



COMMONWEALTH OF PENNSYLVANIA

October 16, 2017

**E-FILED**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
PO Box 3265  
Harrisburg, PA 17105-3265

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

Dear Secretary Chiavetta:

Enclosed for filing are the Reply Comments, on behalf of the Office of Small Business Advocate ("OSBA"), relative to the May 10, 2017 Opinion and Order on the Review of Universal Service and Energy Conservation Programs, at the above-docketed proceeding.

If you have any questions, please feel free to contact me directly.

Sincerely,

Sharon E. Webb  
Assistant Small Business Advocate  
Attorney ID No. 73995

*Enclosures:*

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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Review of Universal Service and Energy Conservation Programs** : **Docket No. M-2017-2596907**  
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**REPLY COMMENTS OF THE  
OFFICE OF SMALL BUSINESS ADVOCATE**

**I. INTRODUCTION**

On May 10, 2017, the Pennsylvania Public Utility Commission (“Commission”) issued an Opinion and Order in the above-captioned proceeding initiating a comprehensive review of the Universal Service and Energy Conservation model. The May 10<sup>th</sup> Order identified a list of topics for Comments including the following: (1) program design; (2) program implementation; (3) program costs; (4) program cost recovery; (5) program administration; (6) program report; and (7) program evaluation. Order at 3-4. The Order further directed the Law Bureau to prepare and file a Staff Report.

Subsequently on July 14, 2017, the Commission issued a Secretarial Letter and its Staff Report. The Secretarial Letter requested comments from interested stakeholders on August 8, 2017, and also scheduled a two-day stakeholder meeting on September 13<sup>th</sup> and 14<sup>th</sup>. Reply comments are due 30 days after the stakeholder meeting.

On August 8, 2017, the Office of Small Business Advocate (“OSBA”) filed a letter indicating it would not file comments, but reserved the right to file reply comments. The OSBA submits the following reply comments to certain points raised by other parties.

## **II. BACKGROUND OF UNIVERSAL SERVICE COSTS**

The Small Business Advocate is authorized and directed to represent the interests of small business consumers of utility services in Pennsylvania under the provisions of the Small Business Advocate Act, Act 181 of 1988, 73 P.S. §§ 399.41 – 399.50 (“the Act”).

Historically, the OSBA has not participated in proceedings specific to universal service programs because currently in the Commonwealth, non-residential customers are ineligible to participate in universal service programs.<sup>1</sup>

## **III. REPLY COMMENTS**

### **A. Commission Precedent Supports that Universal Program Costs Should Be Recovered from Residential Customers**

With the exception of Philadelphia Gas Works (“PGW”) the Commission has specifically declined to allocate universal service costs to non-residential customers in numerous proceedings and has adopted a policy that the cost of universal service programs should be borne entirely by the residential customers of natural gas distribution companies, (“NGDCs”) and of electric

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<sup>1</sup> The OSBA has a unique economic interest in Philadelphia Gas Works (“PGW”) universal service programs because non-residential firm service customers are required (at this time) to pay the Universal Service and Energy Conservation Surcharge (“USEC”). The funding mechanism for PGW’s universal service programs was in place prior to PGW becoming subject to the Commission’s jurisdiction on July 1, 2000. The issue of whether non-residential firm service customers’ allocation should continue for PGW’s universal service programs is currently being litigated at Docket R-2017-2586783.

distribution companies (“EDCs”).<sup>2</sup> Furthermore, the Commission’s policy of not allocating universal service costs to non-residential customers was appealed to the Commonwealth Court and affirmed.<sup>3</sup>

While the scope of the current review involves an examination of the adequacy of funding levels for universal service programs, the goal of the current review is *not* to expand the scope of universal service programs to allow for businesses to participate in universal service programs.

Further, it should be noted that the OSBA is sensitive to the concerns of low income customers. However, the OSBA is also particularly concerned that some of the small business owners it represents are paying for USEC in their homes, and then a second time, as is currently the case in PGW’s service territory, in their businesses. Given the current economic climate, there is no justification for wholesale policy change that would have detrimental impacts on the businesses which the OSBA represents, and the business climate in the Commonwealth.

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<sup>2</sup> The Commission has specifically declined to allocate universal service costs to non-residential customers in numerous gas proceedings, including the following: (a) Valley Energy, Inc. at Docket No. R-00049345; (b) Equitable Gas Company at Docket No. P-00052192; and (c) PPL Gas Utilities Corporation at Docket No. R-00061398. The Commission has also declined to allocate universal service costs to non-residential customers in numerous electric proceedings, including the following: (a) PPL Electric Utilities Corporation at Docket No. R-00049255, and (b) Metropolitan Edison Company and Pennsylvania Electric Company at Docket Nos. R-00061366 and R-00061367. The OCA appealed the Commission’s decision in the Metropolitan Edison Company and Pennsylvania Electric Company case to the Commonwealth Court. The Commonwealth Court affirmed the Commission’s decision with regard to allocating universal service costs solely to the residential class. *Popowsky v. Pennsylvania Public Utility Commission*, 960 A. 2d 189 (Pa. Cmwlth. 2008). Furthermore, in the *Customer Assistance Programs: Funding Levels and Cost Recovery Mechanisms Final Investigatory Order*, Docket No. M-00051923 (Order entered December 18, 2006), the Commission decided it will continue its current policy of allocating CAP costs only to residential customers, in that only residential customers are eligible for universal service programs. Specifically, the Commission stated: “*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.*” (emphasis added).

<sup>3</sup> *Popowsky v. Pennsylvania Public Utility Commission*, 960 A. 2d 189 (Pa. Cmwlth. 2008).

In the case of PGW, the universal service funding model was *inherited* by the Commission, *i.e.*, the funding program was approved by the Philadelphia Gas Commission prior to PGW becoming subject to regulation by the Commission. Subsequently, the Commission concluded in *Customer Assistance Programs: Funding Levels and Cost Recovery Mechanisms Final Investigatory Order*, Docket No. M-00051923 (Order entered December 18, 2006) at 31-32, that universal service costs should be borne only by the residential class. Admittedly, the Commission did not reach a determination in that proceeding about the allocation of PGW's universal service costs. The Commission recognized that there were "a few exceptions" relative to allocating CAP costs exclusively to the residential class.

In a footnote, the Commission specifically identified PGW as one of those exceptions, noting that "PGW's cost allocation was determined prior to the Commission's oversight of the Company."<sup>4</sup> However, the Commission did *not* conclude that PGW should be a *permanent* exception to Commission policy. Rather, the Commission merely observed that PGW's current policy represented an exception to the Commission's generic policy. Furthermore, the Commission expressed no intention to rescind its prior decision to defer the matter to PGW's next base rates proceeding.

To date, the Commission has declined to harmonize PGW's treatment of the USEC with the practices of other Pennsylvania utilities on the grounds that the impact on the residential class would violate the principles of gradualism and the avoidance of rate shock. In PGW's current base rates proceeding, the OSBA has proposed a methodology for the recovery of universal

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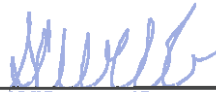
<sup>4</sup>*Customer Assistance Programs: Funding Levels and Cost Recovery Mechanisms Final Investigatory Order*, Docket No. M-00051923 (Order entered December 18, 2006) at 31.

service costs to be allocated to residential customers, that should not be constrained by gradualism and rate shock concerns.

### **III. CONCLUSION**

In view of the foregoing, the OSBA respectfully requests that the Commission consider and adopt the foregoing reply comments.

Respectfully submitted,



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Dated: October 16, 2017