BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY COMMISSION	:	
	:	
v.	:	Docket No. R-2008-2073938
	:	
PHILADELPHIA GAS WORKS	:	

MAIN BRIEF OF THE PHILADELPHIA GAS WORKS

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(Suggested Answer: Yes)

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(Suggested Answer: $60 million)

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(Suggested Answer: No)

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(Discussed herein)

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(Suggested Answer: No)

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(Suggested Answer: Yes)

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(Discussed herein)

II. INTRODUCTION AND SUMMARY

Philadelphia Gas Works ("PGW" or "the Company") is faced with an immediate financial crisis more serious than any it has faced. The global economic and credit crisis has created an immediate and enormous risk that PGW – already totally dependent on external financing to operate – will lose its barely investment grade credit rating and be completely shut out of the credit markets. If this occurs, the Company will be plunged into a financial crisis that will impose hundreds of millions of dollars of additional revenue requirement and force PGW to institute layoffs, construction and maintenance cutbacks and service reductions, from which it will take years to recover, if it is able to recover.

Starting next month, PGW is faced with the prospect of trying to complete a series of financial transactions, all of which are key to PGW's continued financial survival:

- PGW must remarket $311 million of variable rate bonds ("2006 Bonds") as fixed rate securities and terminate an associated "swap agreement." PGW presently plans to try to start remarketing the bonds by the end of January.
- In conjunction with the remarketing, PGW must convince the bond rating agencies to maintain or improve PGW's barely investment grade credit rating. PGW is scheduled to meet with the credit rating agencies starting in early January.
- PGW must "roll over" (or resell) two portions (at about $75 million each) of its commercial paper in February and again in March, 2009.
- As it must each year, PGW must pay off 100% of its outstanding commercial paper for at least 1 day to comply with IRS rules. This usually occurs in May.
- PGW must issue approximately $150 million in new long-term debt in December 2009 or January 2010, to fund construction.
- PGW must successfully renew the letter of credit supporting its $150 million commercial paper program in May 2010.

PGW's witnesses explained that all of these transactions are interrelated and while successfully completing one does not guarantee completion of all the others, the failure of one would most likely have a "domino effect" and would likely mean failure for the rest.

The inability to complete any one of these transactions would have an enormous financial impact on the Company and its customers. For example, the failure to remarket the 2006 Bonds would result in PGW having to pay the proceeds back over 5 years at a total cost of over $100 million a year. If PGW also lost its commercial paper letter of credit – a likely result if the bonds cannot be sold – the resulting cumulative revenue requirement would approach $300 million. Normal operations, of course, would be impossible and every aspect of PGW's operations – from construction to customer service – would be negatively affected.

Thus, the need to, at a minimum, maintain its current bond rating and to remarket the 2006 Bonds starting in January 2009, thus avoiding the enormous negative consequences if PGW were unsuccessful, clearly constitutes an immediate crisis affecting PGW's financial stability – and justifies extraordinary or emergency rate relief.

PGW's testimony showed that, because of the immediacy of the crisis, the only way to prevent this potential cascading failure is to grant this request for extraordinary/emergency relief now and increase PGW's rates by $60 million. Such an increase is needed to cover the incremental revenue requirement – now projected at almost $46 million – associated with the 2006 Bond remarketing and swap termination. Just as important, increased rates are needed to improve the Company's liquidity and key financial indicators, most relevant to potential bond buyers and the credit rating agencies, so that PGW might maintain and (hopefully) improve its present credit rating as it seeks to complete these key financial transactions in the next few months. The crisis is also immediate because the only way in which PGW could garner sufficient revenues to at least partially cover the added costs if it fails to complete any of these transactions is by instituting the requested increase now to capture revenues associated with current winter sales.

The reason that PGW needs to improve its financial profile is simple: PGW is barely investment grade (at BBB-) and since the global credit freeze began in September and October only the most highly rated municipal credits have been able to sell municipal securities. It is not particularly surprising that a company that is almost 90% leveraged and survives on borrowed funds, with virtually no liquidity or reserves, would be negatively affected by a credit freeze. The task before the Company and the Commission is to improve PGW's financial profile so that its lack of liquidity is addressed and its reliance on credit is somewhat mitigated, to the point that PGW's access to the credit markets is maintained in the crucial next few months.

To accomplish this, PGW's originally proposed rate increase - $60 million – was crafted to cover the originally estimated revenue requirement associated with remarketing the 2006 Bonds and also to make marginal improvement in its key liquidity indicators – non-borrowed cash, available commercial paper, fixed coverage charges and debt-to-equity ratio.

But as the case progressed, new evidence made clear that even the full rate increase might not be adequate to produce a marked improvement in PGW's financial circumstances. First, the projected cost associated with terminating the swap now has more than doubled to approximately $50 million, and the revenue requirement has increased as well (from $19.25 million to $45.9 million, both net of a one time $14 million earnings credit that PGW has available and proposes to apply against this charge). Since part of the cost of remarketing the 2006 Bonds is tied to the

"LIBOR" Rate,[1] and increases every time LIBOR decreases, and since the trend for LIBOR continues down, the cost of terminating the swap may end up to be even more than $54 million.[2] Given this new spike in the termination fee, PGW submitted summary schedules that showed that, even with the full $60 million extraordinary rate relief, PGW's financial results will only show marginal improvement.[3]

Second, PGW's rate increase proposal was analyzed assuming a cash collections rate of 96%, its recent historic performance. But as the case progressed, PGW's collections percentage has fallen, a predictable victim of the broad economic downturn given the demographics of the service territory, and appears to be on a downward trend of as much as one percentage point a month. If this trend continues and PGW actually experiences a 92% collections factor, even the full $60 million rate increase may be insufficient to meet the financial and revenue requirement goals it projects at present.

Accordingly, PGW submits that the only viable course is to grant 100% of the $60 million rate relief requested, for implementation starting January 1, 2009 (for service rendered on or after December 28, 2008). Not only is the full amount absolutely, necessary, an award of all or substantially all of the request will send a strong signal to the rating agencies and potential lenders that the PUC is supportive of the Company's efforts to continue as a going concern.

Certainly these troubling trends make it plain that the rate increase recommendations of the statutory advocates – ranging from $18 to $39 million – are not only completely inadequate, but would ultimately cost customers far more than PGW has requested in this proceeding.

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1 The swap termination fee is tied to the 1-month, US Dollar London Inter-Bank Offer Rate.

2 PGW is committed to doing everything it can to mitigate the level of this charge.

3 PGW Exh. JRB-1-C.

These recommendations do not even cover the present projection of the revenue requirement associated with remarketing the 2006 Bonds and terminating the swap, let alone produce material improvements in PGW's liquidity and financial results. In the face of this looming crisis why would the Commission want to risk precipitating a financial collapse that would impose hundreds of millions of dollars of rate increases, and require reduced services, construction cutbacks and layoffs, simply to hold the base rate increase down by $20-30 million – which is less than a 2-3% increase? The answer is that it should not.

Awarding the full requested rate increase is also supported by the fact that PGW has exhausted all other sources of funding. Indeed, despite its own severe financial problems, the City of Philadelphia has continued to grant back the annual, $18 million payment to which it is legally entitled – <u>and, in fact, extended its grant back an additional 2 years, through FYE 2013</u>.

Moreover, PGW has taken steps to try to mitigate the needed level of rate increase. It is in the process of implementing a comprehensive Business Transformation Initiative ("BTI"), which, if and when fully implemented,[4] will reduce costs or increase cash by approximately $25 million a year. Implementation of segments of the BTI has begun, with expected benefits net of expenses to begin in FY 2009, although most of the benefits will be realized in subsequent years. Moreover, the Company has implemented a cost containment plan that is projected to reduce expenses by another $2.3 million in FY 2009 and some $5 million annually thereafter. Lastly, PGW is working on a comprehensive conservation plan, to be filed in the near future for PUC approval, which will be designed to assist customers in conserving energy and further reducing their gas bills.

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[4] A portion of the Plan remains subject to Philadelphia Gas Commission approval.

To further mitigate the effect of PGW's requested extraordinary rate request, PGW has coordinated its base rate increase with a $107 million GCR decrease, even higher than the $85 million decrease originally projected. The net effect is that customers' base rates will increase by 5.2% which will be totally offset by a 9.4% decrease in the GCR/USC, for a net decrease of $47 million or a 4.2% reduction. The average residential customer's bill will actually fall by 6.6% even if the Commission grants PGW's Petition in full. Thus, the Commission can here take the necessary steps to try to improve PGW's liquidity, cash working capital and financial profile while avoiding a further net increase on PGW customers.

This crisis was obviously not caused by or the fault of PGW or its customers, but it is the Commission and the Company that must nevertheless find a solution. If ever there was an instance in which the Commission needed to exercise its authority to deal with an immediate and extraordinary financial crisis to prevent further harm to the Company, its employees, its rate payers and the City and region it is here.

III. DISCUSSION

A. The Standard To Be Applied To PGW's Request For Extraordinary Or Emergency Rate Relief

1. *Introduction*

PGW has filed its request for rate relief both as an extraordinary rate relief petition and, alternatively, a petition for "emergency" rate relief. The latter "emergency" request is made pursuant to the PUC's authority to modify the specific requirements of the Public Utility Code when necessary to accommodate PGW's unique status as a municipal utility regulated under a special version of the "cash flow" ratemaking method.[5]

5 66 Pa.C.S. § 2212(c). *See, PaPUC v. PGW,* R-00061931 (Order entered September 28, 2007) at 8-9 ("*PGW 2007 Rate Order*"). *See, also,* Section II.D.4, *infra*.

2. *Extraordinary Rate Relief*

Section 1308(e) of the Code, 66 Pa. C.S. §1308(e), states, in pertinent part, as follows:

> Upon petition to the commission at the time of filing of a rate request or at any time during the pendency of proceedings on such rate request, any public utility may seek extraordinary rate relief of such portion of the total rate relief requested as can be shown to be immediately necessary for the maintenance of financial stability in order to enable the utility [1] to continue providing normal services to its customers, [2] avoid reductions in its normal maintenance programs, [3] avoid substantially reducing its employment, and [4] which will provide no more than the rate of return on the utility's common equity established by the commission in consideration of the utility's preceding rate filing … .

The Section 1308(e) standard is often described as a four-part test.[6] The first three prongs of the test determine whether immediate rate relief is necessary for the maintenance of a company's financial stability. In *Met-Ed*[7] and *Penelec*,[8] the Commission stated that:

> Proof of such immediate necessity for such rate relief required for the maintenance of the utility's financial stability must be clear and fully supportable of a finding by the commission that the financial stability of the utility is actually in jeopardy.

Met-Ed, slip op. at 6; *Penelec*, 52 Pa. PUC at 488.

The fourth prong of Section 1308(e) places a "return on equity" cap on any rate relief that the Commission may award in this type of proceeding. Since a "return on equity" standard has no meaning for a cash flow regulated company, in PGW's last extraordinary rate proceeding the

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6 As explained below, extraordinary rate relief is not limited to general rate increase requests, but is available with respect to any portion of any "rate request." PGW's extraordinary rate relief tariff filing under Section 1308(a) of the Code including its projected GCR rate decrease are "rate requests" as referenced in Section 1308(e).

7 *Pa. PUC v. Metropolitan Edison Co.*, Docket No. P-80070235 and R-80051196 (Order entered August 28, 1980)(Met-Ed).

8 *Pa. PUC v. Pennsylvania Electric Co.*, 52 Pa. PUC 487 (Sept. 5, 1978) (Penelec).

Commission utilized its authority in Section 2212(c) of the Code to waive this prong.[9] However, the Commission stated that "as we review the amount of relief which should be awarded, we will be guided by whether or not relief will yield a reasonable level of coverage ratios under all circumstances. It is axiomatic that we must be guided by the just and reasonable standard . . . ."[10]

3. *Emergency Rate Relief*

As will be shown below, PGW has completely justified the awarding of extraordinary rate relief pursuant to Section 1308(e). However, if the Commission concludes that the extraordinary rate relief provisions may not be applied to PGW's request, that PGW has not satisfied one of the first three prongs of the extraordinary rate relief test, as set forth above,[11] or if the Commission determines that some other conventional requirement of Section 1308(e) has not been satisfied,[12] then this Commission should modify the requirements of the Public Utility Code and the Commission's regulations as necessary to accommodate PGW's unique status as a municipal utility regulated under a special version of the "cash flow" ratemaking method. Again, the Commission is fully authorized to take such action when found to be in the public interest and when the result satisfies the "just and reasonable" rate standard of the Code.

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9 *Petition of Philadelphia Gas Works For Extraordinary Rate Relief Pursuant to 66 Pa. C.S. §1308(e)*, Docket No. R-00017034F0002 (Order entered April 12, 2002) ("*PGW 2002 Extraordinary Rate Order*"), at 6, 17-19.

10 *Id*. at 19.

11 As noted, the Commission has previously held that the fourth prong of the Code – adherence to prior return on equity determination – does not apply to PGW and has waived it.

12 This would include, for example, a finding that an extraordinary rate relief petition may only be filed in the context of an ongoing Section 1308(d) general rate case.

B. PGW Has Justified Extraordinary or Emergency Rate Relief

The record establishes that PGW has met the criteria for extraordinary or emergency rate relief. Here, as in 2002, a liquidity crisis is the driving force behind the Petition. In 2002, the Commission found that "a level of extraordinary rate relief is indeed required to improve PGW's existing and immediate liquidity crisis that would negatively impact its customers, its employees, and its service."[13] "Without this critical source of short term financing, PGW would have much difficulty functioning as a viable municipal gas utility."[14] Then, and now, PGW needs extraordinary rate relief to place it in "a positive position going forward."

As explained in more detail below, in this case PGW again faces an immediate crisis: the need in the next several months to remarket some $311 million in variable rate bonds as fixed rate bonds and to deal with an associated "swap" arrangement. But, this task will be immediately followed by a series of additional transactions, all of which must be completed successfully if the Company is to maintain financial stability. Unfortunately, if the first transaction (or any of the subsequent transactions) fails, then PGW will fail. Accordingly, PGW has an immediate need to improve its liquidity and overall financial position in order to successfully complete this series of financial transactions – all of which have been threatened by the global financial crisis. The record also shows that, without extraordinary or emergency rate relief, PGW will undoubtedly fail in completing these crucial financial transactions, and, as a result, the Company will be plunged into a financial crisis of enormous proportions; ratepayers will face hundreds of millions of dollars of additional rate increases and the Company will no longer be able to continue to provide normal services to its customers. PGW further will not be

13 *2002 Extraordinary Rate Order*, at 27.

14 *Id.*

able to avoid reductions to its normal maintenance and construction programs or layoffs – exactly the kinds of actions that the extraordinary rate relief provisions of the Code were intended to prevent. The final dimension of this emergency is that the remedy must be awarded immediately in order to capture winter sales revenues if PGW is to have any funds to apply to replace lost borrowings or additional revenue requirements.

The fact that PGW's financial stability is actually in jeopardy is undisputed by the parties. OTS witness, Mr. Deardorff, concluded that rate relief was justified given PGW's weak financial position and the global credit crisis.[15] OSBA witnesses, Mr. Knecht and Mr. Price, found that maintaining PGW's investment grade bond rating was necessary for PGW to remain a financially stable enterprise and that the Company should receive an increase sufficient to permit the remarketing of the 2006 Bonds.[16] OCA witness, Mr. LeLash, stated that there "is little question that PGW faces significant challenges in the short term that raise concerns regarding its ability to maintain its financial stability under its current rates."[17] As will be seen, the remaining dispute is not *whether* PGW should receive extraordinary rate relief, but *what level* is necessary to prevent adverse consequences to the Company and its customers.

1. *PGW Is Dependent On Credit*

PGW's ability to function as a going concern is entirely dependent upon its ability to continue to borrow money.[18] In fact, PGW must consistently borrow money to timely pay all of its obligations, including payroll, natural gas supply bills and debt service, as well as to pay for

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15 OTS St. 1-R (Deardorff) p. 3-4; Tr. 187-188.

16 OSBA St. 1 (Knecht/Price) p. 7-9; Tr. 193-194.

17 OCA St. 1. (LeLash) p. 17.

18 PGW St. 1 (Knudsen) at 2-3; Tr. 101-102 (without commercial paper, PGW would have absolutely no cash on hand on most days to pay its bills); PGW Exh. JRB-8.

all construction and normal maintenance programs and to provide normal services to its customers.[19] PGW has two main sources of borrowed funds: long term debt and short term commercial paper pursuant to its commercial paper program.

a. PGW's Long Term Debt

PGW's long term debt which is rated at the lowest investment grade status,[20] is critically necessary to fund its capital programs. Approximately 80% of its capital program is directly related to safety and reliability, including its current program of replacing at least 18 miles of cast iron mains each year.[21] Since 1993, PGW has had not one dollar of internally generated funds available to finance its capital program.[22] Thus, PGW's approximately $70 million a year construction program must be entirely financed by long-term debt.[23] As a result, PGW has a capital structure of 84% debt-16% equity in the FYE 2009 (September 1 - August 31) test year. [24]

PGW has $1.2 billion of outstanding long term debt,[25] of which approximately $900 million is associated with fixed rate securities. There is no inherent risk to the Company from any of this debt. However, some $311.6 million of the debt was issued in 2006 as variable rate securities (the "2006 Bonds").[26] The proceeds of these bonds were used for capital projects and

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19 PGW St. 1 (Knudsen) at 2-3; Tr. 99, 103 (It would be very difficult for PGW to pay bills on a current basis without commercial paper).

20 PGW St. 2 (Bisgaier) at 12; Tr. 135.

21 PGW St. 3 (Bogdonavage) at 5, n. 3; Tr. 129-130.

22 PGW St. 3 (Bogdonavage) at 5; PGW St. 1 (Knudsen) at 1, 8.

23 *Id.*; Tr. 105

24 PGW St. 3 (Bogdonavage) at 5.

25 *Id*.

26 PGW St. 2 (Bisgaier) at 4.

to refinance certain previously issued bonds for the purpose of achieving significant debt service savings.[27]

b. PGW's Commercial Paper Program

PGW's commercial paper program is the lifeblood of PGW's ability to provide normal services to customers.[28] PGW's commercial paper program is currently backed by a letter of credit issued by a consortium of three banks (JP Morgan, Bank of Nova Scotia ("Scotia Bank") and Wachovia Bank).[29] This letter of credit, which matures in May 2010, makes available about $148 million of short term borrowing or liquidity to the Company.[30]

Since 1996, the Company has effectively had no cash flow from operations, but has had to borrow short term via its commercial paper program to provide critical liquidity and pay the costs of gas and operations as the bills came due.[31] Thus, for the last several years, PGW has consistently been forced to utilize its commercial paper program to provide liquidity throughout the year[32] as well as and at the end of its fiscal year (September-August), to enable it to make natural gas and other purchases in the fall.[33] As a result, PGW's year end cash, which it tries to

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27 Tr. 60-61, 72-73; PGW St. 2 (Bisgaier) at 4.

28 PGW St. 2 (Bisgaier) at 8; Tr. 99-103.

29 PGW St. 2 (Bisgaier) at 11; PGW St. 3 (Bogdonavage) at 4.

30 PGW St. 3 (Bogdonavage) at 5. According to the terms of the Program, $2 million must be set aside to cover the annual cost of the program. *Id*.

31 PGW St. 1 (Knudsen) at 2, Exhibit TEK-1.; PGW St. 3 (Bodonavage) at 4; Tr. 99-103.

32 PGW Exh. JRB-8; Tr. 101-103. Mr. Bogdonavage testified that since September 1 of this year, until December 1, 2008 (the last day examined) PGW had a <u>negative cash</u> balance on <u>each</u> of those days. Tr. 102. In other words, without commercial paper, PGW would not be able to pay all of its obligations on <u>any</u> of those days.

33 PGW St. 3 (Bogdonavage) at 4; PGW St. 1 (Knudsen) at 2, Exhibit TEK-2; PGW St. 2 (Bisgaier) at 8; Tr. 98 (commercial paper is the lifeline of the company); Tr. 103 (It

maintain at $50 million, is entirely borrowed.[34] In other words, if PGW were to lose its commercial paper program it would have no cash to provide cash working capital and could not conduct business.[35]

At the present time, 100% of its commercial paper program is outstanding.[36] PGW issues commercial paper in various tranches for up to 270 days,[37] and currently, PGW has two outstanding tranches: One tranche in the amount of $75 million with a maturity date of February 15, 2009[38] and a second tranche in the amount of $73 million with a maturity date of March 2009.[39] PGW must continue to issue, and re-issue ("rollover") these tranches.[40] Thus, PGW has no "reserve" of liquidity – defined as available commercial paper borrowing capacity plus cash on hand – or cash working capital to deal with any contingencies. All of its available capacity is being used just to provide service on a "business as usual" basis.

2. *The Global Financial Crisis Has Put At Severe Risk PGW's Key Sources Of External Borrowing*

The current global credit crisis has, among other things, made banks and other credit providers unwilling or unable to provide normal, business-as-usual credit or liquidity support to

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would be very difficult for PGW to pay bills on a current basis without commercial paper).

34 Tr. 99-100.

35 *Id*.

36 PGW St. 2 (Bisgaier) at 8-9; PGW St. 3 (Bogdonavage) at 4; Tr. 180 (one tranche of $73 million and one tranche of $75 million are outstanding).

37 PGW St. 2 (Bisgaier) at 9; Tr. 52-53.

38 *Id*. at 8-9.

39 Tr. 53.

40 PGW St. 2 (Bisgaier) at 3; Tr. 53.

either corporate or municipal entities.[41] For example: (a) municipalities rated lower than AAA or AA have had trouble accessing the credit markets on any basis and when they have been able to sell bonds or commercial paper, the prices have been much higher than prior sales;[42] and (b) the economy has slowed and many companies are reporting increased slow pay and defaults.[43]

The global credit crisis puts completion of the following key PGW financial transactions and instruments at risk:

a. Maintenance of PGW's Credit Rating

Presently, PGW's credit ratings are at the lowest investment grade status.[44] With the global credit crisis, market access by PGW "will, at best, be extremely expensive and, at worst, not available."[45] In early January 2009, PGW must go before the rating agencies for a formal review of PGW's bond ratings.[46] This is a necessary step before PGW can engage in any of its

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41 *Id*. at 4; Tr. 69-70 (None of this is PGW's fault. This is happening to countless numbers of government entities across the country that are facing virtually the same problem).

42 PGW St. 2 (Bisgaier) at 7-8; Exhibit BB-1; Exhibit BB-2; Tr. 51-52, 55 (holders of bonds only want a AAA underlying credit rating).

43 PGW St. 1 (Knudsen) at 4; Tr. 133-134 (PGW's collection rate is declining).

44 PGW St. 2 (Bisgaier) at 12; Tr. 135.

45 PGW St. 2 (Bisgaier) at 12. In fact, prior to this current challenge, PGW has faced three prior challenges regarding its bond rating: (1) in 2001, in the absence of a rate increase in nearly a decade and because of a large spike in commodity prices, its investment grade bond rating was at risk and PGW was forced to borrow $45 million from the City's General Fund surplus to cover the gas bills due and request interim and then permanent rate relief from the PUC; (2) in February 2002, Standard & Poors threatened to downgrade the Company below investment grade level, prompting an extraordinary rate increase that the PUC granted in April, meeting S&P's dictated timeframe; and (3) in 2004, S&P challenged the adequacy of PGW's liquidity position leading to the City's waiver of the $18 million City payment, thereby avoiding a downgrade in PGW's bond rating (and a successful effort by PGW to improve its collections). (PGW St. 1 (Knudsen) at 2-3; Tr. 87.)

46 Tr. 64-65.

upcoming financial transactions (discussed below). PGW is gravely concerned about completing these transactions because, for the first time, PGW experienced difficulty in rolling over commercial paper in October 2008 (although it was successful in doing so in November 2008).[47]

The potential for a downgrade is real. In FY 2009 (without an extraordinary or emergency rate increase) PGW's rates will continue to produce no net cash or available internal generation.[48] In fact, PGW will end the year with negative cash of $35 million.[49] Plus, the FYE 2009 debt-to-equity ratio – 84% debt – 16% equity – is now higher than the debt-to-equity ratio in the test year used in PGW's last rate proceeding (FYE 2007): 83% debt – 17% equity.[50] Finally, with no rate increase, PGW's fixed coverage charge, a key indicator used by rating agency Standard and Poors to measure liquidity, is projected to be just five basis points above the minimum level needed for an investment grade bond rating (1.25 x where the minimum is 1.2 x).[51]

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47 PGW St. 2 (Bisgaier) at 9-10; Tr. 52-53.

48 PGW St. 3 (Bodonavage) at 5; Tr. 101-102 (In FY 2008, PGW has had a negative cash position without commercial paper); Tr. 106 (PGW will not generate cash flow in FYE 2009).

49 PGW Exh. JRB-1, Part A, p. 2 ($85 million commercial paper outstanding, $50 million cash equals negative $35 million net cash).

50 PGW St. 3 (Bogdonavage) at 6; Exh. JRB-1, Part A, p. 4.

51 PGW Exh. JRB-1 Part A. These results do not contain the updated, higher swap termination fee; if the higher fee were included the rate would be below 1.2x. The "fixed coverage charge" is a key indicator used by Standard and Poors ("S&P") to determine whether a "credit" meets the minimum standards for an investment grade security. PGW St. 3 (Bogdonavage) at 6. In PGW's last extraordinary rate proceeding, the Commission specifically acknowledged the importance of the S&P fixed coverage charge calculation and used the minimum requirements of 1.2x to 1.3x as a bench mark for the level of extraordinary rate relief that it was to be awarded there. *PGW 2002 Extraordinary Rate Order* at 28-29. As explained below, the result of this proceeding must be to improve PGW's fixed coverage charge sufficiently so that PGW could justify a bond rating

PGW's projected FYE 2009 financial results could easily become much worse if the economic recession adversely affects its collections. PGW is concerned that the economic slowdown will result in reduced cash receipts and sales as well as increased accounts receivables/bad debt.[52] For example, if PGW's experienced collections percentage falls to 92% (the level that PGW experienced historically prior to its dramatic improvement starting in 2004) instead of the 96% level it experienced in FYE 2008, it will suffer a loss in FYE 2009 of almost \$35-40 million,[53] just barely meet its bond indenture coverage requirement of 1.5 times (which if violated constitutes a default) and have a fixed coverage charge well below the minimum level for an investment grade credit, likely resulting in a downgrade.[54]

Each of the three rating agencies has expressed the concern that PGW's highly leveraged position leaves it with no financial flexibility with which to weather a financial crisis, however small.[55] Moreover, PGW's FY 2009 fixed cost coverage ratio (without including the revised projected 2006 Bond remarketing and swap costs) does not compare favorably with those of other municipally-owned utilities (which may be as high as 1.7 times).[56]

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upgrade thereby improving its chances of successfully completing its key financial transactions will be improved.

52 PGW St. 1 (Knudsen) at 4; Tr. 133-134.

53 Tr. 134.

54 PGW St. 3 (Bogdonavage) at 6-7; Exh. JRB-4.

55 PGW St. 2 (Bisgaier) at 14.

56 *Id*.

If any of PGW's credit ratings slip below investment grade, it would almost certainly lose its commercial paper program,[57] and it would not be able to continue its capital program, as it would have no access to the credit markets.[58]

b. 2006 Bonds

Until the onset of the credit crisis, the 2006 Bonds performed as expected.[59] The 2006 Bonds were issued as variable rate bonds (i.e., the interest rate is re-set weekly),[60] which was normal for variable rate municipal bonds.[61] In order to eliminate the risk associated with the weekly resetting of the interest rate, PGW entered into an interest rate swap agreement (with JPMorgan as the counter-party).[62] This enabled PGW to lock-in a fixed payment rate of 3.675%.[63] The payments made by PGW under the swap nearly perfectly matched the variable rate paid to the holders of the 2006 Bonds.[64]

However, the global credit crisis has seriously and negatively impacted the performance of the 2006 Bonds.[65] The 2006 Bonds are covered by a municipal bond insurance policy

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57 PGW St. 2 (Bisgaier) at 14; Tr. 54-55.

58 PGW St. 2 (Bisgaier) at 12; Tr. 54 (If downgraded, PGW would have no access to the capital markets).

59 *Id*. at 4-5.

60 *Id*. at 4.

61 Tr. 60-61. Variable rate bonds were employed by the City of Philadelphia and many government entities in the U.S. Tr. 69-70.

62 PGW St. 2 (Bisgaier) at 4.

63 *Id*.

64 *Id*.

65 *Id*. at 5.

provided by Financial Security Assurance ("FSA").[66] FSA was first placed on "negative outlook" by each of the three credit rating agencies,[67] and then downgraded by Moody's.[68]

In response, the holders of the 2006 Bonds began to tender them back to the bank consortium (JP Morgan, Scotia Bank and Wachovia Bank).[69] Under the terms of a Standby Bond Purchase Agreement that was issued along with the bonds, the banks are required to purchase the 2006 Bonds that they are unable to re-market to new bond buyers.[70] As of November 13, 2008, the members of the bank consortium were holding a total of $269,000,000 of the 2006 Bonds.[71]

The 2006 Bonds held by the banks are designated as "Bank Bonds" and bear interest at the prime rate.[72] Because they are now "Bank Bonds," there is a differential between the variable rate paid to the holders of the 2006 Bonds and PGW's payments under the swap agreement.[73] PGW is required to pay this difference to the bank consortium.[74]

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66 PGW St. 2 (Bisgaier) at 4.

67 PGW St. 2 (Bisgaier) at 5.

68 Tr. 51-52.

69 PGW St 2 (Bisgaier) at 6; Tr. 56.

70 *Id*.

71 PGW St. 2 (Bisgaier) at 6. At the hearing, Ms. Bisgaier indicated that the amount of bonds which had been tendered back had increased to $280 million. Tr. 56.

72 PGW St. 2 (Bisgaier) at 6.

73 *Id*.

74 *Id*.

The Standby Bond Purchase Agreement is due to expire in January 2009.[75] In the normal course, this credit facility would have been renewed and PGW would have continued to get the benefits associated with the original transaction.[76] However, in August 2008, JPMorgan advised PGW that it would not (due to its own internal credit issues) renew the Standby Bond Purchase Agreement.[77]

In response, PGW explored the option of substituting new banks to support the Standby Bond Purchase Agreement,[78] but these efforts were unsuccessful.[79] Thus, PGW must attempt to remarket the 2006 Bonds as fixed rate bonds.[80]

If PGW **cannot** remarket the 2006 bonds, the consortium would own 100% of the 2006 Bonds in January 2009[81] and, under the terms of the Standby Bond Purchase Agreement, PGW will be required to repay the \$311.6 million to JPMorgan in 10 semi-annual installments.[82] The first payment of \$31,161,500 would be due on August 1, 2009.[83] Subsequently, PGW would be responsible for two such payments in each fiscal year, together with higher interest and a higher

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75 *Id*.

76 *Id*.

77 *Id*.; Tr. 56-57, 67-69.

78 PGW St. 2 (Bisgaier) at 7; Tr. 67-69.

79 *Id*.

80 PGW St. 2 (Bisgaier) at 7.

81 *Id*.

82 *Id*.; The revenue requirement consists of the principal and interest payments plus the minimum 1.5x debt service coverage requirement required to be kept by PGW. PGW St. 2 (Bisgaier) at 6-7; Exh. JRB-4.

83 PGW St. 2 (Bisgaier) at 7; Tr. 69 (The need to terminate the swap is driven by the fact that PGW must get the bonds out of the variable rate mode).

debt service coverage requirement.[84] This accelerated repayment would impose an additional revenue requirement on PGW of over $100 million annually, for five years.[85] In addition, PGW would still be required to incur costs to terminate the swap.

If PGW **can** remarket the 2006 bonds, PGW will have additional revenue requirements. First, the debt service and debt service coverage on the 2006 Bonds will increase by $9.9 million in FY 2009.[86] The projected interest rate for this debt increased from 6.76% to 7.36%, and could even reach 8.0%.[87] Second, the interest rate swap must be terminated.[88] The cost of the swap termination is calculated by a market-driven formula[89] where costs to PGW increase as the LIBOR rate decreases.[90] Based on the market conditions at the time of filing, the cost to terminate the swap agreement was projected at $25 million.[91] However, the latest projection reflected in the record is approximately $54 million ($50 million on a present value basis).[92] Utilizing the earnings of its restricted funds as an offset, the total FY 2009 incremental (i.e., not currently included in its rates) revenue requirement associated with successfully remarketing the

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84 *Id.*

85 PGW Exh. JRB-5.

86 Tr. 114-116; the annual interest expense (for FY 2010 and after) is $11 million, PGW St. 2 (Bisgaier) at 7 ($9 million); Tr. 76-77 (additional $2 million). The annual interest expense plus coverage requirement (for FY 2010 and after) is $16.5 million. ($11 million annual interest expense multiplied by 1.5x.)

87 Tr. 49-50 Tr. 114-115; Exh. BB-2.

88 PGW St. 2 (Bisgaier) at 7-8.

89 *Id.*

90 Tr. 73-74.

91 PGW St. 3 (Bogdonavage) at 4; OCA Cross Exam Exh. 1.

92 Tr. 76; Exhibit BB-1; Exhibit BB-2.

bonds and terminating the swap agreement using the latest swap cost projection is $45.9 million.[93]

c. Rollover of PGW's Commercial Paper

In the first half of 2009, PGW must also resell ("rollover") one-half of its commercial paper (approximately $73 million) at least twice. The next scheduled rollovers will occur on February 15, 2009 and again on March 12, 2009.[94] It must continue to rollover its commercial paper during the course of the entire fiscal year.[95]

There is no assurance that buyers will exist for PGW's commercial paper[96] – especially during this credit crisis. If buyers cannot be found for all of each tranche of commercial paper as it matures, PGW will need to draw upon the letter of credit that is the backstop for the program.[97]

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93 Tr. 77-78; Tr. 114-116. To be sure, PGW is currently exploring all available avenues to mitigate any excessive swap termination fee. These could include delaying the swap termination for some months until the LIBOR rate changes and the fee goes down (which would result in additional fees depending on the length of the delay, Tr. 75, 83), paying off the swap in portions, or seeking other financial instruments that might mitigate increased costs. Nonetheless, all of these options will result in significant additional revenue requirements for the Company. PGW is prepared to update the Commission on its actions in this regard on a going forward basis.

One option alluded to by Ms. Bisgaier during the hearing (Tr. 49) that is no longer available, given the size of the swap termination fee, is "financing" or "capitalizing" the fee by adding it to the cost of the remarketed bonds. Considering Ms. Bisgaier's concern that PGW will not be able to remarket any of the 2006 Bonds (Tr. 55), there is no basis for assuming that a substantially larger amount (*i.e.,* $50 - $60 million) could be financed in this credit environment.

94 PGW St. 2 (Bisgaier) at 10; Tr. 53.

95 PGW St. 2 (Bisgaier) at 10; Tr. 53.

96 *Id*. at 3, 9-10; Tr. 53 (The November 2008 rollover of commercial paper "was due primarily to the fact that there was a slight improvement in the commercial paper market generally and people were willing to buy it and take the risk that JPMorgan would still be around to honor the maturity in March" 2009).

97 PGW St. 2 (Bisgaier) at 9.

Under the letter of credit, PGW would be forced to pay interest at the prime rate to the banks until the commercial paper is remarketed, dramatically increasing costs not currently in rates.[98]

d. Payoff of PGW's Commercial Paper

Each year, PGW must pay off all of its outstanding commercial paper for one day, pursuant to IRS requirements.[99] This 100% pay off needs to occur within the current fiscal year and is scheduled to occur in May 2009.

e. Issuance of Additional Long-Term Debt to Finance PGW's Capital Program

As noted previously, PGW does not produce any internally generated funds to finance its $70 million annual capital program.[100] PGW will need to issue approximately $150 million of long-term bonds in December 2009 or January 2010 to provide funds to continue its construction program at required levels.[101] Given that the five primary municipal bond insurers (AMBAC, Assured Guaranty, FGIC, FSA and MBIA) have experienced credit deterioration, PGW will most likely be forced to enter the bond market with unenhanced bonds (i.e. bonds without a highly-rated municipal bond insurance policy).[102] This is not something PGW has done in recent memory,[103] and is likely to be expensive, if it is possible at all.[104] Failure of the Commission to

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98 *Id.*

99 *Id.*

100 PGW St. 1 (Knudsen) at 1, 8; PGW St. 3 (Bogdonavage) at 5; Tr. 121.

101 PGW St. 2 (Bisgaier) at 12.

102 *Id.*

103 *Id.*

104 *Id.*

grant the requested relief in this proceeding or failure of any of the transactions listed here would threaten PGW's ability to market such bonds.[105]

f. Renewal of PGW's Letter of Credit

The letter of credit used to support PGW's Commercial Paper matures in May 2010.[106] If the letter of credit were due for renewal at the present time, Ms. Bisgaier testified that the likelihood that JPMorgan would renew the facility is low.[107] Further, Wachovia's own financial situation is uncertain.[108] Thus, it may also be unwilling to participate in the renewal of the letter of credit.[109] Moreover, if PGW fails to remarket the 2006 Bonds, or fails to sell new bonds in FY 2010, it is almost certain that PGW would also lose its letter of credit in May of 2010.[110]

If the letter of credit is not renewed (or issued by another bank or consortium of banks), any commercial paper then held by the banks must be repaid within 90 days.[111] Moreover, PGW would need to find another source of cash in order to be able to pay its bills, including gas

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105 PGW St. 2 (Bisgaier) at 14-15; Tr. 55-56.

106 PGW St. 2 (Bisgaier) at 3, 9-10; Tr. 55, 120-121.

107 *Id*.

108 PGW St. 2 (Bisgaier) at 12. Wachovia has been acquired by Wells Fargo and its continued interest in municipal financing is uncertain. Tr. 67-68.

109 PGW St. 2 (Bisgaier) at 12; Tr. 55 (If PGW was downgraded, there would be virtually no way that it could renew the commercial paper program in May of 2010).

110 *Id*.; PGW St. 2 (Bisgaier) at 14; PGW St. 3 (Bogdonavage) at 7.

111 PGW St 2. (Bisgaier) at 14-15; PGW St. 3 (Bogdonavage) at 7.

supplier bills and debt service.[112] This would require a rate increase of <u>at least</u> $172 million.[113] It is difficult to imagine how PGW could remain a going concern under this scenario.[114]

3. *The Consequences of PGW's Financial Failure to it and its Customers Will be Devastating*

If PGW is unable to accomplish any of the above, the Company would be trying to deliver gas to existing customers without the funds to do so.[115] It would be in crisis mode and would be forced to: (1) reduce normal maintenance and construction activities;[116] (2) stop all non-safety related and non-essential maintenance;[117] (3) cut back on customer service;[118] (4) extend the hiring freeze;[119] and (5) initiate staff reductions and layoffs.[120]

Indeed, PGW CEO Thomas Knudsen testified that the Company has already begun contingency planning to be able to respond immediately if one of the above events transpired.

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112 PGW St. 3 (Bogdonavage) at 7.

113 PGW Exh. JRB-5 (effect of commercial paper loss).

114 PGW St. 2 (Bisgaier) at 15; PGW St 3 (Bogdonavage) at 7-8.

115 PGW St. 1 (Knudsen) at 7; Tr. 129-130; Tr. 135 (Mr. Knudsen stated that this is the most worried that he has been about this company since he started at PGW 8 years ago).

116 Tr. 129-130. PGW would need to do a "triage" analysis on projects to identify those designed to enhance reliability and safety which could be safely delayed for some period. PGW St. 1 (Knudsen) at 8.

117 PGW St. 1 (Knudsen) at 7-8; Tr. 129.

118 PGW St. 1 (Knudsen) at 7-8; Tr. 129-130.

119 PGW St. 1 (Knudsen) at 7-8; Tr. 129.

120 PGW St. 1 (Knudsen) at 7-8, Tr. 129-130.

The steps currently being examined include modifying the capital budget, personnel cuts, service cutbacks and maintenance reductions.[121]

4. *PGW Has Demonstrated An Immediate Financial Crisis Justifying Extraordinary Rate Relief*

Thus, there is overwhelming, credible evidence that PGW is facing a severe and immediate crisis threatening its financial stability which justifies the awarding of extraordinary rate relief. As detailed above, the financial crisis is really a series of individual financial crises – beginning next month but extending out to May 2010. Because of the interrelated nature of these events, all of them need to be considered components of the immediate crisis.

To respond to this crisis, PGW needs to begin to collect its additional rates by January 1, 2009 if the extraordinary or emergency rate request is to give it the funds needed to cover the anticipated new financial costs and provide the liquidity improvement needed to ensure continued access to the capital markets.[122]

If any doubt remained, the Commission's conclusions in PGW's 2002 extraordinary rate relief proceeding appear to be on point again:

> We note that the driving force behind the Petition under review is PGW's current liquidity problem. PGW's reliance on the threat of an S&P downgrade is not, in and of itself, sufficient justification for extraordinary relief. The S&P notice is, however, one manifestation of PGW's current and immediate liquidity crisis. Of equal or greater concern is PGW's $100 million commercial paper credit facility now underwritten by a consortium of banks led by JP Morgan Chase Bank. There is substantial and credible evidence of record to indicate that, if PGW does not receive a significant increase in permanent revenues, PGW's liquidity crisis will result in significant disruptions to its normal customer services, its

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121 Tr. 129-30; Tr. 129 (PGW has started the process of looking at more draconian measures in operations if circumstances require).

122 Tr. 132-33; PGW St. 3 (Bogdonavage) at 7, 10; PGW St. 1 (Knudsen) at 11.

> ongoing maintenance and mains improvement program and will result in a reduction in PGW's employment.
>
> The OCA, CEPA and the OSBA forcefully argue that PGW's assertions that an S&P ratings downgrade will result in an almost complete financial collapse is speculative. <u>While we are sympathetic to these arguments, we note that there is a fine line between speculation and that which is reasonably foreseeable</u>. We reiterate that a threatened S&P downgrade, standing alone, is insufficient to justify the relief awarded here. However, we also note that the evidence of record clearly establishes that PGW's liquidity problems threaten not only its bond ratings, but also its $100 million commercial paper credit facility. PGW's efforts to obtain a Forward Purchase Agreement for its Sinking Fund Reserve earnings have already been impacted.
>
> PGW witnesses Bisgaier and Krellenstein testified to their substantial experience in capital markets. The record amply reflects the tenor of the markets and the pressure on credit rating agencies in the wake of the Enron debacle. Given the current tenor of the markets and the record evidence regarding PGW's liquidity crisis, our responsibility to the residential and business customers of PGW requires that we act now. <u>We simply cannot wait until PGW collapses</u>.[123]

As was the case in 2002, PGW's witnesses have explained that the only prudent course is to increase base rates by a modest amount now to try to stave off a collapse – the Commission cannot wait until PGW collapses. It is important to understand that PGW bills approximately two-thirds of its revenues in the four month winter period, December 1 through March 31.[124] Therefore, if PGW were to wait for a base rate increase awarded with the usual general rate increase schedule, it would only begin recovering additional rates <u>a year from now</u>, in November or December of 2009. This would not give PGW the funds to improve its financial position or to deal with the loss of any of its credit facilities in early 2009. The cost to customers of such a rate increase at this time are far less than the potential consequences of not taking such action. The

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123 *PGW 2002 Extraordinary Rate Order* at 14-15 (emphasis added).

124 PGW St. 1 (Knudsen) at 10;PGW St. 3 (Bogdonavage) at 10.

"worst case scenario" could result in financial failures with an additional revenue requirement of over $250 million[125] and a complete shut down of normal company operations. Moreover, delay is likely to cost more than immediate action – as evidenced by the increase in the upper end of projected cost to terminate the swap agreement, which went from $15 - $30 million[126] to $54 million in a few weeks.[127]

a. PGW Has Justified Emergency Rate Relief

While PGW believes that it has met each of the statutory extraordinary rate relief criteria as written, if, in the unlikely event, the Commission concludes that any of these events extend too far into the future or are not certain enough to be considered under the Commission's past practice, it should modify or waive those standards to recognize PGW's special circumstances and PGW's special "cash flow" ratemaking method and characterize PGW's request as justifying "emergency" rate relief.[128] PGW has no shareholders and no alternative sources of producing hundreds of millions of dollars of additional liquidity that would be needed if any of these financial transactions fail. Moreover, under the cash flow method of ratemaking, PGW's year-to-year cash and liquidity levels are related so that the ability of PGW to renew its commercial paper letter of credit in 2010 will be directly affected by the level of cash and other financial indicators at the end of FY 2009. Thus, at least for PGW, examining PGW's financial needs starting in January 2009 and extending to May 2010 is the only reasonable approach.

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125 PGW Exh. JRB-5.

126 PGW St. 2 (Bisgaier) at 8.

127 Tr. 48-51; Exhibit BB-1.

128 The PUC has authority to do so pursuant to 66 Pa. C.S. § 2212(c).

5. *PGW Has No Other Source Of Funding By Which To Avoid The Need For Extraordinary Rate Relief*

An implicit requirement in Section 1308(e) is that the utility have no other appropriate sources of funding which could be tapped to obviate the need for extraordinary/emergency rate relief. PGW has shown that there are no such alternatives. [129]

As the Commission is well aware, PGW has no shareholders and is 100% owned by the City of Philadelphia.[130] PGW is legally required to make an annual payment of $18 million to the City.[131] Ms. Bisgaier, who is the financial advisor both to PGW and the City of Philadelphia (as well as to the Commonwealth of Pennsylvania), testified that the City had already made a substantial contribution to PGW's financial wellbeing by agreeing to forego until FY 2011 the $18 million annual payment.[132] The City has been "granting back" that payment since 2004.[133] Further, Mr. Knudsen testified that, in recognition of PGW's dire circumstances and, despite its own difficult finances, the City would continue to grant back the $18 million payment for an

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129 PGW cannot tap its capital fund or pension fund to improve financial stability because these funds must be repaid almost immediately. Tr. 103-105. Given that PGW is finding it difficult to refinance its existing debt (PGW St. 2 at 9-10; Tr. 55), it is extremely likely that PGW will experience difficultly with "new" debt with its current credit rating. Any suggestion that it would be simple or easy for PGW to borrow money (without $60 million in extraordinary or emergency rate relief) does not reflect a full understanding of PGW's near junk bond status and the global credit crisis.

130 Petition at ¶¶ 2, 3; *Pa. PUC, et al. v. Philadelphia Gas Works*, R-00006042, *et al.* (Order entered October 4, 2001), at 7 (incorporating the findings of fact in the Recommended Decision of August 7, 2001) (PGW 2001 Rate Order).

131 *See, e.g.,* 66 Pa. C.S. 2212(f); *PGW 2001 Rate Order*; *PGW 2002 Extraordinary Rate Order*.

132 Tr. 66, 128. PGW St. 2 (Bisgaier) at 13, 16.

133 PGW St. 1 (Knudsen) at 3.

additional two years or through FY 2013.[134] Beyond that, the City simply has no money, recently announcing its own $1 billion deficit.[135] The City is also putting into place cutbacks in a host of services, including libraries, fire stations, and City pools.[136] Ms. Bisgaier also testified to the obvious fact that neither the Commonwealth nor the federal government are ready sources of funding for PGW.[137] Moreover, any such one-time funding would have little effect on potential purchasers of the 2006 Bonds or the bond rating agencies.[138] Plainly such one-time or "stop-gap" measures will not permit PGW to avoid the need for an immediate extraordinary rate increase.

6. *PGW Has Taken Reasonable Steps To Mitigate The Level Of Extraordinary Rate Increase And Is Considering Other Longer Term Policy Initiatives*

Another showing implicitly required for a grant of extraordinary rate relief is that the utility has taken all reasonable steps to mitigate its request for such relief. PGW has shown that it has taken such steps. Initially, it should be noted that, because the overwhelming majority of PGW's operating expenses are fixed or beyond its control (fully 92%), its ability to reduce its

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134 Tr. 128, 136-137.

135 PGW St. 1 (Knudsen) at 4; St. 2 at 16-17.

136 *Id.* Marcia Gelbart and Patrick Kerkstra, "Nutter says city finances are getting worse", The Philadelphia Inquirer, December 9, 2008,, which is available at http://www.philly.com/inquirer/local/20081209_Nutter_says_city_finances_are_getting_worse.html ; Catherine Lucey and Chris Brennan, "We must tighten our belts,' Nutter Says of Budget Cuts," Philadelphia Daily News, November 7, 2008, which is available at http://www.philly.com/dailynews/local/20081107__We_must_tighten_our_belts___Nutter_says_of_budget_cuts.html; and, Michael Nutter, "Mayor of the City of Philadelphia, A Call for Shared Sacrifice," Address on Budget Cuts (Nov. 6, 2008), which is available at http://www.nutter2007.com/index.php?/news/watch_mayor_nutters_budget_speech .

137 PGW St. 2 (Bisgaier) at 17.

138 Tr. 51-52, 54-59. PGW St. 2 (Bisgaier) at 15 (To maintain, or upgrade its ratings, PGW would have to demonstrate a year-end free cash balance and provide evidence that PGW is not on the brink of financial disaster.)

cash needs through cutbacks and efficiency measures is limited.[139] It is also clear that this crisis appeared on the horizon very suddenly, leaving PGW almost no time to put in effect its mitigation strategy.[140] Nonetheless, PGW has undertaken several initiatives designed to reduce costs and improve efficiency which are projected eventually to increase cash or decrease expenses by $25 million annually.

First, and most importantly, PGW has begun a "Business Transformation Initiative ("BTI") which is designed to produce some $25 million in total net annual savings (after initial outlays in FY 2008 and 2009).[141] The effects of the plan will begin to be reflected in the FYE 2009 year and the longer term positive effects will be a replacement for additional rate increases in the FY 2010- FY 2013 period. Only the portion of that plan that has been cleared for implementation – known as BT "Lite" – is reflected in PGW's *pro forma* five year forecast and enhances PGW's financial results in those years.[142] However, PGW's full program – "BT-Full" – has not been approved through PGW's budget review process.[143] So, the ability to realize these savings and, in turn, to avoid potential rate increases, is contingent upon such approval.

Second, and more immediately, PGW has instituted "cost containment" steps designed to reduce expenses and capital outlays. They include:

- Eliminating merit raises for non-union employees (expense savings: $1.5 million);
- Reducing PGW's total Operating and Maintenance spending by an annual amount - 2%;

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139 PGW St. 1 (Knudsen) at 9; Ex. TEK-4.

140 Tr. 70.

141 PGW St. 1 (Knudsen) at 9-10; Tr. 106-107.

142 PGW St. 1 (Knudsen) at 9-10; Tr. 107.

143 PGW St. 1 (Knudsen) at 10; Tr. 107.

- Selling one of two headquarters buildings and consolidating operations for annual savings of $1.5 million starting in FY 2010;
- Eliminating five of six district offices for annual savings of $500,000 (also starting in FY 2010). The consolidation of the headquarters building and the district offices would also save nearly $5.0 million in planned capital expenditures;
- Freezing all non-essential hiring for vacant positions;
- Reducing the fleet by more than 50 vehicles for over $1 million reduction in planned capital expenditures.[144]

The effect of these steps in the test year will be relatively small (FYE 2009): $2.3 million,[145] but the effect will be greater in FY 2010 (approximately $5 million in capital and expense savings). Just as important, these efforts show that PGW is not just asking its customers to make the only sacrifices in the form of higher base rates. To further mitigate the effects of the extraordinary rate increase, PGW has taken these additional steps:

- PGW has coordinated the base rate increase with a substantial (now $107 million) GCR decrease so that the net effect of the financial improvement effort for the customer will be a rate decrease, rather than a rate increase.
- PGW is seeking aggressively to implement the efficiency/cost cutting efforts discussed above.
- PGW is preparing to file, soon, a Conservation/Demand Side Management proposal for approval by the PUC, in order to promote, fund and encourage serious conservation efforts among our customers.[146]

Thus, the record reflects that PGW has taken reasonable steps to attempt to mitigate the rate increase, and the impact on customers.

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144 PGW St. 1 (Knudsen) at 10-11.

145 PGW St. 3 (Bogdonavage) at 3; Tr. 107. Mr. Bogdonavage did not reflect the $2.3 million reduction in his *pro forma* income statement because it was offset by adjustments from PGW's last rate case that would have decreased net income by a greater amount but which Mr. Bogdonavage also did not include (PGW St. 3 (Bogdonavage) at 3) and because the effect on *pro forma* results would not be material. Tr. 107-108.

146 PGW St. 1 (Knudsen) at 11-12.

C. <u>What Level of Extraordinary or Emergency Rate Relief Has PGW Justified?</u>

1. *PGW Has Justified The Full Amount Of Its Request For Extraordinary Or Emergency Rate Relief.*

PGW's request for extraordinary or emergency rate relief is structured to do three key things: (1) cover the revenue requirement that will result from successfully remarketing the 2006 bonds and terminating the swap; (2) improve PGW's liquidity and key financial indicators so that PGW will have a better chance of maintaining or improving its existing bond rating and successfully remarketing the 2006 Bonds, renewing its commercial paper program, and completing the other financial transactions discussed above.; and (3) produce additional cash so that if (despite improvement with financial indicators), PGW is unable to successfully complete one of the key financial transactions it will have some source of revenues to partially cover the loss of external funding. Thus, just as in prior extraordinary rate proceedings, the extraordinary rate increase is needed to "maintain the utilit[y's] liquidity … ."[147] Each of these revenue requirement needs is discussed below:

a. Revenue Requirement Associated With Remarketing the 2006 Bonds

As noted, the FY 2009 revenue requirement associated with remarketing the 2006 Bonds and terminating the swap agreement is currently projected to be $45.9 million. Indeed, Ms. Bisgaier testified that the current cost to terminate the swap – $54 million ($50 million on a present value basis)[148] – is likely to keep increasing due to its tie-in to the LIBOR rate; as

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[147] *Pa. PUC v. Pocono Water Co. and Pocono Sewer Co.*, Docket No. R-80011059 and R-80011060 (Order entered March 13, 1980) (Pocono), *Accord*, *PGW 2002 Extraordinary Rate Order,* at 8, 18, 27-29 (Extraordinary rate relief justified to improve PGW's liquidity and maintain its commercial paper letter of credit.)

[148] Tr. 48-51; PGW Exh. BB-1.

LIBOR continues to decrease, PGW's costs increase.[149] PGW is actively investigating steps that could mitigate this cost but there is no way to avoid an increased revenue requirement to terminate the arrangement.[150]

b. Improving PGW's Financial Results.

Over and above this revenue requirement need, both Ms. Bisgaier and Mr. Knudsen testified that in order to increase its chances of completing the key financial transactions, it needed to make a material improvement in its projected financial results. The most imminent financial transaction that must be successfully completed is the remarketing of the 2006 Bonds. Ms. Bisgaier testified that, in her view, "it is going to be extremely difficult to market those bonds."[151] To accomplish this, all the PGW witnesses testified that PGW must not only improve its financial results such that it will avoid the "imminent threat of a downgrade to below investment grade,"[152] but also improve its results to a stronger investment grade level.[153]

Ms. Bisgaier explained the specific "market improvements" needed to improve PGW's financial health:

> the rating agencies are looking for a material improvement in PGW's liquidity position (as expressed by the 1.2-1.3 times coverage standard) and by a de-leveraging of PGW with a return to a cash flow position that would eventually produce internally generated funds with which to fund at least a portion of the on-

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149 Tr. 51, 73-74; LIBOR fell by over 0.01 percentage point to 2.19% on Friday, December 5, 2008. *See, e.g.,* "Stocks Rise Despite Dismal Jobs Report," Wall Street Journal, December 5, 2008, which is available at http://online.wsj.com/article/SB122847746874082651.html .

150 *See* n. 93, *supra.*

151 Tr. 55 (Bisgaier).

152 Tr. 59 (Bisgaier).

153 PGW St. 3 (Bogdonavage) at 8; PGW St. 2 (Bisgaier) at 15.

> going capital improvement program. Additionally, to maintain or upgrade its ratings, PGW would also have to demonstrate a year-end free cash balance (i.e. cash from operations rather than from short-term borrowing) [which] would provide evidence to the rating agencies that PGW was not perpetually teetering on the brink of financial disaster and that like other well-run utilities had the financial flexibility to meet difficult challenges. Such financial flexibility must be demonstrated by the implementation of rates that are sufficient to allow PGW to stop lurching from crisis to crisis by starting to achieve the financial objectives implicit in the rating agency standards. [154]

PGW's originally filed *pro forma* test year results (assuming a $25 million cost to terminate the swap) show that only at the full $60 million rate level can PGW project a material improvement in its key financial indicators: year end cash, available liquidity, fixed coverage charges and debt to equity ratio. [155]

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[154] PGW St. 2 (Bisgaier) at 15.

[155] PGW St. 2 (Bisgaier) at 15. Awarding rate relief to maintain PGW's bond rating and improve its liquidity is consistent with PGW's "cash flow" ratemaking methodology regardless of how it is interpreted. While there is an ongoing dispute about the specifics, there appears to be a consensus that, in applying PGW's cash flow method, the Commission has discretion to establish a "margin" above required items – *i.e.*, expenses and debt service – to deal with specific items like cash working capital and internal generation (as PGW believes), or as the PUC asserts, when required to preserve the financial health of the Company. While the exact requirements of the "cash flow method" remain in dispute and subject to the pending appeal before the Pennsylvania Commonwealth Court in *PGW, et al., v. Pennsylvania Public Utility Commission*, (Docket No. 1914 C.D. 2007), and without waiving PGW's legal position in any way, both versions of the "cash flow method" would permit the Commission to authorize the proposed extraordinary rate increase. Under PGW's view, the Commission is required not only to use "a cash flow method" but the cash flow method <u>specifically adopted</u> and utilized by the Philadelphia Gas Commission prior to ratemaking authority being transferred to the PUC. Under the prior ratemaking methodology cash flow method, the Commission is specifically required to consider a reasonable level of cash working capital and a reasonable amount of funds to pay construction and/or prepay debt (*i.e.*, internally generated funds) when those levels remain inadequate even after rates are set to cover the Company expenses and debt service and coverage requirements. *See* Brief of PGW on Appeal at 13-24. However, the Commission's interpretation of the "cash flow method" is that the Commission must only provide PGW the sufficient funds to cover expenses, debt service and a "margin", the level of which the Commission has stated is "largely a matter of administrative discretion." PUC Brief on Appeal at 16, 19.

Here are PGW's key financial results at present rates:

Table 1-A

Key Financial Indicators
Current Rates
Original, $25 million Swap Termination Cost Projection
(96% Collection Factor All Data FYE 09)

Non-Borrowed Year End Cash on Hand	Available Commercial Paper	1998 Ordinance Coverage	S&P Fixed Coverage Charge	Debt-to-Equity Ratio
($34.7M)	$65M	2.21x	1.25x[156]	84% debt

Here are PGW results assuming a $60 million rate increase:

Table 1-B

Key Financial Indicators
$60 million Rate Increase
Original, $25 million Swap Termination Cost Projection
(96% Collection Factor All Data for FYE 09)

Non-Borrowed Year End Cash On Hand	Available Commercial Paper	1998 Bond Ordinance Coverage	S&P Fixed Coverage Charge	Debt-to-Equity Ratio
$8.5M (3 days of operating expenses)	$108M	2.84x	1.61x[157]	81% debt

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Therefore, under either formulation of the cash flow method, the Commission has "discretion" to award PGW additional amounts for cash working capital and to improve its liquidity and to increase the chances that it will be able to maintain access to the capital markets.

156 It is important to note that PGW calculated the S&P fixed coverage charge without including the swap termination payment as an expense. This was done to be conservative and because PGW has not determined how S&P would treat the swap termination payment for the calculation of fixed charge coverage.

157 *See*, footnote 155, *supra*.

Ms. Bisgaier explained that at $60 million, PGW's original projection permitted PGW to end the year with just three days of cash (expressed as days of annual operating expenses less depreciation).[158] It would also produce a fixed coverage charge of 1.61x which, while still low, starts to approach the fixed coverage charge that higher rated municipal credits demonstrated.[159] Using the originally projected swap termination costs, only a $60 million rate increase satisfies this standard.[160]

However, for a number of reasons, a $60 million rate increase appears to be the <u>very minimum</u> that PGW can receive and achieve any marked improvement in its financial results. Most importantly, the originally filed *pro forma* results did not include the most recent $50 million projection of the cost of terminating the swap. PGW's FYE 2009 projected results if it incurs a swap termination fee of $50 million are as follows:

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158 Tr. 57.

159 PGW St. 2 (Bisgaier) at 14.

160 The absolute minimum rate increase that would produce any material improvement in PGW's financial results (using the originally filed *pro forma* projections) would be $50 million. At a <u>$50 million</u> rate increase, PGW's FY 2009 year end cash and its outstanding commercial paper would be almost equal, meaning that, while PGW would have no unborrowed cash working capital, at least its year end balance would not be negative. PGW Exh. JRB-6, Attach. E, p. 2. Additionally, at $50 million, PGW's projected fixed coverage charge (including the $18 million City Payment) would exceed 1.5x. *Id.*, at p. 3. No lower rate increase would produce a 1.5x fixed coverage charge. It is well to recall however, that all of these results assume less than the current projection for swap termination costs as well as lower interest and debt service charges than the current projection. *See*, Tr. 109-116; OCA Cross Exam Exh. 1.

Table 2

Key Financial Indicators
$60 Million Rate Increase
Revised, $50 Million Swap Termination Cost Projection
96% Collection Factor (FYE 2009)[161]

Non-Borrowed Year End Cash on Hand	Available Commercial Paper	1998 Bond Ordinance Coverage	S&P Fixed Coverage Charge	Debt-to-Equity Ratio
($18M) [$31M in FY10]	$82M	2.8x [2.63 in FY 2010]	1.6x	82% debt

Thus, if the swap termination fee turns out to be $50 million, even a $60 million base rate hike would produce only a marginal improvement in PGW's key indicators in FY 2009. While PGW would still be in a negative cash position at year end, it would be able to point to an improvement in its liquidity, in the form of non-borrowed year end cash, by FY 2010. In addition, there would be some improvement in the S&P fixed coverage charge. Moreover, awarding the full rate increase requested would send a signal to the bond rating agencies that the PUC is now fully supportive of PGW and is committed to helping it survive the current financial storm.[162] That support alone would help mitigate some of the negative effects of the increased costs facing the Company.

c. Providing Replacement Funds If PGW Loses Its Credit Facilities Or Fails To Remarket The 2006 Bonds.

If, despite PGW's best efforts – and the PUC's support - PGW nonetheless is unable to complete one of its key financial transactions and faces additional costs as a result, awarding all,

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161 PGW Exh. JRB-1-C.

162 Tr. 71 (Bisgaier). ("I believe that [awarding the full, $60 million request] would be a showing of incredible support to PGW from the regulators and it would be recognized as such by all three of the rating agencies.")

or substantially all of the full rate increase will help PGW make those payments, at least in part. For example, Mr. Knudsen explained what would happen if PGW fails to remarket the 2006 Bonds and faced a $31 million payment in 2009, and a $60 million payments in 2010 (plus coverage requirements). He explained that awarding PGW its full extraordinary rate increase now would be the only way in which the Company would be able to build up funds to even begin to address those payments.[163]

d. The Requested Extraordinary Rate Relief Is Reasonable Compared To Past PUC Determinations and Produces Reasonable Coverages.

The results produced by awarding the full, $60 million rate increase are consistent with PGW's statutorily mandated cash flow method of ratemaking even as interpreted in the Commission's last general rate order. In that case, the Commission determined PGW's authorized rate increase on the basis of whether it permitted PGW to meet its bond ordinance debt service coverage requirements and produced "adequate" cash on hand.[164] When the revised projection for the swap termination fee is included, a $60 million rate increase would produce roughly similar results:

163 PGW St. 1 (Knudsen) at 11; PGW St. 3 (Bogdonavage) at 10; Tr. 132-133.

164 *See, PGW 2007 Rate Order* at 73-74.

Table 3

Financial Measure	Prior Base Rate Case[165]	FYE 2009 Original Swap Cost Projection	FYE 2009 Updated Swap Cost Projection[166]
Net Income	$40.8M	$35.9M	$9.5M
1998 Bond Ordinance Coverage	2.44x	2.84x	2.80x
S&P Fixed Coverage Charge	1.63x[167]	1.61x (with City fee) 1.89x (w/out City fee)	1.60x (with City fee); 1.87x (w/out City fee)
Year End "Cash"	$54.5M	$50.6M	$50.1
Net (non-borrowed Cash	($35.5M)	$8.5M	($17.9M)
Available Commercial Paper	$60M	$108M	$82M

Under either PGW's original or updated projection of swap termination costs, the projected financial results are well within – in fact, <u>well below</u> the cash working capital, liquidity fixed coverage and internal generation requirements that PGW witnesses have testified are appropriate and reasonable for PGW.[168]

Further, in the 2002 extraordinary rate increase proceeding for PGW, the Commission stated that it would consider the reasonableness of PGW's coverages. As show, a $60 million award also produces reasonable, slightly improved coverages on a "1998 bond ordinance" basis, while the S&P fixed coverage charges are within the range calculated by the PUC in the last case. Of course, this entire case is based on the assumption that PGW must show improvement

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165 *PGW 2007 Rate Order* at Attachment A, pp. 1, 2, 4. The PUC did not compute a debt-to-equity ratio in its prior order.

166 PGW Exh. JRB-1-C.

167 The Commission's last rate case calculated a S&P fixed coverage charge but does not specify whether the calculation includes or excludes the $18 million City fee.

168 PGW St. 2 (Bisgaier) at 15-16; PGW St. 3 (Bogdonavage) at 8-10.

in its liquidity indicators, so the slight improvement in these indices is not only appropriate but absolutely necessary.[169]

e. Conclusion

Thus, the record evidence demonstrates graphically that PGW's proposed $60 million extraordinary rate increase is the minimum amount necessary to deal with the immediate revenue requirement and other demands with which it is faced. Indeed, if the huge jump in the projected cost of terminating the swap associated with the 2006 Bonds had occurred prior to PGW's filing of its extraordinary rate increase request, it likely would have requested far more than $60 million. As the Commission is legally restricted to awarding the maximum amount reflected in PGW's proposed tariff and for which it has provided notice to customers, the clear prudent course is for the PUC to grant the full rate increase, or a substantial portion thereof, and to monitor PGW's situation to assure that additional assistance is not necessary.

2. *The Lower Amounts Recommended By The Statutory Advocates Are Not Sufficient To Meet PGW's Immediate Need For Extraordinary Relief*

Considering the above discussion, the recommendations of the statutory advocates, which are far less than the requested $60 million, are plainly not sufficient to maintain financial stability. All of the public witnesses to one degree or another have testified that PGW has justified some extraordinary or emergency rate relief. These recommendations range from $19 million[170] to $39 million.[171] But, all fall far short of providing real relief for PGW's immediate crisis.

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[169] *See*, Table 3, above.

[170] OSBA St. 1 (Knecht/Price) at 12 ("back of the envelope" calculations of $19 to $28 million).

[171] OTS St. 1 (Deardorff) at 4-5 ($39 million).

All the witnesses testifying on this subject agreed that PGW's most immediate crisis was the remarketing of the 2006 Bonds, and improving PGW's liquidity but none adequately addressed the identified crisis. Indeed, each recommended a rate increase that was designed to cover the initially projected cost if PGW were successful in remarketing the bonds.[172] Not a single witness addressed the question of the level of increase needed to assure the success of the transaction by improving its liquidity. Even more troubling, while acknowledging that PGW has a series of transactions that must be completed in addition to remarketing the 2006 Bonds, none of the parties explained how restricting the rate award would increase PGW's chances of completing them.

Indeed, even while claiming that all of the transactions, except the 2006 Bond remarketing were too remote to satisfy the "immediate need" requirement of the extraordinary rate relief petition, OCA witness Bleiweis frankly admitted that if PGW were unsuccessful in remarketing the 2006 Bonds its ability to issue additional long term debt in 2009 would be "severely threatened."[173] Further, he agreed that if the bonds could not be remarketed, PGW's ability to renew its commercial paper letter of credit would also be threatened.[174] Finally, he agreed that failure of the commercial paper program would threaten PGW's ability to operate.[175]

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172 OCA St 1 (Bleiweis) at 6; OSBA St. 1 (Knecht/Price) at 3-4; OTS St. 1 (Deardorff) at 5-6; Tr. 170-171, 187, 193-194.

173 Tr. 183.

174 *Id*.

175 *Id.,* OCA St. 2 (Bleiweis) at 7, 9-12 (Increase related to the commercial paper program is needed to allow PGW sufficient cash flow to operate).

To be sure, Mr. Bleiweis claimed that the "domino" effect was speculative and a "big if."[176] But his recommendation falls far short even if its sufficiency is viewed from the standpoint of meeting PGW's increased revenue requirement associated with the 2006 Bond remarketing. He refused to change his recommendation despite the fact that the projected cost of completing the transaction has now more than doubled.[177] This is especially troubling because, if the new projection of the cost to remarket the 2006 Bonds and terminate the swap is included in FY 2009 projections, the OCA's $25 million recommendation would leave PGW with a huge <u>negative</u> year end cash balance of ($43.5 million) almost $100 million of commercial paper utilized ($94 million) and – worst of all – an S&P fixed coverage charge of just 1.38x.[178]

In many respects, the OCA and OTS positions here are parallel with the OCA position in PGW's last extraordinary rate case. There the OCA (and CEPA) argued that PGW should only receive an increase that would address PGW bond ordinance coverage requirements, which are driven by PGW's level of net income. The Commission rejected this position:

> The OCA and CEPA positions are not appropriate. To adopt the OCA's standard would render the application of Section 1308(e) a nullity in this case since the limitation on the amount of relief would fail to provide PGW with the level of relief necessary to address PGW's immediate liquidity problems.[179]

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176 Tr. 183.

177 Tr. 170-180.

178 This was computed by updating PGW Exh. JRB-7 (which computes PGW's income and statistics assuming a $25 million rate increase and the original projection of 2006 Bond remarketing and swap termination costs) with the new projection of these costs: an additional $25 million of swap termination fees and an additional $1.8 million of interest expense and debt service coverage.

179 PGW Order 19.

As noted, the most recent projected revenue requirement for the 2006 Bond remarketing and swap termination is $45.9 million. If that amount is added to Mr. Bleiweis' recommended $5 million "allowance" to improve PGW cash on hand,[180] his minimum recommendation is <u>$50.9 million</u>.

Similarly, OTS witness Deardorff did not address how his $39 million rate increase would improve PGW's chances of completing the bond remarketing – the key immediate need facing the Company. Indeed, the underlying rationale of his position was called into question when he too refused to update his recommendation to account for the drastically increased projected cost of the swap termination, calling any such revision "speculative." But that's not a valid basis for ignoring the new, higher projection. As the Commission found in PGW's prior extraordinary rate increase proceeding, if the Commission were to wait until there is absolute certainty, it will not be able to prevent the severe adverse consequences of a failed remarketing.[181] It simply does not make sense to refuse to recognize new projections of the cost of remarketing the 2006 Bonds and stubbornly stick to an outdated rate increase recommendation.

Even more troubling, OCA witness Bleiweis testified that a $25 million rate increase would provide PGW with sufficient cash, with $5 million of the $25 million gong for that purpose.[182] He even presented a chart showing that PGW would end the year with $50 million "cash." What Mr. Bleiweis never said in his testimony (but was forced to admit on cross-

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180 OCA St. 2 (Bleiweis) at 11.

181 *PGW 2002 Extraordinary Rate Order* at 15 ("The OCA . . . argue[s] that PGW's . . . assertions [are] speculative . . . . The record amply reflects the tenor of the markets and the pressure on credit rating agencies . . . . We simply can't wait until PGW collapses.")

182 OCA St. 2 at 11.

examination) was that, under his recommendation, 100% of the year end cash is borrowed by PGW's issuance of commercial paper.[183] Equating borrowed cash with cash working capital produced from rates ignores that this entire case is about the potential loss of PGW's ability to issue commercial paper and inability to produce any cash to fund operations. Even Mr. Bleiweis was forced to admit that if the Company lost its commercial paper program it would not have the cash to pay its bills at the end of the year.[184]

Finally, Mr. Bleiweis claimed that the $60 million rate request should be denied (in favor, presumably, of his inadequate recommendation) claiming that the additional level was actually designed to address longer term – not immediate problems.[185] Mr. Knudsen explained that this was untrue. The Company had an immediate need to improve its financial results both in the short term, through the end of the fiscal year and (projected) for the long term, because that is what the bond rating agencies want to see.

Overall, in light of the enormous costs that would result if PGW fails, the additional revenue requirements, the loss of services, layoffs, cut backs and reductions in safety and reliability-related construction, does it really make sense to gamble that a $25 or $39 million rate increase is sufficient?[186] Given this, the potential costs of not giving PGW all the financial wherewithal it has requested to survive this crisis far outweighs the small additional base rate increase.

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183 Tr. 179-180.

184 Tr. 180.

185 OCA St. 2 (Bleiweis) at 5, 14; Tr. 181 (Mr. Bleiweis stated that, in his point of view, "immediate" means three to six months).

186 The OSBA witness provided some "back of the envelope" calculations but his main recommendation was that PGW receive sufficient rate relief to permit it to remarket its 2006 Bonds. OSBA St. 1 (Knecht/Price) at 4; Tr. 194.

D. Other Issues Associated With the Extraordinary/Emergency Rate Request

1. *Section 1308(d): A General Rate Increase Request Is Not Required As Part Of PGW's Request For Extraordinary Rate Relief*

PGW's extraordinary/emergency rate relief request was made under Sections 1308(a) and 1308(e) of the Code.[187] PGW specifically requested that the PUC allow the Supplement to be placed into effect on less than statutory notice.[188] Accordingly, the request does not constitute a general increase because the proposed tariff actually produces an overall rate decrease.[189] Therefore, Section 1308(d) of the Public Utility Code does not apply.[190]

Nonetheless, some parties may argue that PGW's extraordinary or emergency rate relief request is deficient because PGW did not also file a general rate increase request at the same time.[191] This argument is not supported by the language of Section 1308(e), which states that "[u]pon petition to the commission <u>at the time of filing of a rate request</u> or at any time during the

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[187] Section 1308(a) of the Public Utility Code permits changes in existing and established rates upon 60 days notice stating the proposed changes and when they will go into effect. The proposed changes must be shown by filing a new tariff or a supplement to existing tariffs. 66 Pa. C.S. § 1308(a).

[188] PGW Petition, ¶ 23, 24. The Commission may permit the proposed changes without the 60 days notice "under such conditions as it may prescribe." 66 Pa. C.S. § 1308(a).

[189] Section 1308(d) of the Public Utility Code defines a general rate increase as "a tariff filing which affects more than 5% of the customers and amounts to an in excess of 3% of the total gross annual intrastate operating revenues of the pubic utility." 66 Pa. C. S. § 1308(d). PGW had a single tariff filing reflecting a rate decrease.

[190] PGW complied with the non-general filing requirements set forth in 52 Pa. Code § 53.52(b), rather than the extensive general rate case filing requirements.

[191] The related argument that PGW's filing is a general rate increase request and should be adjudicated as such, *i.e.*, suspended for seven (7) months with the extraordinary rate relief request adjudicated within that timeframe, should be rejected because Supplement No. 28 produces an overall rate decrease. However, to the extent that the Commission concludes that Supplement No. 28 does constitute a general rate increase, PGW respectfully requests that the Commission waive such regulatory provisions pursuant to Section 2212(c) and its authority to waive its own regulations. 52 Pa. Code §§ 1.2(c), 1.91.

pendency of a rate request, any public utility may seek extraordinary rate relief <u>of such portion of the total rate relief requested</u> . . . ."[192] Thus, by its terms, Section 1308(e) is not limited to general rate increase filings. The statutory language in Section 1308(e) only refers to a "rate request." The language does not contain a specific reference to, or limitation based on, a "general rate increase" under Section 1308(d). If the Legislature intended to limit Section 1308(e) to general rate increases, it could have included a specific reference to either a "general rate increase" or Section 1308(d).[193] By failing to include such a reference <u>or</u> a limitation on such relief as a percentage of a "general rate increase," the Legislature made relief under Section 1308(e) available with respect <u>to any portion</u> of <u>any rate request</u>.[194] PGW's Supplement No. 28 is clearly a "rate request" as referenced in Section 1308(e).[195]

However, to the extent that the Commission concludes that any provision of Section 1308(d) or any other section of the Public Utility Code prevents it from acting in the manner requested by PGW, or that PGW should have complied with the general rate relief filing

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[192] 66 Pa. C.S. § 1308 (e) (emphasis added).

[193] Some parties may argue *Joseph Horne Co. v. Pa. P.U.C.*, 485 A.2d 1105 (Pa. 1984), holds that extraordinary rate relief is only available through a general rate increase. This argument is without merit. The specific holding of that case was that PUC established temporary rates during a general rate increase request in violation of the specific prohibition in Section 1310(a) of the Code. *Id.*, 485 A.2d at 1109. The Court's statements concerning Section 1308(e) addressed Section 1308(e) relief <u>when</u> a general rate increase filing was made, but the Court also pointed out that Section 1308(e) relief was neither requested nor granted. *Id.*, 485 A.2d at 1110.

[194] If 100 per cent of the request is shown to satisfy the applicable requirements of Section 1308(e), the statute authorizes the Commission to grant the relief.

[195] The argument that it is not appropriate to consider the combined net decrease effect of Supplement No. 28 should be rejected. There is no GCR customer that does not also pay a delivery service charge. Also, if PGW had filed a tariff supplement proposing a 3% increase in the customer charge and a 3% decrease in other delivery service charges, no one could seriously argue that the tariff supplement constituted a general rate increase.

requirements, PGW requests that the Commission waive any applicable provision pursuant to its general authority and its authority under Section 2212(c) of the Public Utility Code.[196] More specifically, if the Commission concludes that an extraordinary rate relief petition may only be filed in connection with a Section 1308(d) general rate case, the only reasonable manner of proceeding would be to waive this requirement rather than require PGW (and the Commission and interested parties) to incur the time and expense of addressing a subsequent general rate increase filing when the overall effect of PGW's extraordinary or emergency rate filing is a net rate *decrease*. A subsequent general rate increase filing will not address PGW's immediate financial situation, which deteriorated significantly shortly after this filing due to unforeseen events, and will only result in increased base rates to customers to address PGW's longer term financial situation.

A waiver is especially appropriate because PGW anticipates filing a base rate increase in the 2010 to 2011 fiscal year.[197] This negates OTS's recommendation that PGW be required to file immediately a subsequent base rate increase.[198] It would be especially troubling and risky if the Commission were to grant extraordinary rate relief now, but order PGW to make an immediate general rate filing in which the extraordinary rate award would be subject to review. PGW needs certainty and the ability to certify that the extraordinary rate award is not "temporary" or subject to further review. The rating agencies and prospective bond buyers need certainty and predictability. A final permanent rate award now is also completely consistent with

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196 "[U]pon request of [PGW], the commission may suspend or waive the application to [PGW] of any provision of this title, including any provision of this chapter other than this section." 66 Pa. C.S. § 2212(c). As shown below, the argument that Section 2212(c) is an unconstitutional delegation of power to the Commission is without merit.

197 Tr. 122.

198 OTS St. 1 (Deardorff) at 10.

the extraordinary rate provisions themselves, which state that "[r]ates established pursuant to [Section 1308(e)] shall not be deemed to be temporary rates within the meaning of that term as it is used in section 1310."[199]

2. *Conditions: Should PGW Be Required To Do Anything Else In Conjunction With Receiving The Extraordinary Or Emergency Rate Relief?*

PGW is committed to helping its customers deal with the rising cost of energy. In conjunction with this rate request, PGW is seeking aggressively to implement the efficiency and cost cutting efforts.[200]

PGW is certainly willing to accept a commission order that conditions PGW's award of extraordinary rate relief on its commitment to continue its cost containment efforts. This would include its efforts to implement its full Business Transformation Initiatives, and/or to implement other efficiency measures, such as performance based management compensation plans. PGW also would welcome an ongoing monitoring and information exchange process so that PGW could keep the Commission informed of its progress and new developments and accept additional suggestions from the Commission.

Since the timing of the extraordinary rate proceeding did not permit a record to be developed on these issues, PGW would not oppose a Commission directive to file within a reasonable time a plan to address these and any other matters that the Commission believes necessary. The Commission could also convene a workshop to consider the specifics of such steps and to arrive at plans and timelines that can be presented to the Commission for approval or disposition. The one absolute requirement, however, is that the level of the rate award should not be contingent upon some action or future performance, or it will be for naught.

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199 66 Pa.C.S. § 1308(e).

200 PGW St. 1 (Knudsen) at 10-12.

a. Use of a Collaborative on Competitive Suppliers

In his testimony, Mr. Knudsen suggested that transitioning most (or all) of PGW's load to competitive suppliers was a proposal that PGW would review seriously.[201] This might provide direct cash flow relief to PGW concerning PGW's commodity purchases, which total $600 and $700 million annually.[202]

In response, Mr. Cusati, on behalf of Interstate Gas Supply and Dominion Retail, recommended that a collaborative be established to discuss this process. While PGW is supportive of this idea,[203] PGW needs time to consider this complicated concept,[204] which is fraught with difficulties; initially in terms of public policy formulation and then in terms of implementation.[205] However, PGW does not oppose the convening of a collaborative on the subject of whether such efforts would assist PGW's financial situation as well as the practical issues associated with any such effort to encourage more competitive supply.

3. *Customer Service: TURN's Claim that PGW's Extraordinary Rate Request Should Be Denied Because of PGW's Collection Practices Regarding Low-Income Customers Is Inappropriate, Lacks Any Evidentiary Support, And Must Be Rejected.*

The Tenant Unit Representative Network and Action Alliance of Senior Citizens of Greater Harrisburg (collectively "TURN") has claimed that PGW's extraordinary rate request should be denied because PGW's collection practices regarding low-income customers are not consistent with their view of appropriate practice. These claims should be rejected. First and

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201 PGW St. 1 (Knudsen) at 8-9.

202 PGW St. 1 (Knudsen) at 8-9.

203 Tr. 135-136.

204 Tr. 136.

205 PGW St. 1 (Knudsen) at 9.

foremost, this proceeding is about the immediate financial crisis currently facing PGW – a crisis that is more serious than any other faced in the past. Without the relief requested, PGW may not be in a position to serve any of its customers at present levels – whether the customer is low-income or not. The issues raised here are clearly outside the scope of an extraordinary rate request and should not be considered in this proceeding.[206] TURN has the ability to file a separate complaint regarding alleged legal or regulatory violations.

Even if the Commission were inclined to consider the arguments raised by TURN, TURN has not shown or even alleged that these policies violate a single law or regulatory obligation. In fact, all of the arguments raised by TURN in this proceeding have been addressed and considered by the Commission in PGW's most recent rate case. In that case, the Commission found that TURN's contentions did not constitute a violation of any laws or regulatory obligations and did not merit a rejection of PGW's request for a rate increase.[207]

PGW has submitted detailed evidence showing that all of TURNs complaints are without merit and that PGW complies with the law and PUC regulations.[208]

4. *The Commission's Section 2212(c) Waiver Authority Is Not An Unconstitutional Delegation Of Legislative Power.*

The OSBA argues that the Commission's authority under Section 2212(c) of the Code to waive any provision of the Public Utility Code other than Section 2212 is an unconstitutional delegation of legislative power to the Commission because, in OSBA's view, the General Assembly provided no standards to guide the Commission's exercise of this authority. OSBA

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206 Section 1308(e) does not indicate that any issue may be considered in such a proceeding other than the need for and level of extraordinary rate relief.

207 *See, PGW 2007 Rate Order* at 124-128, 136-139, 141-148, 150-151.

208 *See*, PGW St. 5 (Coltro) and accompanying exhibits (testimony from prior rate case).

relies upon the Commonwealth Court's decision in *PPL Energyplus*[209] and compares Section 2212(c) to a provision of Section 2809(e) addressed in *PPL Energyplus*.

The Commission need not address OSBA's argument because it was necessarily denied in PGW's 2002 Extraordinary Rate Proceeding.[210] Accordingly, OSBA is collaterally estopped from making this unconstitutional delegation claim here.[211]

Nonetheless, if the Commission chooses to revisit this issue, PGW submits that OSBA's argument is without merit, and its reliance on *PPL Energyplus* is misplaced. The Commission has consistently exercised its authority under Section 2212(c) guided by the general standards of whether the waiver of a particular regulatory requirement otherwise applicable to PGW was just and reasonable or in the public interest.[212] That is all PGW is asking the Commission to do in this matter. There is nothing unlawful or unconstitutional in the PUC's waiver authority under Section 2212(c) or in the Commission's implementation of that authority in the past or as

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209 *PPL Energyplus, Inc. v. Com.*, 814 A.2d 861 (Pa. Cmwlth. 2003), *reversed on other grounds*, *Delmarva Power & Light Co. v. Com.*, 870 A.2d 901 (Pa. 2005).

210 *PGW 2002 Extraordinary Rate Order* at 13,18-19. *Accord*, *PGW 2007 Rate Order* at 56.

211 *Stilp v. Com.*, 910 A.2d 775, 783-84 (Pa. Cmwlth. 2006).

212 For example, in its 2002 extraordinary rate relief proceeding, PGW requested that the "return on equity" prong of the four-part test of Section 1308(e) be waived and replaced with a just and reasonable standard providing that the level of extraordinary relief is the amount needed to maintain PGW's bond rating at investment grade. *PGW 2002 Extraordinary Rate Order* at 9. OSBA argued that this fourth prong could be applied to PGW, but in the alternative suggested the same standard as PGW. *Id*. at 13. The Commission determined that it would be unjust and unreasonable to apply this prong to PGW because "return on equity" has no meaning for any cash flow regulated company and, accordingly, waived it. *PGW 2002 Extraordinary Rate Order*, at 19 ("It is axiomatic that we must be guided by the just and reasonable standard . . . ."). In its 2006 base rate case, PGW requested Section 2212(c) waivers to permit allowances for its lobbying expenses and regulatory fines and penalties that would otherwise be denied. The PUC rejected PGW's waiver requests on the basis that granting the waivers and allowing these claims would be unjust and unreasonable and not in the public interest. *PGW 2007 Rate Order* at 55-56 (lobbying expenses), 60-63 (regulatory fines and penalties).

requested by PGW here. The lack of more specific standards in Section 2212(c) is of no legal significance as there are many provisions in the Public Utility Code that direct or provide authority for Commission action without specific standards or with similar general standards. None of these provisions has been challenged as unconstitutional for lack of such specific standards.

A party arguing the unconstitutionality of a statute has a heavy burden to sustain the claim because, as OSBA acknowledges, a presumption exists that the legislature does not intend an unconstitutional result.[213] The OSBA cannot meet this heavy burden. In *PPL Energyplus*, the Commonwealth Court stated the following rules to determine whether an unconstitutional delegation of legislative power has been made in a particular case:

> Where the standard fixed by the Legislature is not arbitrary or unlimited, but is definite and reasonable, the delegation of power or discretion will be sustained as constitutional. In considering the standard, regard must be had to [1] the purpose and [2] scope of the [legislation], [3] the subject matters covered therein, [4] the duties prescribed and [5] the broad and narrow powers granted, because those factors will often determine whether or not a sufficiently clear, definite and reasonable standard has been established. **A grant of power ... without any standards whatever, would be an illegal delegation of authority and would render [such legislation] unconstitutional**.[214]

However, the PUC has determined to apply its waiver power in Section 2212(c) consistent with the just and reasonable standard and the requirement that it not act in an arbitrary and capricious manner.[215]

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213 1 Pa. C.S. § 1922(3); *PPL Energyplus*, 814 A.2d at 863 (citing *James v. Southeastern Pennsylvania Transportation Authority,* 477 A.2d 1302 (Pa. 1984).

214 *PPL Energyplus*, 814 A.2d at 863 (quoting *Dauphin Deposit Trust Co. v. Myers,* 130 A.2d 686, 688-89 (Pa. 1957)) (emphasis added).

215 *PGW 2002 Extraordinary Rate Order* at 17-19.

The Commission's exercise of its authority is also tempered by its obligation to act in the public interest.[216] Thus, the Commission's exercise of its authority pursuant to Section 2212(c) is not "unfettered" or unconstitutional for lack of more specific standards. OSBA's renewed challenge to authority the Commission has lawfully exercised under Section 2212(c) is without merit and should be rejected, again.

E. <u>Proposed Net Rate Change and The Allocation of Any Authorized Extraordinary/Emergency Rate Award</u>

1. *Net Rate Change*

PGW has already received PUC authorization to delay its quarterly GCR rate adjustment from December 1 to the date on which the PUC permits PGW's proposed extraordinary rate request to be placed into effect, which PGW proposes to be January 1, 2009 (for service rendered on or after the date of the PUC decision – December 18, 2008). PGW originally projected that the GCR/Universal Service Charge ("USC") rate change would total $85 million, but at the hearing, that projection was revised to a $107 million decrease.[217] The new rate - $10.70 is $.44 lower than the rate filed with PGW's Petition,[218] and constitutes a 9.4% decrease in overall operating revenues. Combined with the 5.2%, $60 million, base rate increase the change nets to a $47 million (4.2%) overall rate <u>decrease</u>.[219]

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216 *See, e.g., Reading and Southwestern St. Railway v. PaPUC*, 77 A.2d 102, 104 (Pa.Super. 1950) ("[the PUC's] duty is to determine the public interest. . . .")

217 Tr. 145; PGW Exh. KSD-11.

218 *Id*.

219 This equates to a 6.6% reduction for the average residential heating customer.

2. *Allocation of Extraordinary Rate Award*

PGW has proposed to allocate any rate award on a pro-rata basis among firm sales, firm transportation and interruptible transportation customers. The proposed pro-ration is based on the relationship of the delivery charge revenue for each class to the total delivery charge revenue for all of the aforementioned customer classes.[220] The resulting allocation evenly increases delivery charge revenue by 23% for each class.[221] The Company allocated the increase in this manner because PGW only recently determined to seek expedited, extraordinary rate relief; therefore, there was not enough time to prepare a cost of service study and to propose an allocation on the basis of those results.[222]

Among the intervening parties in this proceeding, both the Philadelphia Industrial and Commercial Gas Users Group ("PICGUG") and the Office of the Small Business Advocate ("OSBA") have commented on PGW's proposed allocation method. While OSBA offers alternative allocation methods, PICGUG asserts that Interruptible Transportation ("IT") customers should not be allocated any increase because IT customers don't purchase natural gas from PGW, therefore, they won't benefit from the Gas Cost Rate decrease.[223] PICGUG also claims (incorrectly) that the rate request is related solely to the successful renewal of the Company's commercial paper program which PICGUG maintains is only used for natural gas

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220 PGW St. 4 (Dybalski) at 3-4.

221 PGW St. 4 (Dybalski) Exhibit KSD-6.

222 *Id*. at 2.

223 PICGUG St. 1 at 6.

purchases.[224] PICGUG's position should be rejected for a number of reasons. First, PGW's IT customers benefited from a substantial rate decrease in the Company's most recent base rate case as a result of PICGUG's demand that IT rates should be set to reflect the cost to provide the service. In September 2007, the PUC ordered PGW to implement cost based rates for IT customers[225] which resulted in an overall reduction of 53% in total IT delivery charge revenue. As a result, the IT rates have decreased as much as \$2.15 per Mcf.[226] It was PICGUG that advocated for "cost based" IT rates – rather than market-based rates based on alternative fuel prices. Cost based rates means that when costs go up the rates go up as well. After such a sizable reduction in rates in order to reflect the calculated cost to serve IT customers, this group hardly has cause to complain that PGW's proposed rate increase should not be allocated to them now that costs are going up.[227]

Moreover, PICGUG's testimony suggests that the basis for PGW's rate request is associated with maintaining PGW's commercial paper program and improving cash flow issue tied to the purchase of natural gas. But PICGUG's assumption in this regard is not correct.

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224 *Id*. at 6-7.

225 *PGW 2007 Rate Order*.

226 IT Rates have decreased as follows:

Pre-cost based rate category	Pre-cost based rate delivery charge per Mcf	Post-cost based rate delivery charge per Mcf depending on volumes used	Decrease in rate
IT2	\$3.69	\$1.54	(\$2.15)
IT3	\$1.71	\$0.53 / \$0.58 / \$0.75	(\$1.18) / (\$1.13) / (\$0.96)
IT4	\$1.27	\$0.53 / \$0.58 / \$0.75	(\$0.74) / (\$0.69) / (\$0.52)
IT5	\$0.84	\$0.53 / \$0.58 / \$0.75	(\$0.31) / (\$0.26) / (\$0.09)
IT6	\$0.83	\$0.51	(\$0.32)
IT7	\$0.74	\$0.51	(\$0.23)

227 PICGUG St. 1 at 8.

PGW's testimony clearly indicates that the most prominent need for the requested relief is to pay for the costs related to the cost of remarketing the 2006 Bonds and to improve PGW's overall financial stability in order to lead to the successful remarketing of this variable rate debt.[228] If the remarketing should fail, the future marketing of another near-term bond issuance (i.e. long term debt) will also likely fail.[229] What PICGUG flatly ignores is that PGW's variable rate debt, fixed rate debt and other long term debt obligations funds PGW's entire capital program.[230] It is the capital program that improves PGW's distribution system which, in turn, delivers natural gas to the interruptible customers. For the foregoing reasons, much of the requested base rate increase is related to providing service to IT customers, therefore, the allocation of any increase to IT customers is appropriate.

As for OSBA's alternative allocation proposals, PGW takes exception to the proposal which recommends allocation of the requested base rate increase based upon the Cost of Service Study submitted by PGW in its 2006 base rate proceeding. As PGW witness Kenneth Dybalski explained during the hearings in this proceeding, the 2006 COSS is outdated and there is not a reasonable basis to determine if using the 2006 data results in an allocation that is accurate.[231]

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[228] PGW St. 2 (Bisgaier) at 4-8, 14-15.

[229] PGW St. 2 (Bisgaier) at 12.

[230] PGW St. 3 (Bogdonavage) at 5-6.

[231] Tr. at 148-149.

III. CONCLUSION

For the foregoing reasons, the PGW respectfully requests that the Commission grant its request for extraordinary or emergency rate relief and authorize PGW to file Supplement No. 28 to PGW Tariff No. 2 to produce a $60 million, 5.2% increase in base rates which will be offset by a 9.4% ($107 million) decrease in the GCR/USC for a net decrease of $47 million or 4.2%.

Respectfully submitted,

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Dated: December 12, 2008

Appendix A

Proposed Conclusions of Law

1. PGW is a "city natural gas distribution operation" as defined in Section 102 of the Public Utility Code, 66 Pa.C.S. §102.

2. The Commission has jurisdiction over the parties and subject matter in this proceeding.

3. The utility requesting the rate increase has the burden of proving that the rate involved is just and reasonable. Section 315(a) of the Code, 66 Pa. C.S. §315(a).

4. The Company has sustained its burden of proving that a distribution rate increase of 5.2%, in conjunction with a $107 million GCR decrease of 9.2 %, for a net decrease of 4.2% is just, reasonable and in accordance with law.

5. The Commission may permit the proposed changes without the 60 days notice "under such conditions as it may prescribe." 66 Pa. C.S. § 1308(a).

6. PGW has demonstrated an immediate need for extraordinary rate relief.

7. The legal standards for extraordinary rate relief as set forth in Section 1308(e) of the Code, 66 Pa. C.S.§1308(e).

8. The first three prongs of the test under Section 1308(e) determine whether immediate rate relief is necessary for the maintenance of a company's financial stability.

9. The fourth prong of Section 1308(e) places a cap on any rate relief that the Commission may award in this type of proceeding.

10. The Commission has the authority to waive fourth prong under Section 2212(c) of the Code.

11. The fourth prong does not apply to PGW's circumstances and must be waived.

12. Section 1308(d) of the Public Utility Code does not apply to PGW's Petition.

13. By its terms, Section 1308(e) is not limited to general rate increase filings.

14. The Commission has the authority to modify the requirements of the Public Utility Code as necessary to accommodate PGW's unique status as a municipal utility regulated under a special version of the "cash flow" ratemaking method. 66 Pa. C.S. § 2212(c).

15. PGW has demonstrated an immediate need for emergency rate relief.

16. The Commission has the authority to modify the requirements of its Regulations as necessary to accommodate PGW's unique status as a municipal utility regulated under a special version of the "cash flow" ratemaking method.

17. The Commission may modify such requirements when found to be in the public interest and when the result satisfies the "just and reasonable" rate standard of the Code.

18. The Commission has the authority to waive strict compliance with its regulations, including (but not limited to) 52 Pa. Code § 53.64(i)(5), and permit a delay in a Gas Cost Rate ("GCR") filing. See, e.g., 52 Pa. Code §§ 1.2, 5.41, 5.43, 56.222, 1.91.

19. Under these circumstances, it is legal, reasonable, appropriate and in the public interest to waive the strict requirement that PGW file its quarterly GCR filing on December 1, 2008 and to permit a one-month delay in that filing with PGW's next quarterly filing occurring on its regular schedule.

20. The provisions of Section 1307(f)(ii) of the Code, which in the relevant part are related to adjustments to rates on a more than a quarterly basis, are inapplicable to the circumstances presented by the Petition and the one-month delay of PGW's GCR filing.

21. It would be in the public interest, and consistent with Section 2212(c) of the Public Utility Code to waive or modify all regulations or provisions of the Public Utility Code inconsistent with the Commission's action in this proceeding.

22. Issues of customer service are not within the scope of an extraordinary rate proceeding pursuant to section 1308(e).

23. General allegations that a utility's low-income programs or policies, or its credit and collection policies and procedures, are not consistent with a party's preferred approach does not constitute a basis for a finding of inadequate service and are not sufficient to deny a rate increase. *See Pa. PUC, et al. v. Philadelphia Gas Wor*ks, R-00061831, et al. (Order entered September 28, 2007), at 124-126.

Appendix B

Proposed Ordering Paragraphs

IT IS ORDERED:

1. That the Petition of Philadelphia Gas Works for Extraordinary or Emergency Rate Relief is hereby granted consistent with this Opinion and Order.

2. That within six (6) days of the date of entry of this Opinion and Order, Philadelphia Gas Works file, a Supplement to its Tariff Gas Pa. P.U.C. No. 2 designed to produce (a) an increase in total annual operating revenues of $60 million (5.2%) effective on one (1) day's notice, for service rendered on or after December 18, 2008 and a decrease in Gas Cost Rate (GCR) revenues of $107 (9.4%) million effective on one (1) day's notice for service rendered on and after December 18, 2008.

3. That the $60 million increase shall be applied to the delivery charge for all firm customers and firm and interruptible transportation customers as proposed by PGW in Supplement No. 28.

4. That at the time of filing of the Tariff Supplement referred to in Ordering Paragraph No. 2 above, Philadelphia Gas Works shall file with the Commission all data necessary to demonstrate its compliance with this Opinion and Order.

5. That any regulations, and (if necessary) pursuant to 66 Pa. C.S. § 2212(c) any applicable provision of the Public Utility Code, inconsistent with the foregoing Ordering Paragraphs and this Opinion are waived to the extent that they are inconsistent with said Ordering Paragraphs or Opinion.

6. That PGW shall file with the PUC on a periodic basis (and at least monthly) progress reports setting forth the status of its efforts with respect to the financial transactions discussed by PGW and in the attached Opinion and Order.

7. Philadelphia Gas Works shall participate in any workshops or collaboratives directed by the Commission in this Opinion and Order.