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August 8, 2017

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

VIA ELECTRONIC FILING

**RE: Review of Universal Service and Energy Conservation Programs
Docket No. M-2017-2596907**

Dear Secretary Chiavetta:

Enclosed please find for filing with the Pennsylvania Public Utility Commission the Joint Comments of the Met-Ed Industrial Users Group, the Penelec Industrial Customer Alliance, the Philadelphia Area Industrial Energy Users Group, the PP&L Industrial Customer Alliance, and the West Penn Power Industrial Intervenors in the above referenced proceeding.

Very truly yours,

McNEES WALLACE & NURICK LLC

By 
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Enclosure

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Review of Universal Service and Energy : Docket No. M-2017-2596907
Conservation Programs :

**JOINT COMMENTS
OF THE MET-ED INDUSTRIAL USERS GROUP,
THE PENELEC INDUSTRIAL CUSTOMER ALLIANCE,
THE PHILADELPHIA AREA INDUSTRIAL ENERGY USERS GROUP,
THE PP&L INDUSTRIAL CUSTOMER ALLIANCE, AND
THE WEST PENN POWER INDUSTRIAL INTERVENORS**

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Dated: August 8, 2017

I. INTRODUCTION

On May 10, 2017, the Pennsylvania Public Utility Commission ("PUC" or "Commission") entered an Order requesting Comments on developing general standards for the appropriate funding and cost recovery mechanisms for universal service and energy conservation ("Universal Service") programs operated by Pennsylvania's utilities. In examining these issues, the Commission's Order requests that interested parties comment on any of the related Universal Service programs, including Customer Assistance Programs ("CAPs"), Low-Income Usage Reduction Programs ("LIURPs"), Customer Assistance and Referral Evaluation Services ("CARES"), and hardship fund programs.

On July 14, 2017, the Commission published a Staff Report prepared by the Commission's Law Bureau in compliance with the May 10 Order. The report provides an overview and historic perspective on the Universal Service programs. It also outlines the process of developing new regulations.¹

The Staff Report recognizes the long-standing Commission policy of allocating CAP costs "to the only customer class whose members are eligible for the program – residential customers."² In describing the history of the CAP program, the Staff Report states that, with a few exceptions, the Commission has allocated costs to the residential class since the program's early days.

¹ Staff Report, *Review of Universal Service and Energy Conservation Programs*, Docket M-2017-2596907 (issued July 14, 2017) ("Staff Report").

² *Id.*, page 7.

To address issues of particular importance to large commercial and industrial customers, the Met-Ed Industrial Users Group ("MEIUG"), the Penelec Industrial Customer Alliance ("PICA"), the Philadelphia Area Industrial Energy Users Group ("PAIEUG"), the PP&L Industrial Customer Alliance ("PPLICA"), and the West Penn Power Industrial Intervenors ("WPPII") (collectively, "Industrials") submit these Comments.

In these Comments, the Industrials urge the Commission to continue to allocate Universal Service costs to residential customers. The reasons for this are (a) only residential customers are eligible to receive the benefits of these programs; (b) it is consistent with long-standing Commission policy and precedent; and (c) the primary exception to Commission precedent has unique circumstances as a city-owned gas operation.

II. COMMENTS

A. Cost-Causation Principles Dictate that Universal Service Program Costs Should Only Be Allocated to Residential Customers, as Only Residential Customers Benefit from These Programs.

Principles of cost causation dictate that costs should be attributed to the customers causing costs to be incurred. Universal Service programs such as CAP and LIURP are made available only to residential customers. Conversely, large commercial and industrial organizations neither benefit from nor are eligible to participate in these programs, and therefore do not cause utilities to incur Universal Service related costs.

Because only residential customers benefit from Universal Service programs, cost-causation methodology indicates that only the residential customer class be allocated the costs of these programs.

The Industrials have occasionally encountered suggestions that non-residential customers should be allocated these costs because they receive an "indirect" benefit from one or more of the Universal Service programs.³ However, contrary to the parties' claims, the Industrials are not aware of verified and quantified indirect benefits of these programs to non-residential customers. Conversely, keeping rates as low as possible for businesses makes them more competitive, allowing these businesses to provide enhanced employment opportunities that lift people from the low-income classification.

In the past, some parties have suggested that if the cost causation methodology were followed to its logical end, only residential customers on the low-income and discount programs would be paying for these program costs, thus defeating the purpose of the programs. This unreasonable extrapolation, however, is nothing more than a smokescreen designed to hide the real issue of cost causation. For example, residential customers with certain incomes are eligible for utilities' CAP programs. Even if a residential customer is not currently receiving assistance, he or she may be eligible for CAP if certain financial hardships occur. Conversely, non-residential customers, regardless of the financial problems they face, are not and most likely never will be eligible for CAPs. Accordingly, all residential customers may be eligible for low-income assistance, rendering them direct beneficiaries of these programs; thus, they are

³ See, e.g., *Pa. PUC v. PPL Electric Utilities Corporation*, Docket No. R-00049255; see also *Pa. PUC v. Philadelphia Gas Works*, Docket No. M-00021612; *Pa. PUC v. UGI Utilities, Inc. – Gas Division*, Docket No. R-00994786; and *T.W. Philips Gas & Oil Co. – Application for Approval of a Restructuring Plan filed Pursuant to the Natural Gas Choice and Competition Act*, Docket No. R-00994790.

responsible for the costs. Because a utility's residential customer class is the only class eligible to benefit from Universal Service programs, only the residential customer class should be allocated these costs.

B. Precedent Supports Allocating Universal Service Program Costs Only to Residential Customers.

The Public Utility Commission's determinations have overwhelmingly supported the position that non-residential customers, who are not eligible for Universal Service programs, should not be allocated the costs of these programs.⁴

The PUC has reviewed this precise issue in multiple proceedings, and general PUC precedent provides that only residential customers should be allocated these costs. In a 2004 PPL rate proceeding, the Office of Consumer Advocate ("OCA") requested that the costs for PPL's universal service programs be allocated to all customer classes.⁵ The PUC found that "universal service programs, by their nature, are narrowly tailored to the residential customers and therefore should be funded only by the residential class."⁶ This finding is consistent with PUC precedent before and since that time, the majority of which has determined that large commercial and industrial customers should not have to pay for programs from which they do not benefit.

In 2006, the Commission considered whether it "should depart from its long-standing

⁴ See Final Order, *Customer Assistance Programs: Funding Levels and Cost Recovery Mechanisms*, Docket No. M-00051923 (December 18, 2006). The primary exception to the Commission's overwhelming precedent for allocating Universal Service program costs to the residential customer classes is Philadelphia Gas Works ("PGW"). PGW's allocation of these costs across rate classes was a methodology "inherited" from a time prior to PGW becoming regulated by the Commission. In this proceeding, the Commission deferred PGW's cost allocation methodology to the next base rate proceeding. This issue is currently being litigated at *Pa. PUC et al. v. Philadelphia Gas Works*, Docket No. R-2017-2586783.

⁵ See Final Order, *Pa. PUC v. PPL Electric Utilities Corporation*, Docket No. R-00049255 (December 22, 2004).

⁶ *Id.*

policy of collecting CAP costs only from residential customers."⁷ The Commission stated that "[a] majority of utilities recommend that the Commission continue its policy of allocating CAP costs exclusively to the residential class." The Commission wrote:

After careful consideration of the comments and the arguments presented, the Commission will continue its current policy of allocating CAP costs to the only customer class whose members are eligible for the program – residential customers. The Commission believes that we should not initiate a policy change that could have a detrimental impact on economic development and the climate for business and jobs within the Commonwealth.⁸

Finally, some parties have argued that the Legislature intended that costs for Universal Service programs be allocated to all classes by its use of the term "non-bypassable" in the Electricity Generation Customer Choice and Competition Act ("Competition Act").⁹ However, in *Met-Ed Industrial Users Group v. Pennsylvania Public Utility Commission*, the Commonwealth Court determined that the "non-bypassable" reference was to a deregulated electricity environment. In that context, a non-bypassable charge is one in which customers pay the charge whether they "shop" for generation supply or take default service from a utility. The court agreed with the Commission's interpretation that the Competition Act does not imply an allocation scheme in which costs must be assigned to all rate schedules.¹⁰

The Industrials recognize that the Commission desires to review the adequacy of the existing Universal Service programs and funding levels. This investigation will not change the

⁷ See Final Order, *Customer Assistance Programs: Funding Levels and Cost Recovery Mechanisms*, Docket No. M-00051923 (December 18, 2006).

⁸ *Id.*

⁹ According to the Competition Act, low-income programs have been implemented and supported by public utilities' bundled rates, and the Act seeks to continue to promote these programs through a "non-bypassable, competitively neutral cost-recovery mechanism that fully recovers the costs of universal service and energy conservation services." 66 Pa. C.S. § 2804(9); see also § 2803(17).

¹⁰ *Met-Ed Indus. Users Group v. Pa. PUC*, 960 A.2d 189 (Pa. Cmwlth. Ct. Nov. 7, 2008).

fundamental nature of the programs as residential-only offerings. As a result, the Commission should follow and reaffirm its precedent to recover the costs only from the residential class.

C. The Primary Exception to Residential-Only Allocation Has Unique Circumstances as a City-Owned Gas Operation.

As acknowledged above, PGW is the primary historical exception to the Commission's policy and precedent of allocating Universal Service program costs only to residential customer classes.

While the Industrials believe that all utilities should be subject to the same standard, PGW can be distinguished for the following reasons.

First, as the Commission itself acknowledged, PGW's allocation methodology was "inherited" from when PGW was regulated by the Philadelphia Gas Commission.¹¹ This is inapplicable to most other utilities, as most have allocated Universal Service program costs to residential customers only.

Second, the Commission's primary reasoning for not forcing PGW to change its methodology has been rate shock.¹² Again, this is related to the historical dependence of PGW's programs on all classes. In PGW's current base rate proceeding, the Office of Small Business Advocate designed a methodology that will enable PGW to move away from its historic allocation towards the allocation used by other utilities (*i.e.*, residential only).¹³

¹¹ See Final Order, *Customer Assistance Programs: Funding Levels and Cost Recovery Mechanisms*, Docket No. M-00051923 (December 18, 2006).

¹² See *Pa. PUC v. Philadelphia Gas Works*, Docket Nos. M-00021612, M-00021612C0001, M-00021612C002, M-00021612C000 (Order Entered March 31, 2003) ("Restructuring Order") and Recommended Decision, *Pa. PUC v. Philadelphia Gas Works*, Docket No. R-00061931 (July 24, 2007), pages 80-81.

¹³ See Main Brief on Behalf of the Office of Small Business Advocate, *Pa. PUC et al. v. Philadelphia Gas Works*, Docket No. R-2017-2586783 (July 21, 2017), pages 14-16.

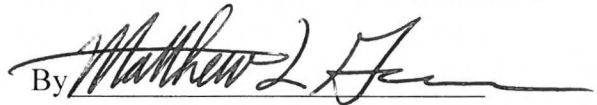
III. CONCLUSION

In conclusion, based upon cost causation methodology, PUC precedent, and legislative intent, only the customer class benefiting from, and eligible for, Universal Service programs should be allocated these costs. Accordingly, in any standards developed by the Commission regarding Universal Service programs, the Commission must ensure that the costs of these programs are only allocated to the residential customer class.

WHEREFORE, the Met-Ed Industrial Users Group, the Penelec Industrial Customer Alliance, the Philadelphia Area Industrial Energy Users Group, the PP&L Industrial Customer Alliance, and the West Penn Power Industrial Intervenors respectfully request that the Pennsylvania Public Utility Commission consider and adopt, as appropriate, the foregoing Comments.

Respectfully submitted,

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