for LIURP weatherization treatment fully satisfies its universal service objectives. PGW states that while the ALJs focused on PGW’s universal service objectives in support of their recommendation, they failed to explain their interpretation of the specific requirements of the objectives. According to PGW, the ALJs failed to address the fact that the Commission had already acknowledged that “performing extensive and costly weatherization services on a premise with questionable bill payment history is likely “not a prudent investment of funds.” *Id.* at 40, citing *USECP 2014-2016 Order* at 55. PGW asserts that its program complies with the stated LIURP goals[[78]](#footnote-78) and the mandated

universal service objectives by; (1) assisting low income customers to conserve energy and providing them LIURP services that results in improved health, safety and comfort levels; and, (2) ensuring that its LIURP is managed in a cost-effective manner in order to provide the greatest financial benefit to its non-CRP low income customers, and customers who pay for the LIURP treatments and subsidize CRP customers’ usage. *Id.* at 40-41. Further, PGW questions why the ALJs’ incorrectly stated that CRP customer payments “are based in part on their pre-existing arrears and income deficit,” despite the ALJs’ acknowledgement that reduced energy usage due to LIURP weatherization treatments pursuant to PGW’s percentage of income program, does not directly impact the amount that a CRP customer pays or the amount of arrears that a customer may have pursuant to PGW’s percentage of income program.[[79]](#footnote-79) *Id.* at 42.

Next, PGW contends that not only would prioritizing eligible LIURP customers based on arrearage or income deficit have no impact on the customers’ finances, but complying with the prioritization approach suggested by the ALJs will undermine PGW’s current primary prioritization objectives, which are based on gas savings and cost-effectiveness. PGW Exc. at 43. PGW argues that the ALJs’ recommendation, will, in essence, negatively impact the finances of non-CRP customers who pay for weatherization services. *Id.* at 43. PGW reiterates that it allows its contractors to prioritize their LIURP weatherization projects independently, based on the greatest energy savings opportunities and program cost-effectiveness. PGW states that it evaluates and reallocates funding for its contractors based on how well their projects satisfy these two identified metrics.[[80]](#footnote-80) PGW contends that forcing its contractors to prioritize based on arrearages and income of only CRP customers would undermine PGW’s existing approaches which are focused on energy savings and cost-effectiveness. PGW believes this could ultimately result in under-utilized budgets and/or diminish the overall cost-effectiveness of its LIURP, because the contractors will be restricted in their ability to base their prioritization on actual program impact metrics. *Id.* at 43-44. Additionally, PGW believes that not only will this approach prevent the execution of the most cost-effective projects with the highest potential of energy savings, but it will also not be beneficial to PGW’s CRP customers because these customers do not receive financial benefits from the weatherization services. *Id.* at 44. Further, PGW asserts that non-CRP customers will also be financially harmed if the LIURP program is made less cost-effective as a result of the adoption of the ALJs’ recommendation. *Id.* Therefore, PGW requests that the Commission reject the ALJs’ recommendation denying its requested waiver of Section 58.10 (a)(2) and (3) of the Commission’s Regulations. *Id.* at 44-45.

In its Replies to Exceptions, the OCA asserts that PGW failed to satisfy its burden of proof to demonstrate that the waiver request was necessary, reasonable or in the best interest of PGW’s customers. The OCA agrees with the ALJs’ decision denying PGW’s waiver request. OCA R. Exc. at 30-31. The OCA submits that contrary to PGW’s arguments, the percentage of income program design would not impact prioritization for LIURP nor would it be detrimental to the program. According to the OCA, most EDCs and NGDCs in the state operate a similar percentage of income design as PGWs’, and yet have not requested a waiver of Section 58.10(a) of the Commission Regulations. The OCA stated as follows:

The Commission has repeatedly made clear in its review of gas and electric universal service programs that establishing eligibility for LIURP is a different task than prioritizing investments within the eligible population. While high energy usage relates to the eligibility for LIURP programs, it is entirely appropriate to use arrearages and income deficits to prioritize amongst customers who are equally eligible.

OCA R. Exc. at 32.

 The OCA highlights the Commission’s position on this issue stating that “although the PGW ELIRP is operating within the DSM portfolio of programs, the selection method for customers should not change from what it would be if ELIRP were part of PGW’s USECP.” OCA R. Exc. at 32, citing CAUSE-PA M.B. at 29. The OCA reiterates that maintaining the requirements and procedures of the existing regulations would help PGW meet its universal service obligations and would, in turn, be beneficial to PGW customers participating in the programs. OCA R. Exc. at 33.

 CAUSE-PA, also in opposition to PGW’s waiver request, states that, other than PGW’s claim of an existing rigorous prioritization strategy, PGW has not provided any support for its requested waiver. CAUSE-PA asserts that the ALJs’ recommendation should be upheld because PGW has failed to meet its burden of demonstrating that there are “special circumstances” that warrants the approval of PGW’s waiver request. CAUSE-PA R. Exc. at 20-21.

#### d. Disposition

Upon consideration of the record evidence, the positions of the Parties, and the applicable law, we will deny PGW’s Exceptions and uphold the ALJs’ recommendation denying PGW’s waiver request of Section 58.10 of the Commission’s Regulations. We agree with the ALJs’ explanation that the prioritization requirements of Section 58.10(a)(2) and (3) “would help PGW to meet [its] universal service objectives.” We also agree with the ALJs’ recommendation that PGW should further prioritize “within the pool of CRP customers who are eligible for LIURP services” based on arrears and income deficit.[[81]](#footnote-81) While we commend PGW’s rigorous prioritization strategy which PGW asserts has produced maximum energy savings and program cost-effectiveness, we are not convinced that it is enough reason to grant a waiver of this section of the Commission’s LIURP Regulations. In particular, we note that pursuant to 52 Pa. Code § 58.1, this section of the LIURP Regulations is intended ultimately to help low income customers conserve energy and reduce residential energy bills by decreasing the incidence and risk of customer payment delinquencies and the costs associated with uncollectible cost expenses, collection costs and arrearage carrying costs.

Additionally, while we acknowledge that PGW is only seeking a waiver that requires PGW to prioritize customers based on arrearages and income deficits and not a waiver of the requirement to prioritize customers for the receipt of LIURP benefits, we do not believe such a waiver is warranted at this time. PGW argued that prioritizing LIURP weatherization services for existing CRP customers with pre-existing arrearages, who, according to PGW, are required to pay a calculated asked-to-pay amount that is not based on usage, and an additional five dollars per month toward their arrearages, will not result in any financial change to the five dollars monthly payment. PGW Exc. at 42. However, we note that the Commission in its *USECP 2014-2016 Order,* found that “PGW could achieve the long-term goal of reducing the CRP costs by using the LIURP selection process to prioritize jobs for those customers with both high usage and large arrears.” *USECP 2014-2016 Order* at 55.

With regard to PGW’s argument that complying with the ALJs’ recommendation will negatively impact its prioritization objectives which are based on gas savings and cost-effectiveness, we disagree. We recognize that PGW evaluates and reallocates funding for its CSPs based on how well the CSPs’ projects satisfy these two metrics. Nevertheless, while this could be one of the ways PGW effectively controls its program administrative costs, we do not believe it is enough reason for the Commission to waive this section of its LIURP Regulations. We are also not convinced that adopting the ALJs’ recommendation would result in financial harm to PGW’s non-CRP customers. Moreover, the Commission balances the interests of customers who benefit from LIURP with the interest of those who pay for the programs. Further, we agree with the OCA that no other EDCs or NGDCs in the state with a similar percentage of income design as PGW has requested a similar waiver or indicated that prioritizing eligible customers based on arrearages and income deficit results in negative financial impact on their customers. Therefore, we find that PGW failed to demonstrate that there are “special circumstances” that warrants the approval of this waiver request or that this waiver request is necessary, reasonable or in the best interest of PGW’s customers. As such, we shall deny the Exception of PGW on this issue.

### 6. 52 Pa. Code § 58.14 Waiver Request

Section 58.14(c)(1) of the Commission’s LIURP Regulations is concerned with inter-utility coordination and requires a gas utility to address electricity usage through the provision of electric usage education, installation of efficient light bulbs, electric water heaters, and hot water pipe insulation and devices to reduce the flow of hot water. Specifically, Section 58.14(c)(1), provides in part: “…When providing program services a covered gas utility shall address usage of electricity provided by a covered utility through the provision of electric usage reduction…” 52 Pa. Code § 58.14.

#### a. Positions of the Parties

Due to complexities of intra-utility coordination and the fact that PECO is extensively addressing electric usage as part of its Act 129 EE&C program, PGW averred it will not address or identify energy efficiency or conservation measures regarding electricity usage within its DSM plan. PGW, therefore, requested a waiver of Section 58.14(c) of the Commission’s LIURP Regulations. PGW M.B. at 80-81. PGW alleged the OCA’s opposition to this waiver request is based on a mistaken assumption that 52 Pa. Code § 58.14, is intended to require the restoration of PGW’s off-customers, especially, those using electric as a heating source.[[82]](#footnote-82) PGW dismissed the OCA’s mistaken assumption. *Id.*

The OCA is opposed to PGW’s waiver request. The OCA argued that just because PGW is not addressing electric usage in its DSM plan does not mean that the applicable section of the Regulation should be waived. The OCA stated the following regarding this issue:

Non-compliance with a regulatory requirement, standing alone, is no justification for granting a waiver of the requirement. In particular, as a natural gas utility, PGW can address the “usage of electricity” through LIURP investments directed toward the prevention of a need to use electricity as a *de facto* heating source. When natural gas systems are inoperable, or otherwise unavailable, because low-income customers do not have the resources to make repairs or replacements, those low-income customers frequently turn to portable space heaters as *de facto* primary heating sources. Not only is this use of *de facto* electric space heating extraordinarily expensive, but the use of portable electric space heating equipment is extremely dangerous as well.

OCA M.B. at 83.

The OCA further contended that to the extent that there are opportunities for PGW to coordinate with PECO on its LIURP or Act 129 programs, PGW should take advantage of such opportunities. The OCA noted that while PGW is correct that Section 58.14(c) of the Commission’s Regulations, 52 Pa. Code § 58.14 (c), does not specifically identify *de facto* space heating situations, the OCA is concerned that if this section is waived, PGW may never identify or address inter-utility coordination in the future. The OCA, therefore, recommended that the Commission deny PGW’s request to waive Section 58.14(c) of the Commission Regulation, 52 Pa. Code § 58.14(c). OCA R.B. at 37.

#### b. ALJs’ Recommendation

The ALJs emphasized the importance of inter-utility coordination, noting that the Commission explained in its adoption of Section 58.14(c), that it was “designed in a way that promotes the concept of inter-utility coordination… where there is an opportunity for significant enough energy savings and bill reductions to warrant more comprehensive coordination.”[[83]](#footnote-83) R.D. at 175. The ALJs indicated that just because PGW is not addressing or identifying the issue of inter-utility coordination in its DSM plan does not mean Section 58.14(c) of the Commission’s Regulations should be waived. *Id.*

The ALJs also agreed with the OCA that PGW should coordinate with PECO on its LIURP or Act 129 programs, as long as such coordination will afford PGW’s CSPs, the opportunity to coordinate efforts to address potentially dangerous instances where a customer is using alternative heating or other energy saving areas, such as lighting, water heaters, and gas ranges. In addition, although the ALJs rejected CAUSE-PA’s *de facto* heating proposal,[[84]](#footnote-84) they, nonetheless, found that PGW has not established the “special circumstances” required to justify a waiver of Section 58.14. The ALJs, therefore, denied PGW’s request for a waiver of Section 58.14 of the Commission’s Regulations, 52 Pa. Code § 58.14 (c). *Id.*

#### c. Exceptions and Replies

 In its Exceptions, PGW states that the Commission should reject or clarify the ALJs’ recommendation regarding PGW’s waiver request. PGW requests a clarification of why the ALJs suggested that PGW coordinate with PECO’s LIURP or Act 129 programs, despite their conclusion that this section does not require the adoption of CAUSE-PA’s *de facto* heating proposal. PGW Exc. at 48-49.

 PGW asserts that it is not opposed to inter-utility coordination, especially, if there is an opportunity for energy savings and bill reductions. However, PGW believes that given the extensive nature of PECO’s LIURP or Act 129 EE&C programs, there is no need for PGW to participate or address this issue. PGW Exc. at 49. PGW, nonetheless, requests that should the Commission decide to adopt the ALJs’ recommendation regarding the waiver request, the Commission should not place additional requirements on PGW as such requirements are not necessary in light of the extensive nature of its DSM program and PECO’s Act 129 EE&C program. *Id.*

 In its Replies to Exceptions, the OCA asserts that the ALJs correctly denied PGW’s waiver request.[[85]](#footnote-85) OCA R. Exc. at 37. The OCA argues that PGW failed to provide sufficient reasons for a waiver of this regulation, especially, since there is a possibility that such coordination could potentially be beneficial to PGW’s low-income customers. *Id.* at 37-38. The OCA further asserts that there is also a possibility of PGW’s CSPs to coordinate efforts to address potentially dangerous instances where customers are using *de facto* space heating. *Id.* at 38-39.

 In its Replies to Exceptions, CAUSE-PA, also in support of the ALJs’ recommendation, highlights that inter-utility coordination is an integral part of the overall energy efficiency program. CAUSE-PA argues that granting PGW’s request to waive this requirement sends the wrong message to other utilities and undermines the need for coordination between and among utilities. CAUSE-PA R. Exc. at 22. CAUSE-PA asserts that PGW’s waiver request should be rejected whether or not the Commission decides to provide specific directive on PGW’s coordination efforts. CAUSE-PA R. Exc. at 22-23.

#### d. Disposition

Upon consideration of the evidence of record and the arguments provided by the Parties on this issue, we will deny PGW’s Exceptions. We are in agreement with the ALJs’ explanation that just because PGW is not addressing or identifying the issue of inter-utility coordination in its current DSM plan does not mean 52 Pa. Code Section 58.14(c) should be waived. We note that 52 Pa. Code § 58.14(c)(1), involving inter-utility coordination, requires a gas utility to address electricity usage through the provision of education, efficient light bulbs, installation of electric water heaters and hot water pipe insulation and devices to reduce the flow of hot water. 52 Pa. Code § 58.14(c)(1). As indicated by both the OCA and CAUSE-PA, inter-utility coordination is a critical component of the energy efficiency program and the Commission encourages utility coordination efforts, especially, if there is an opportunity for such efforts to leverage the benefits of the participating utilities’ customers. Hence, in recognition of this fact, we will deny PGW’s waiver request of 52 Pa. Code Section 58. 14(c). Consequently, we encourage PGW to endeavor to coordinate with PECO on its LIURP or Act 129 programs in the future, if such coordination will afford PGW’s CSPs the opportunity to coordinate efforts to address potentially dangerous instances where a customer is using alternative heating or other energy saving areas, such as lighting, water heaters, and gas ranges.

With regard to PGW’s request for clarification regarding the ALJs’ recommendation involving CAUSE-PA’s *de facto* heating proposal as it relates to PGW’s waiver request, we note that the ALJs were clear in highlighting the specific reasons for their denial of CAUSE-PA’s *de facto* heating proposal. The ALJs, in their denial of the proposal, stated among other things, that the *de facto* heating program would result in additional cost to PGW. In light of the above findings, we shall deny the Exception of the Company on this issue.

## K. *De Facto* Electric Heating Proposal

### 1. Positions of the Parties

CAUSE-PA proposed that PGW investigate and explore a pilot program with PECO to identify ways to remediate *de facto* heating in PGW’s service territory.[[86]](#footnote-86) CAUSE-PA asserted that the *de facto* heating program appropriately aligns with the intent and purpose of LIURP and addresses a significant unmet need of PGW’s most vulnerable customers. CAUSE-PA opined that this proposal presents a great opportunity for PGW to collaborate meaningfully with PECO to address and remediate *de facto* heating in the City of Philadelphia. Specifically, CAUSE-PA requested that the Commission order PGW to investigate the possibilities for remediation of *de facto* heating and provide a report and action recommendation to the Parties and stakeholders of this proceeding. CAUSE-PA asserted that part of that investigation should include a review of the opportunities available for PGW to partner with PECO to address *de facto* heating and ways to remediate it. CAUSE-PA M.B. at 29-30.

CAUSE-PA encouraged PGW to take a more active role in addressing *de facto* heating by coordinating with PECO on this issue. In particular, CAUSE-PA posited that PECO’s recently approved CAP rate design settlement, which includes an increase in PECO’s LIURP budget by $700,000 per year for a three year period for the purpose of implementing measures for a *de facto* target group, presents a great opportunity for PGW to collaborate with PECO to address this issue. *Id.* at 30.

Further, in support of its proposal, CAUSE-PA cited to Section 58.1 of the Commission Regulations, 52 Pa. Code § 58.1, which states that LIURP programs are intended to reduce residential energy bills and the incidence and risk of customer payment delinquencies. 52 Pa. Code § 58.1. Additionally, CAUSE-PA asserted that consistent with Section 58.4(d) of the Commission’s Regulations, 52 Pa. Code § 58. 4(d), utilities are expressly “encouraged to propose pilot programs” to achieve such a result. 52 Pa. Code § 58. 4(d). CAUSE-PA noted that its *de facto* heating proposal would help PGW fulfill PGW’s LIURP obligations and would also result in improved health, safety, and comfort levels for program recipients. *Id.* at 31-32.

TURN *et al.* also supported CAUSE-PA’s *de facto* electric heating proposal. TURN *et al.* reiterated most of CAUSE-PA’s arguments regarding the proposal. TURN *et al.* M.B. at 18. For instance, similar to CAUSE-PA, TURN *et al.* noted that the *de facto* electric heating proposal is timely, given the Commission’s recent decision regarding PECO’s CAP design and increased funds for PECO’s *de facto* heating related LIURP efforts. *Id.* at 19-20. TURN *et al.* contended that while PGW is concerned with the added cost of the arrears of the consumers served by a *de facto* electric heating program, PGW failed to recognize that such a program could result in decreased delinquency and increased payment to PGW, and would also contribute to the overall safety of customers and communities in PGW’s service territory. TURN *et al.* noted that part of PGW’s investigation into a *de facto* electric heating program can and should include a review of whether there are customers who are paying *de facto* electric heating costs, which results in higher overall energy bills, and whose bills could be reduced, if they were served by PGW. *Id.* at 20.

Finally, TURN *et al.* noted that, when asked in discovery to identify any impediments to PGW’s ability to address *de facto* heating within the context of the Phase II DSM Plan, PGW stated “PGW would need to learn more about the ‘*de facto* heating’ customer base before providing a response on impediments to a more targeted approach of serving these customers through DSM.” TURN *et al.* agreed that PGW should learn more about its own vulnerable customer base to determine if its DSM is capable of treating their homes. TURN *et al.* R.B. at 4.

PGW, in opposition to CAUSE-PA’s *de facto* heating proposal, contended that it’s CRP Home Comfort program and DSM programs are provided for the benefit of its customers and are wholly paid for by PGW customers. Therefore, PGW does not contemplate providing services to customers of a different utility in order to reduce their electric usage.[[87]](#footnote-87) PGW posited that CAUSE-PA’s proposal is not cost-effective. PGW also stated that it would encounter complex structural or mechanical issues at homes that prevent the use of natural gas, if this program is implemented. PGW argued that providing a program to non-PGW customers is not part of its LIURP and that CAUSE-PA’s proposal is an unreasonable expansion of the DSM program that would impose additional costs on PGW’s customers in order to benefit non-PGW customers. PGW M.B. at 81-82.

With regard to CAUSE-PA’s argument that the *de facto* heating proposal would “reduce the high number of PGW service terminations,” PGW retorted that there is no validity to this claim. PGW alleged that if a customer cannot pay his or her CRP asked-to-pay bill, then whether or not the home receives LIURP weatherization services will not make a difference because the CRP bill will be the same with or without the weatherization services. PGW concluded that the *de facto* electric heating proposal would not fulfill the regulatory purposes CAUSE-PA and TURN *et al.* rely on in their support of the proposal. PGW also contended that the reference to Section 58.4(d) of the Commission Regulations does not apply in this case because this section discusses pilot programs “for achieving the purposes of residential low income usage reduction.” 52 Pa. Code § 58.4(d). PGW argued there is no legal mandate in the Commission’s LIURP Regulations for PGW to implement CAUSE-PA’s *de facto* electric heating proposal. PGW R.B. at 86.

The OCA is not opposed to CAUSE-PA’s *de facto* electric heating proposal. OCA M.B. at 84. I&E did not object to the *de facto* electric heating proposal. I&E R.B. at 25. The OSBA, PICGUG and the CAC did not take any specific position regarding the proposal.

### 2. ALJs’ Recommendation

The ALJs recommended denial of the *de facto* electric heating proposal advocated by CAUSE-PA because they did not believe it was an effective use of resources. Moreover, they did not think it is workable under the circumstances because the proposal failed to take into consideration the fact that many of the affected customers already have large arrearages. R.D. at 186.

First, the ALJs noted that PGW’s CRP program is a percentage of income program which requires CRP customers to pay a specific amount based on their level of income. The ALJs explained that PGW’s LIURP does not directly affect the amount that a CRP customer would either pay to restore service or pay on a monthly basis. Further, the ALJs noted that LIURP does not affect the amount of arrears that a CRP customer may have, nor would it in any way prevent termination of service for CRP customers. *Id.*

Secondly, the ALJs explained that the *de facto* heating program would result in PGW incurring more costs because PGW would have to extend money for the weatherization service to non-customers, and then deal with customers who have already been terminated for non-payment and who may have significant outstanding arrearages. According to the ALJs, the *de facto* heating program would not address these issues and, therefore, is not an appropriate way to use PGW’s LIURP funds. *Id.*

Finally, the ALJs indicated that there is no guarantee that PECO would be able or willing to work with PGW on a *de facto* heating program. The ALJs noted that PECO’s *de facto* heating program will directly affect its CAP customers in the amount they are asked to pay and also with possible terminations. The ALJs also did not believe there is a comparable benefit to PGW’s CRP customers in this regard. Rather, they thought the *de facto* heating proposal would increase the cost of the LIURP. In light of the afore-mentioned reasons, the ALJs recommended denial of CAUSE-PA’s *de facto* heating proposal. *Id.* at 186-187.

### 3. Disposition

No Party filed Exceptions regarding the ALJs’ recommendation on this issue. Finding the ALJs’ recommendation to be reasonable, we adopt it without further comment.

## L. Restore Service Program

### 1. Positions of the Parties

CAUSE-PA proposed that PGW establish a Restore Service program for off CRP customers who were eligible for LIURP services prior to termination of their services but who never received treatment. CAUSE-PA opined that such a program would address PGW’s termination crisis and increase its CRP enrollment. According to CAUSE-PA, per data provided by PGW, a comparison of CRP customers who received LIURP services from 2011-2014 to those who did not revealed that those who received LIURP services were less likely to be shut off for non-payment and were more likely to be restored following a shut off. CAUSE-PA M.B. at 35.

CAUSE-PA averred that the Restore Service program would help restore service to prior high usage customers and help them receive LIURP services. CAUSE-PA noted that PGW’s high number of involuntary residential service terminations is a serious issue that needs to be addressed. In addition, CAUSE-PA pointed out that there are a significant number of PGW customer terminations that remain off in the winter and indicated that the Restore Service program could address this problem.[[88]](#footnote-88) CAUSE-PA wants PGW to enhance its LIURP eligibility requirements to enable involuntarily shut-off customers to receive energy efficiency services. *Id.*

 Additionally, CAUSE-PA contended that the Restore Service program would also help address the growing decline in PGW’s CRP enrollment. CAUSE-PA noted that the Commission had already pointed out that PGW’s CRP participation declined by seventeen percent between 2010 and 2013, and that from March 2013 to March 2014, PGW “had the largest percentage decrease compared to any other natural gas company in Pennsylvania, decreasing 13.5 percent from March 2013 to March 2014. CAP enrollments for all natural gas companies during this same time period showed an average increase of 8.9 %.” *Id.* at 37. CAUSE-PA emphasized the continued decline in PGW’s CRP enrollment and encouraged PGW to focus its efforts to increase CRP on those off customers. *Id.* at 37.

TURN *et al.* supported CAUSE-PA’s Restore Service proposal. TURN *et al.* averred that PGW should establish the Restore Service program in conjunction with its LIURP because it would address PGW’s termination crisis, reduce PGW’s uncollectible expenses, and increase public health and safety. TURN *et al.*, in support of the proposal, reiterated most of the arguments put forth by CAUSE-PA and requested that the Commission direct PGW to establish CAUSE-PA’s Restore Service proposal. TURN *et al.* M.B. at 22-24.

PGW opposed CAUSE-PA’s Restore Service proposal. PGW contended that although CAUSE-PA argued that its proposal would remediate PGW’s high number of involuntary residential service terminations, the proposal failed to address how the customer arrearages would be paid. According to PGW, the cost of the program does not qualify as a PGW LIURP cost because the Restore Service program would be offered to non-PGW customers. PGW further argued that there is no statutory or any other obligation for PGW to offer non-LIURP conservation programs, especially, since the proposal has the potential to unreasonably increase PGW and its ratepayers’ costs. PGW M.B. at 82.

PGW also contended that weatherization services do not change the CRP customer’s asked-to-pay amount, there is, therefore, no proof that customers receiving weatherized services are shut off less frequently than those who do not.[[89]](#footnote-89) PGW also dismissed CAUSE-PA and TURN *et al.*’s claim that the Company is in a “termination crisis” noting that PGW has the highest proportionate number of low income customers of all the electric and gas utilities in the state, yet its average termination rate is lower than every other gas and electric utility in the state.[[90]](#footnote-90) PGW does not believe the Restore Service program would address its declining CRP enrollment because customers enroll in CRP to receive the benefit of a lower payment, rather than receive weatherization services to further reduce their required bill payment. PGW R.B. at 92-93.

I&E did not object to CAUSE-PA’s Restore Service proposal. I&E R.B. at 25. The OCA did not oppose the proposal as well. OCA M.B. at 84. The OSBA, PICGUG and the CAC did not take any specific position on the proposal.

### 2. ALJs’ Recommendation

The ALJs agreed with PGW that there is no statutory mandate that requires PGW to offer CRP Home Comfort weatherization services to non-customers. The ALJs believe the Restore Service proposal is not an appropriate use of the LIURP funds paid by non-CRP customers. According to the ALJs, weatherization services have no impact on the amount a CRP customer is asked-to-pay and nothing on the record supports the view that CRP customers receiving weatherization services are shut off less frequently than CRP customers who do not receive LIURP services. R.D. at 192.

The ALJs also disagreed with CAUSE-PA’s assessment that PGW has a “termination crisis.” The ALJs noted that 30.8% of PGW’s customers were confirmed low-income, which, proportionally, is the highest number of low income customers of all electric or gas utilities in the state. Yet, PGW’s average termination rate for confirmed low-income customers, at 10.7%, is lower than the average termination rate for all the NGDCs, at 14.7%, and 17.3% for EDCs, in the state. *Id.* at 93.

Finally, with regard to CAUSE-PA’s argument that its proposal will address any alleged decline of PGW’s CRP enrollment, the ALJs disagreed. The ALJs’ explained that customers enroll in CRP to receive the benefit of a lower bill payment and that they do not receive CRP Home Comfort weatherization services to further reduce their required bill payment. According to the ALJs, there was no reason to reach a conclusion that an increase in weatherization services will “provide a pathway” to increase participation in a CRP designed to lower required bill payments. Accordingly, the ALJs rejected CAUSE-PA’s Restore Service proposal. *Id.*

### 3. Disposition

No Party filed Exceptions regarding the ALJs’ recommendation on this issue. Finding the ALJs’ recommendation to be reasonable, we adopt it without further comment.

## M. Other Issues

### 1. Price Signals under the Customer Responsibility Program

#### a. Positions of the Parties

The OSBA expressed concern regarding the efficiency of PGW’s CRP due to the high usage of PGW’s CRP customers. The OSBA stated that “the effectiveness of the Company’s conservation efforts for low-income customers could be substantially improved by restructuring the CRP to include a serious and credible price signal for all program participants.” OSBA St. at 3-12. The OSBA did not specifically address this proposal in its briefs.

The OCA disagreed with the OSBA’s price signal proposal. The OCA does not believe a CRP restructure was necessary. The OCA asserted that the OSBA erroneously concluded that consumption levels have not decreased over time and that PGW’s CRP was not inefficient. OCA M.B. at 84-85. The OCA further averred that CRP is designed to include customers whose consumption is higher than the average customer and to systemically exclude low-use customers from participating in the program. The OCA explained that since CRP is an income-based program, only customers that can benefit from the program are eligible to participate. In other words, the customers’ percentage of income level discount will provide them with a more affordable bill.[[91]](#footnote-91) *Id.* at 85.

The OCA further argued that the decrease in gas price over the past ten years has also enhanced the elimination of more customers from CRP because their bills have become affordable without CRP assistance. The OCA opined that these factors contribute to why the existing customers of the program reflect higher-than- average-usage. The OCA maintained that, overall, in a time of increasing incomes and decreasing prices, PGW’s CRP participants have shown a decrease in average consumption. According to the OCA, this demonstrates that PGW’s CRP is efficient. *Id.* at 85-86.

CAUSE-PAalso opposed the OSBA’s proposal. CAUSE-PA contended that restructuring the CRP to include a price signal, especially, if the price signal produces an increase in a customer bill, could undermine the affordability of the program for PGW’s low income customers and defeat the purpose for which the program was created in the first place. CAUSE-PA argued that the OSBA’s price signal proposal is based on a misinterpretation of usage data for CRP customers, and the reasoning behind the proposal, is inaccurate and contrary to what the existing data portrays.[[92]](#footnote-92) According to CAUSE-PA, the OSBA acknowledged that other factors such as the age of CRP customers’ homes change in consumption of the CRP customer base, and the fact that past rise and fall in natural gas prices that did not affect CRP customers, could be contributing factors to the higher-than-average usage of CRP customers. CAUSE-PA argued that this admission on the part of the OSBA, in itself, calls the reasoning behind the OSBA’s proposal into question. CAUSE-PA further noted that the OSBA used a flawed approach in comparing the aggregate consumption rates for non-CRP customers with those of CRP customers. CAUSE-PA M.B. at 38-40.

Turn *et al.* also opposed the OSBA’s price signal proposal. Turn *et al.*, in opposition to the proposal, supported most of the arguments presented by CAUSE-PA. Turn *et al.* argued that restructuring the CRP to include a price signal could undermine the affordability of the program and that the OSBA’s findings are contradicted both by the record evidence and its testimony. Turn *et al.* M.B. at 25-27.

PGW, in response to the OSBA’s price signal proposal, averred that CRP is not an issue in the instant proceeding but, nevertheless, disagreed with the OCA, CAUSE-PA, and Turn *et al*.’s argument regarding the proposal. PGW argued that just because its CRP is a percent of income plan does not mean it cannot accommodate price signals. PGW M.B. at 83; PGW R.B. at 94. PGW, however, noted that it disagreed with the OSBA’s proposal only because the instant proceeding is not the appropriate avenue to address this issue. PGW opined that the instant proceeding is supposed to be focused only on PGW’s LIURP. *Id.*

#### b. ALJs’ Recommendation

The ALJs agreed with PGW’s contention that its Universal Service and Energy Conservation Plan (USECP) is not part of this proceeding. According to the ALJs, since a price signal proposal would require restructuring PGW’s CRP, this issue should be addressed within the context of PGW’s next USECP proceeding. R.D. at 198.

#### c. Disposition

No Party filed Exceptions regarding the ALJs’ recommendation on this issue. Finding the ALJs’ recommendation to be reasonable, we adopt it without further comment.

### 2. Commercial Data Uploading Tool

#### a. Positions of the Parties

PGW proposed to implement a Commercial Data Uploading Tool (Data Tool) that would not only permit Commercial and Industrial (C&I) customers to track natural gas data, but would also automatically upload these customers’ usage data to the EPA Portfolio Manager program. PGW St. 2 at 11.

PICGUG indicated that in response to discovery on this proposal, PGW stated that the Data Tool would be developed to store and transmit monthly consumption volumes, bill amounts, and read types. PICGUG further indicated that PGW claimed the software costs would be subsumed within the proposed DSM budget and allocated among customers as an administrative expense. [[93]](#footnote-93) According to PICGUG, PGW affirmed that customer data will not be uploaded onto the Data Tool without customer authorization. PICGUG M.B. at 7. PICGUG, therefore, requested that the Commission condition the approval of the Data Tool on PGW’s compliance with the “opt-in” structure outlined by PGW in response to PICGUG’s Interrogatory I-1(d). [[94]](#footnote-94) PICGUG maintained that requiring interested customers to explicitly authorize participation in the Data Tool would ensure that customers concerned with data security would not be unnecessarily exposed to unauthorized data transmissions. *Id.*

#### b. ALJs’ Recommendation

 The ALJs acknowledged PICGUG’s concerns regarding unauthorized data transmissions with the use of the Data Tool. The ALJs agreed that PGW’s opt-in structure will ensure data security. Accordingly, the ALJs recommended that the approval of PGW’s Commercial Data Uploading Tool be conditioned upon PGW’s implementation of an approval-of-transfer mechanism on its website.[[95]](#footnote-95)

#### c. Disposition

No Party filed Exceptions regarding the ALJs’ recommendation on this issue. Finding the ALJs’ recommendation to be reasonable, we adopt it without further comment.

# V. Conclusion and Ordering Paragraphs

Based on the foregoing, we shall grant the Exceptions of PGW, in part, and adopt the ALJs’ Recommended Decision, as modified by this Opinion and Order which shall be issued in Tentative Form to allow the Parties the opportunity to file comments addressing any concerns they may have in consideration of our resolution concerning the Company’s annual LIURP budget during the Philadelphia Gas Work’s DSM Phase II Plan; **THEREFORE**,

 **IT IS ORDERED:**

1. That the Exceptions filed by the Philadelphia Gas Works on April 7, 2016, to the Recommended Decision of Administrative Law Judges Christopher P. Pell and Marta Guhl that was issued on March 18, 2016, are granted, in part, and denied, in part.
2. That the Recommended Decision of Administrative Law Judges Christopher P. Pell and Marta Guhl that was issued on March 18, 2016, is adopted, subject to the modifications expressed in this Opinion and Order which shall be issued in Tentative Form.
3. That the Parties to this proceeding shall have ten (10) days from the date of entry of this Opinion and Order to file comments with this Commission in response to the Commission directed modification to the annual Low Income Usage Reduction Program budget as set forth within this Opinion and Order.
4. That should any comments be filed with the Commission pursuant to Ordering Paragraph No. 3, above, the matter shall be disposed of through an appropriate Final Order.
5. That should no comments be filed with the Commission pursuant to Ordering Paragraph No. 3, above, it is further ordered:

(a) That this Tentative Opinion and Order shall become final by operation of law without further action by the Commission.

(b) That the Philadelphia Gas Works’ DSM Phase II Plan be approved for a five year period from 2016 through 2020, as modified herein by this Opinion and Order.

(c) That the Philadelphia Gas Works shall not be permitted to recover lost revenues through its proposed Conservation Adjustment Mechanism.

(d) That the Philadelphia Gas Works shall not be permitted to implement its proposed Performance Incentives Mechanism.

(e) That the Philadelphia Gas Works’ proposal to implement a Fuel Switching Program as part of its proposed DSM Phase II Plan be denied.

(f) That the Philadelphia Gas Works be permitted to continue to operate its Low Income Usage Reduction Program within its DSM Phase II Plan.

(g) That the Philadelphia Gas Works be permitted to implement the Low Income Multifamily program as proposed by the Company and as modified by the PGW/I&E Stipulation in terms of eligibility and funding.

(h) That the Philadelphia Gas Works’ requested waivers of Sections 58.5, 58.9, 58.11 and 58.16 of the Commission’s Regulations be granted.

(i) That the Philadelphia Gas Works’ requested waivers of Sections 58.4, 58.10 and 58.14 of the Commission’s Regulations be denied.

(j) That the record at Docket No. P-2014-2459362 shall be marked closed.

**BY THE COMMISSION,**



Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: June 30, 2016

ORDER ENTERED: August 4, 2016

1. As noted, *infra,* on May 7, 2015, we granted a petition filed by PGW to extend its Phase I DSM Plan for an interim period effective September 1, 2015, through either: (1) August 31, 2016; or (2) the effective date of a Phase II compliance plan filed in response to a final Commission Order in the matter before us. [↑](#footnote-ref-1)
2. The Commission set forth specific requirements outlining information that PGW is required to provide in support of its proposal to continue this program. *See Philadelphia Gas Works Universal Service and Energy Conservation Plan for 2014-2016 Submitted in Compliance with 52 Pa. Code § 62.4,* Docket No M-2013-2366301, (Order Entered August 22, 2014. (*USECP 2014-2016 Order*). [↑](#footnote-ref-2)
3. PGW proposed a “Base Plan” budget of $22.7 million in the event that it is not permitted to implement its proposed CAM and an “Expanded Plan” budget of $32.2 million in the event that it is permitted to implement its proposed CAM. [↑](#footnote-ref-3)
4. The TRC Test PGW utilizes is similar in scope to the TRC Test that is utilized by Electric Distribution Companies (EDCs) that are required to offer an Energy Efficiency and Conservation (EE&C) Plan pursuant to Act 129 of 2008 (Act 129). PGW M.B. at 25. [↑](#footnote-ref-4)
5. PGW noted that the ECRS is applied only to the bills of firm customers in the class for which the costs are incurred. PGW St. 2 at 12. [↑](#footnote-ref-5)
6. These proposals are discussed, in detail, elsewhere in this Opinion and Order. [↑](#footnote-ref-6)
7. Although it does not seek recovery of the unrecovered costs incurred in the implementation of its Phase I DSM Plan, PGW noted the associated reductions in energy consumption are projected to result in total non-gas revenue losses of $8.46 million (nominal). PGW explained that this figure represents the value of the reduced volumetric distribution revenues through which PGW recovers its fixed operational costs. PGW St. 3 at 33. [↑](#footnote-ref-7)
8. Specifically, PGW stated that it would forecast its conservation adjustments for each customer class by multiplying the class’s delivery charge by the projected ccf savings for the class and dividing by the forecasted sales to the class. PGW Exh. TML-4 at 57. [↑](#footnote-ref-8)
9. *See* Supplement No. 93 to PGW’s Gas Service Tariff—Pa. P.U.C. No. 2, effective June 1, 2016, at 67. [↑](#footnote-ref-9)
10. PGW Exh. TML-4 at 4-5, 22, 13-134; PGW St. 1-RJ at 1. [↑](#footnote-ref-10)
11. OCA St. 1 at 31. [↑](#footnote-ref-11)
12. PGW St. 2 at 5; 66 Pa. C.S. § 2203 (8); 52 Pa. Code § 58.4(a). [↑](#footnote-ref-12)
13. PGW St. 1-R at 21, citing, *July 2010 Order*. [↑](#footnote-ref-13)
14. *Response of Philadelphia Gas Works to Tentative Order entered April 3, 2014 Regarding the Enhanced Low Income Retrofit Program*, Docket No. M-2013-2366301, dated April 23, 2014 at 11. The Commission PGW’s 2014-2016 Plan dated June 1, 2013, as amended September 22, 2014, which clearly states that LIURP changes and budgets will be addressed in this proceeding. *Philadelphia Gas Works Universal Service and Energy Conservation Plan 2014-2016* Docket No. M-2013-2366301, Philadelphia Gas Works Universal Service and Energy Conservation Plan dated June 1, 2013, as amended September 22, 2014. The Commission approved PGW’s final USECP 2014-2016 Plan on November 13, 2014. *See Philadelphia Gas Works Universal Service and Energy Conservation Plan for 2014-2016 Submitted in Compliance with 52 Pa. Code § 62.*4, Docket No. M-2013-2366301, Final Order Re Compliance Filing entered November 13, 2014. [↑](#footnote-ref-14)
15. 66 Pa. Code § 2203(8). [↑](#footnote-ref-15)
16. *Pa. Pub. Util. Comm’n v. PGW*, R-2009-139884, Docket No. P-2009-2097639, *Joint Petition for Settlement* dated May 12, 2010 ¶¶ 37-38. [↑](#footnote-ref-16)
17. OCA M.B. at 61. [↑](#footnote-ref-17)
18. OCA M.B. at 62. [↑](#footnote-ref-18)
19. PGW St. 1-RJ at 1. [↑](#footnote-ref-19)
20. PGW St. 1-RJ at 2. [↑](#footnote-ref-20)
21. PGW M.B. at 63. [↑](#footnote-ref-21)
22. *UGI EE&C Plan Order* at 70. [↑](#footnote-ref-22)
23. 66 Pa. C.S. § 2203(8). [↑](#footnote-ref-23)
24. 52 Pa. Code §§ 58.4(a), (c). [↑](#footnote-ref-24)
25. *I**d.* [↑](#footnote-ref-25)
26. 52 Pa. Code § 58.4. [↑](#footnote-ref-26)
27. *USECP 2014-2016 Order* at 69. [↑](#footnote-ref-27)
28. *See*, PGW St. 1-R at 21. [↑](#footnote-ref-28)
29. *USECP 2014-2016 Order* at 69. [↑](#footnote-ref-29)
30. PGW St. 1-RJ at 2. [↑](#footnote-ref-30)
31. OCA St. 2 at 8. *See,* *Philadelphia Gas Works Universal Service and Energy Conservation Plan (USECP) for 2014-2016 Submitted in Compliance with 52 Pa.Code § 62.4*, Docket No. M-2013-2366301(Order entered August 22, 2014) at 47. [↑](#footnote-ref-31)
32. PGW St. 1 at 2. [↑](#footnote-ref-32)
33. 66 Pa.C.S. § 2203(8); 52 Pa.Code §§ 62.1, 62.3. [↑](#footnote-ref-33)
34. Exh. TML-4, Table 50. [↑](#footnote-ref-34)
35. *USECP 2014-2016 Order* at 69. [↑](#footnote-ref-35)
36. OCA St. 2, at 6. [↑](#footnote-ref-36)
37. *UGI Utilities, Inc.- Gas Division, UGI Utilities, Inc.-Electric Division, UGI Penn Natural Gas, Inc., and UGI Central Penn Gas, Inc., Universal Service and Energy Conservation Plan for 2014-2017 Submitted in Compliance with 52 Pa.Code § 54.74 and § 62.4.*, Docket No. M-2013-2371824, Final Order at 69-70. [↑](#footnote-ref-37)
38. *See* OCA St. 2 at 8. *See also* *USECP 2014-2016 Order* at 47. [↑](#footnote-ref-38)
39. 52 Pa. Code § 58.4(a). [↑](#footnote-ref-39)
40. 52 Pa. Code § 58.4(a). [↑](#footnote-ref-40)
41. OSBA St. 3 at 4. [↑](#footnote-ref-41)
42. 66 Pa. C.S. § 2203(8). [↑](#footnote-ref-42)
43. *USECP 2014-2016 Order* at 69. [↑](#footnote-ref-43)
44. *Petition of Philadelphia Gas Works for Waiver of Provisions of Act 11 to Increase the Distribution System Improvement Charge CAP and to Permit Levelization of DSIC Charges*, Docket No. P-2015-2501500, at 46 (Order entered January 28, 2016). [↑](#footnote-ref-44)
45. *UGI Utilities, Inc.-Gas Division, UGI Utilities, Inc.–Electric Division, UGI Penn Natural Gas, Inc. and UGI Central Penn Gas, Inc., Universal Service and Energy Conservation Plan for 2014-2017 Submitted in Compliance with 52 Pa. Code § 54.74 and § 62.4,* Docket No. M-2013-2371824 (Order entered January 15, 2015) at 70. [↑](#footnote-ref-45)
46. Rather than fill the public notice and input requirement, and petition for a decrease based on need, PGW instead sought a waiver of the public input requirement, which the ALJs rejected. R.D. at 104. [↑](#footnote-ref-46)
47. Cost per job - this figure is calculated from the raw budget and proposed jobs numbers, but may be different than what is actually reported due to a change in the number of actual jobs performed, or the total budget being expended during a particular program year. [↑](#footnote-ref-47)
48. *See* Columbia at M-2014-2424462, Peoples at M-2014-2432515, Peoples-EQT at M-2014-2432515, National Fuel Gas at M-2013-2366232, PECO at M-2012-2290911, PGW at M-2013-2366301, UGI at M-2013-2371824 and UGI-PNG at M-2013-2371825. [↑](#footnote-ref-48)
49. The Commission is taking administrative notice of the information in this table pursuant to 52 Pa. Code § 5.408. [↑](#footnote-ref-49)
50. 52 Pa. Code §§ 62.1 - 62.8. [↑](#footnote-ref-50)
51. A Secretarial Letter dated June 27, 2014, set May 1, 2016, as PGW’s current filing date. The next USECP thereafter is due on February 1, 2020. [↑](#footnote-ref-51)
52. *USECP 2014-2016 Order* at 49. [↑](#footnote-ref-52)
53. R.D. at 133-134. [↑](#footnote-ref-53)
54. *USECP 2014-2016 Order* at 45 (“As noted above, since [LIURP] is part of PGW’s DSM, it was not being evaluated in conjunction will the full spectrum of low-income considerations that apply to USECP issues, but was meeting the LIURP reporting requirements under the Universal Services programs.”) [↑](#footnote-ref-54)
55. 42 U.S.C. § 7411(d). [↑](#footnote-ref-55)
56. 52 Pa. Code § 58.2. [↑](#footnote-ref-56)
57. 52 Pa. Code § 56.83(3). [↑](#footnote-ref-57)
58. 52 Pa. Code § 56.83. [↑](#footnote-ref-58)
59. PGW St. 2 at 7. [↑](#footnote-ref-59)
60. USECP 2014-2016 Order at 49. Consistent with this directive, BCS has been served copies of all PGW’s filings and testimony at this docket and BCS has been invited to participate in settlement discussions with the Parties. PGW St. 1-R at 13. [↑](#footnote-ref-60)
61. *USECP 2014-2016 Order* at 56. [↑](#footnote-ref-61)
62. *De facto* heating occurs when a low-income customer relies on non-gas heating as a primary source of heating even though the residence is configured to be heated primarily with gas service. [↑](#footnote-ref-62)
63. *USECP 2014-2016 Order* at 57. [↑](#footnote-ref-63)
64. *USECP 2014-2016 Order* at 57. [↑](#footnote-ref-64)
65. *USECP 2014-2016 Order* at 57. [↑](#footnote-ref-65)
66. The proposed budget for the LIME program is $1,028,706 and PGW’s proposed budget for the CRP Home Comfort program, if the CAM is not approved, is $15,945,846. PGW Exh. TML-4 at 88; PGW St. RJ-1 at 1. [↑](#footnote-ref-66)
67. See Attachment A, Stipulation between PGW & I&E dated December 4, 2015. [↑](#footnote-ref-67)
68. OCA M.B. at 74-75. [↑](#footnote-ref-68)
69. OCA St. 2 at 41. [↑](#footnote-ref-69)
70. 52 Pa. Code § 58.9(a)(1) provides, in part: “…[t]he utility shall then provide a targeted mass mailing to each customer identified through this procedure so as to solicit applications for consideration of program services.” [↑](#footnote-ref-70)
71. 52 Pa. Code § 58.11(a) provides, in part: Energy Survey requires “…[t]he installation of a program measure is considered appropriate if …the energy savings derived from the installation will result in a simple payback of 7 years or less. A 12-year simple payback criterion shall be utilized for the installation of side wall insulation, attic insulation, space heating system replacement, water heater replacements and refrigerator replacement when the expected lifetime of the measure exceeds the payback period.” [↑](#footnote-ref-71)
72. 52 Pa. Code § 58.16(a) provides, in part: “…a covered utility shall create and maintain a Usage Reduction Advisory Panel to provide consultation and advice to the company regarding usage reduction services.” [↑](#footnote-ref-72)
73. PGW averred that there is no budget approved for the program beyond the expiration of the DSM Bridge Plan (August 31, 2016, or the effective date of the compliance plan following the Commission’s decision in this proceeding). PGW M.B. at 79. [↑](#footnote-ref-73)
74. PGW opined there is no basis for the OCA’s and CAUSE-PA’s opposition to this waiver request. *Id.* at 80. [↑](#footnote-ref-74)
75. The OCA argued that pursuant to 66 Pa. C.S. § 2203(8), PGW is required to have an “appropriately funded and available” LIURP program. OCA M.B. at 81. [↑](#footnote-ref-75)
76. PGW submits that its current LIURP budget was initially developed as part of a base rate case settlement and has only been continued on an interim basis subject to the resolution of this proceeding. PGW Exc. at 45. [↑](#footnote-ref-76)
77. PGW indicated that its CRP is a percentage of income payment program (PIPP), which means the CRP customer is asked to pay a specific amount that is below the full cost of the CRP customer’s usage, while non-CRP customers pay for the remaining cost of the CRP customer’s actual usage through the CRP subsidy. PGW R.B. at 78. PGW noted that because it is a PIPP, its CRP customers do not receive a financial benefit from the weatherization treatments and this method provides a more effective and valuable impact. Therefore, PGW does not prioritize customers based on arrearages and income. PGW R.B. at 80. [↑](#footnote-ref-77)
78. PGW notes that the stated purposes of LIURP programs, as set forth in Section 58.1, are to “assist low income customers conserve energy *and* reduce residential energy bills” and to “result in improved health, safety and comfort levels for program recipients. PGW Exc. at 40, citing 52 Pa. Code § 58.1. [↑](#footnote-ref-78)
79. PGW avers that it calculates an asked-to-pay amount that is not based on usage and, if there are any pre-existing arrearages, the CRP customer is required to pay an additional $5 per month toward the arrearage. Therefore, providing LIURP weatherization services to an existing CRP customer who has a pre-existing arrearage and is required to pay the additional $5 per month on that pre-existing arrearage will not result in any financial change to the $5 a month the customer is required to pay. PGW Exc. at 42. [↑](#footnote-ref-79)
80. According to PGW, the ALJs agreed PGW’s prioritization metrics are an effective way to control administrative costs. *Id.* [↑](#footnote-ref-80)
81. We agree with CAUSE-PA’s argument that although PGW’s ELIRP program is operating within its DSM, the prioritization of eligible customers should not change from what it would be if [PGW’s LIURP] were part of PGW’s USECP. CAUSE-PA R. Exc. at 20. [↑](#footnote-ref-81)
82. The OCA, which is the only party opposed to PGW’s waiver request of Section 58.14 (c), supported CAUSE-PA’s proposal that PGW should be required to examine *de facto* heating situations that results from the loss of gas service by PGW customers under this regulation. A *de facto* heating situation occurs when a natural gas customer loses service and turns to alternate electricity heating sources. PGW R.B. at 82-83. According to CAUSE-PA, *de facto* heating occurs when a low-income customer relies on non-gas heating as a primary source of heating even though the residence is configured to be heated primarily with gas service. CAUSE-PA M.B. at 30. [↑](#footnote-ref-82)
83. *Residential Low Income Usage Reduction Programs*, Docket No. L‑00960118, Final Rulemaking Order adopted August 28, 1997, 28 Pa. B. 25. [↑](#footnote-ref-83)
84. The *de facto* heating proposal will be discussed in the next section. [↑](#footnote-ref-84)
85. The OCA avers that the Commission’s Regulations regarding this issue is not discretionary and the fact that another public utility is already engaged in the same area is further justification for PGW to engage in such coordination efforts. OCA R. Exc. at 37. [↑](#footnote-ref-85)
86. According to CAUSE-PA, its *de facto* proposal is primarily concerned with low-income households who are unable to maintain or reconnect their natural gas services and who are reliant on expensive, inefficient, and potentially unsafe *de facto* heating. CAUSE-PA asserted that the fact that the households to be served by the proposal rely upon PECO’s electric service, or the use of potentially unsafe home heating fuels, does not remove them from PGW’s service territory; nor does their lack of current PGW service preclude the provision of LIURP services. CAUSE-PA M.B.at 33. [↑](#footnote-ref-86)
87. PGW believes CAUSE-PA’s concerns are focused on a public policy problem and a concern for PECO and its high-bill ratepayers. PGW M.B. at 81. [↑](#footnote-ref-87)
88. CAUSE-PA noted that PGW, in 2014, terminated service to nearly 16,000 low income households and that more than 2,000 CRP households were without service as of February 1, 2015. CAUSE-PA noted that almost 200 of those customers’ properties were eligible for the receipt of LIURP services. According to CAUSE-PA, the Commission could initiate such a program by targeting those nearly 200 CRP households who were eligible for LIURP services but were without service. CAUSE-PA also identified the Commission’s annual cold weather survey expressing a high level of concern about households who enter and endure the winter without a safe source of heat or are using potentially unsafe heat. CAUSE-PA further indicated that although the Commission routinely urges consumers to contact their utility providers for information about programs available to help restore service, PGW has no such program available. CAUSE-PA M.B. at 35. [↑](#footnote-ref-88)
89. According to PGW, on average, just 1.5% of customers who did not receive weatherization previously and were shut off for non-payment, would have been eligible to receive LIURP treatment. PGW R.B. at 92. [↑](#footnote-ref-89)
90. PGW noted that 30.8% of its customers are confirmed low-income, which is the highest proportionate number of low income customers of all Pennsylvania’s EDCs and NGDCs. Yet, PGW’s termination rate for confirmed low-income customers, which is at 10.7%, is lower than the average termination rate of 14.7% for all NGDCs in the state, and 17.3% for all EDCs in the state. *Id.* at 92-93. [↑](#footnote-ref-90)
91. The CRP provides discounts to CRP participants and establishes affordability limits at 8% for households with income at or below 50% of Federal Poverty Level (FPL); 9% for households with income between 51 to 100% of FPL; and, 10% for households with income between 101% to 150% of FPL. OCA M.B.at 85. [↑](#footnote-ref-91)
92. CAUSE-PA stated that the Commission in its *USECP* *2014-2016 Order* reviewed and approved PGW’s CRP structure. CAUSE-PA at 38. [↑](#footnote-ref-92)
93. *See,* PICGUG Exh. 1 at 4. [↑](#footnote-ref-93)
94. *See,* PICGUG Exh. 1 at 4. [↑](#footnote-ref-94)
95. The ALJs noted that PGW specifically stated that “[b]uilding owners and PGW customers with accounts will be able to approve the transfer of this information into the EPA Portfolio Manager tool through PGW’s website.” R.D. at 198. The ALJs also stated that in response to interrogatories by PICGUG, PGW described the Commercial Data Uploading Tool as follows:

The commercial data uploading tool will enable building owners to upload usage information for their property into the EPA Portfolio Manager tool for analysis and compliance purposes. The tool would be developed in the proposed DSM Phase II to transmit monthly natural gas consumption volumes, bill amounts, and read types by meter for properties enrolled. There may also be some additional data worth inclusion allowing the tool to identify and store property identification information. This tool would help building owners analyze their usage information to inform conservation activities. PGW would also intend to use this tool as a platform for specific EnergySense marketing opportunities in informing users how to take advantage of the available EnergySense rebates and grants in reducing their usage.

*Id.* [↑](#footnote-ref-95)