**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

Public Meeting held July 29, 2010

Commissioners Present:

James H. Cawley, Chairman

Tyrone J. Christy, Vice Chairman

John F. Coleman, Jr.

Wayne E. Gardner

Robert F. Powelson, Statement

Pennsylvania Public Utility Commission R-2009-2139884

Office of Consumer Advocate C-2010-2153064

Office of Small Business Advocate C-2010-2151419

Philadelphia Industrial and Commercial Users Group C-2010-2160512

Tenant Union Representative Network and Action Alliance

of Senior Citizens of Greater Philadelphia C-2010-2155856

Philadelphia Housing Authority C-2010-2160858

Stanton Bubis C-2010-2160918

George W. Craigie C-2010-2160860

Denise Devlin C-2010-2160919

Kathleen Golden C-2010-2169748

Sydella Hodge C-2010-2160924

Floyd M. Jones C-2010-2160929

Linda Montgomery C-2010-2160887

Dominic A. Stango C-2010-2167827

v.

Philadelphia Gas Works

Philadelphia Gas Works’ Revised Petition P-2009-2097639

For Approval of Energy Conservation and

Demand Side Management Plan

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration are the Exceptions filed by Denise Devlin on June 29, 2010[[1]](#footnote-1)to the Recommended Decision (R.D.) of Administrative Law Judge (ALJ) Charles E. Rainey, Jr., issued on June 21, 2010, in the above-captioned proceeding. Reply Exceptions were filed *nunc pro tunc* by Philadelphia Gas Works (Respondent or PGW) on July 6, 2010. [[2]](#footnote-2)

# I. Introduction

As discussed, *infra*, this proceeding addressed both PGW’s proposed general rate increase filed as Supplement No. 36 to Tariff Gas-Pa. P.U.C. No. 2 and PGW’s Petition for approval of its Energy Conservation and Demand Side Management (DSM) Plan.

The ALJ recommended that the Commission adopt, in its entirety and without modification, the Joint Petition for Settlement (Settlement or Settlement Agreement) which was filed by the Parties in this proceeding on May 19, 2010. R.D. at 6. The Settlement Agreement is conditioned upon the Commission’s approval of the proposed terms and conditions without modification. Settlement at 15.

# II. History of the Proceeding

On December 18, 2009, PGW filed Supplement No. 36 to Tariff Gas – Pa. P.U.C. No. 2 to become effective February 16, 2010, containing proposed changes in rates, rules, and regulations calculated to produce $42.5 million (4.8%) in additional annual revenues to provide funding for PGW’s Other-Post Employment Benefits (OPEB). This rate filing was made in compliance with the Commission's Order entered December 19, 2008 at Docket No. R-2008-2073938 (*Extraordinary Rate Order*). In that Order, the Commission awarded PGW an extraordinary rate increase of $60 million annually and, *inter alia,* directed PGW to file a section 1308(d) base rate case no later than December 31, 2009. Settlement at 2.

Also on December 18, 2009, PGW filed a motion to consolidate its petition for approval of its revised DSM Plan with its request to increase base rates. The DSM Plan was initially filed on March 26, 2009, subsequently withdrawn, and resubmitted on April 20, 2009, at Docket No. P-2009-2097639. The revised five-year DSM Plan was also filed in response to the *Extraordinary Rate Order.* R.D. at 1; Settlement at 2.

By Order entered February 11, 2010, the Commission granted the motion at Docket No. P-2009-2097639 and consolidated PGW’s petition for approval of its DSM Plan with its request to increase base rates at Docket No. R-2009-2139884. The Commission also instituted an investigation into the lawfulness, justness, and reasonableness of PGW’s proposed changes in rates, rules, and regulations. The Commission stated that pursuant to 66 Pa. C.S. § 1308(d), the rate filing will be suspended by operation of law on February 16, 2010, until September 16, 2010, unless permitted by Commission order to become effective at an earlier date. The Commission also stated that during the course of the investigation, that consideration should be given to the reasonableness of PGW’s existing rates, rules and regulations. R.D. at 1- 2.

The Commission assigned PGW’s petition for approval of its DSM Plan and request to increase base rates to the Office of Administrative Law Judge (OALJ) for the prompt scheduling of such hearings as may be necessary culminating in the issuance of a Recommended Decision. R.D. at 2.

Formal complaints were filed by the Office of Consumer Advocate (OCA) at Docket No. C-2010-2153064, the Office of Small Business Advocate (OSBA) at Docket No. C-2010-2151419, the Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (TURN *et al.*) at Docket No. C‑2010‑2155856, the Philadelphia Industrial and Commercial Gas Users Group (PICGUG) at Docket No. C-2010-2160512 and the Philadelphia Housing Authority (PHA) at Docket No. C-2010-2160858. Formal Complaints were also filed by the following residential consumers: Stanton Bubis at Docket No. C-2010-2160918, George W. Craigie, at Docket No. C-2010-2160860, Denise Devlin at Docket No. C‑2010‑2160919, Kathleen Golden at Docket No. C-2010-2169748, Sydella Hodge at Docket No. C-2010-2160924, Floyd M. Jones at Docket No. 2160929, Linda J. Montgomery at Docket No. 2160887, and Dominic A. Stango at Docket No. C‑2010‑2167827. The Office of Trial Staff (OTS) filed a Notice of Appearance. Petitions to intervene were filed by the Retail Energy Supply Association (RESA) and the Clean Air Council (CAC). The petitions to intervene were granted.[[3]](#footnote-3) R.D. at 2.

A prehearing conference was held on March 2, 2010, at which time a schedule for discovery, written testimony, hearings and briefs was established. Present at the prehearing conference were PGW, the OTS, the OCA, the OSBA, the PICGUG, TURN *et al*., the CAC, RESA and the PHA. The matters addressed during the prehearing conference were memorialized in the ALJ’s prehearing order dated March 11, 2010. R.D. at 2.

On April 1, 2010, PGW filed a motion for a protective order. By order dated April 8, 2010, PGW’s motion was granted. R.D. at 2.

Five public input hearings were held in Philadelphia on April 6-8, 2010. A total of fifteen people gave sworn testimony at the five public input hearings. R.D. at 3.

On March 9, 2010, PGW and the CAC filed a Joint Motion for Partial Summary Judgment (Motion) to Approve Settlement for Expedited Implementation of Residential DSM Programs. That same day, they also filed a Joint Petition for Interlocutory Review of a Material Question (Joint Petition). By Order entered April 15, 2010, the Commission ruled that the Joint Petition was improper, and it returned the matter to the Office of Administrative Law Judge for further proceedings. On April 19, 2010, PGW filed a Petition for Leave to Withdraw its Motion for Partial Summary Judgment (Petition). By order dated May 5, 2010, PGW’s Petition was granted by the ALJ. R.D. at 3.

Hearings were held on May 10 and 12, 2010. At the hearing on May 10, 2010, testimony was given by Linda Montgomery, a residential consumer complainant. Ms. Montgomery also introduced an exhibit which was admitted into evidence. R.D. at 3.

Also at the hearing on May 10, 2010, the Parties announced that a Settlement in principle had been reached between PGW, the OTS, the OCA and the OSBA. On May 11, 2010, the following Parties notified the ALJ by e-mail that they had entered into a Settlement in principle: PGW; the OTS; the OCA; the OSBA; the PICGUG; TURN *et al*.; the CAC; the RESA and the PHA. R.D. at 3.

At the hearing held on May 12, 2010, the aforementioned Parties confirmed that they entered into a Settlement. The ALJ directed the Parties to file their Statements in Support of the Settlement with the Settlement. The Parties stated that a Joint Petition for Settlement with proposed tariff modifications, proof of revenues and appended Statements in Support of the Settlement, would be filed by May 19, 2010. R.D. at 3- 4.

On May 13, 2010, a Stipulation for Admission of Evidence (Stipulation) was filed by PGW, the OTS, the OCA, the OSBA, the PICGUG, TURN *et al*., the CAC, the RESA and the PHA. The Parties requested that the statements and exhibits which they sent to the court reporter and are listed in the Stipulation, be admitted into evidence. The statements and exhibits listed in the Stipulation were admitted into evidence. R.D. at 4.

On May 19, 2010, a Joint Petition for Settlement (Joint Petition or Settlement) was filed. The Settlement was signed by PGW, the OTS, the OCA, the OSBA, the PICGUG, TURN *et al*., the CAC, the RESA and the PHA (collectively “Joint Petitioners”). Each of the Joint Petitioners provided a Statement in Support of the Settlement. The Statements in Support of the Settlement are appended to the Settlement as Statements A through I. R.D. at 4. A copy of the Settlement and Statements of Support of the Settlement is attached to this Opinion and Order.

On May 19, 2010, the OCA sent a letter to each of the eight residential consumer complainants. Prior to the letter being sent, the ALJ gave the OCA direction in regard to the content of the letter. The letter advised the individual residential consumer complainants that the Joint Petitioners had entered into a Settlement. The letter included the key terms of the Settlement, and compared it to PGW’s original proposals. The letter informed each residential consumer complainant that he or she could either: (1) join in the Settlement by signing an enclosed signature page and sending it to the ALJ and the Commission Secretary; (2) neither join nor oppose the Settlement, and so inform the ALJ and the Commission Secretary in writing; or (3) oppose the Settlement, and so inform the ALJ and the Commission Secretary in writing. The letter further encouraged any residential consumer complainant opposed to the Settlement to set forth “facts, affidavits, argument and relevant legal analysis, and if desired, a specific request to continue to litigate.”[[4]](#footnote-4) R.D. at 4- 5.

On May 27, 2010, Stanton Bubis, Dominic A. Stango and Denise Devlin submitted their signature page signed and dated May 22, 23 and 26, 2010, respectively. Complainants Bubis and Stango joined the Settlement and Complainant Devlin neither supports nor opposes the Settlement; however, she stated that she may file written Exceptions to this Recommended Decision if she disagrees with it. R.D. at 5.

On May 28, 2010, Complainant Sydella Hodge submitted her signature page dated May 26, 2010,which does not indicate what position, if any, she takes in regard to the Settlement. R.D. at 5.

On June 2, 2010, the ALJ received Complainant Linda Montgomery’s signature page dated May 30, 2010, indicating that she neither supports nor opposes the Settlement, but when approved, the Settlement will resolve her complaint. R.D. at 5.

The other three residential consumer Complainants did not provide timely written notice of their positions regarding the Settlement. All of the signature pages which were timely submitted were made a part of the record in this case. R.D. at 6.

On June 21, 2010, the ALJ issued his Recommended Decision which recommended, *inter alia*, that the Settlement Agreement be adopted in its entirety and without modification. R.D. at 6.

As discussed, *infra*, on June 28, 2010, PGW filed a letter requesting a clarification be made to a statement contained in the Recommended Decision. There were no objections filed to PGW’s request.

On June 29, 2010, Exceptions were filed by Denise Devlin. Reply Exceptions were filed *nunc pro tunc* by PGW on July 6, 2010.

# III. Discussion

Pursuant to our Regulations at 52 Pa. Code § 5.231, it is the Commission’s policy to promote settlements. The Commission must however, review proposed settlements to determine whether the terms are in the public interest. *Pa. PUC v. Philadelphia Gas Works*, M-00031768 (January 7, 2004); *Pa. PUC v. C S Water and Sewer Assoc.*, 74 Pa. P.U.C. 767 (1991); *Pa. PUC v. Philadelphia Electric Co.*, 60 Pa. P.U.C. 1 (1985).

The Parties submit that the Joint Petition for Settlement, dated May 12, 2010, is in the public interest for the following reasons: (1) substantial litigation and associated costs will be avoided; (2) the Settlement is consistent with Commission Policies promoting negotiated settlements and; (3) the Settlement is a reasonable resolution. Settlement at ¶ 36.

# A. Summary of Settlement Terms

The following discussion is intended to be a summary of the terms of the Settlement and not every detail has been reflected. Consequently, this summary should not be interpreted as amending the provisions of the Settlement.

**1. Revenue Requirement and OPEB Funding**

The Settlement permits PGW to increase annual revenues by $16 million or 1.81% overall, in lieu of the $42.5 million, or 4.8% increase originally requested. R.D. at 8. The typical residential customer using 92 Mcf annually, will incur a monthly increase of $3.58 in lieu of the $8.45 monthly originally requested by PGW. OCA Statement in Support at 4, 5; R.D. at 8.

Under the Settlement, PGW will be permitted to maintain the $60 million extraordinary rate relief authorized by the *Extraordinary Rate Order*. In addition, the $16 million additional revenue granted under the Settlement specifically will be designated for funding of PGW’s OPEB obligation and shall be deposited into an Irrevocable Trust Fund. This additional revenue will be collected on a volumetric basis from all customer classes through a reconcilable Rider. PGW will report to the Commission on its establishment of the irrevocable trust and its deposits into the trust. Settlement at ¶¶ 19, 20.

**2. Stay Out Provision**

PGW will not file another distribution rate case during the twenty-four months following Order entry in this proceeding (stay out provision). This condition will not, however, preclude PGW from seeking extraordinary or emergency rate relief pursuant to 66 Pa. C.S. § 1308(e). Settlement at ¶ 18.

**3. Debt Repayment**

Under the terms of the Settlement, PGW agrees to make principal debt repayments on a monthly basis totaling $276.6 million through fiscal year (FY) 2015; and agrees that it will not sell new money bonds for at least three years. During the twenty-four-month stay out period, discussed *supra*, PGW agrees to provide quarterly reports to the Commission and the active parties to this proceeding listing its monthly debt repayments with the amounts of principal and interest for each payment. Settlement at 17.

PGW may suspend a discretionary debt repayment scheduled for FY 2015 in the amount of $15 million on the date it files a Petition for Extraordinary/Emergency Rate Relief. The suspension of the debt repayment obligation will continue until the Commission, by order, sets forth the date that the payment may resume. *Id.*

**4. Interest Rate Hedge / Swap Arrangement**

The Settlement provides that to the extent that PGW decides to maintain currently-in-force interest rate swap agreements (“Swap Arrangement”), and later decides to terminate the Swap Arrangement, PGW agrees that one-time termination/cancellation/ unwinding or exit fee(s) will not be included in any request for future rate relief. This exclusion does not apply to the costs (including debt service, debt service coverage and issuance costs) of the financing of any associated swap termination fee. Settlement at ¶ 21.

Consistent with its ongoing commitment to provide utility service at the lowest reasonable cost, PGW will continue to monitor its options with regard to the Swap Arrangement, and will, in conjunction with the City of Philadelphia, consider terminating the Swap Arrangement when doing so would prudently reduce the total cost of the financing to ratepayers. During the two-year stay-out of a base rate filing, PGW will provide to the OTS and the OCA monthly reports of the status of the Swap Arrangement which shall include: 1) the latest available cost of terminating the swap made available from the City’s independent swap advisor; 2) the interest cost differential that PGW would have had to incur if it had terminated the swap during the reporting month and replaced variable rate with fixed rate securities; and 3) an update of PGW’s current view of its plans relative to terminating the Swap Arrangement. PGW shall make knowledgeable experts and consultants available to provide additional explanations or data as reasonably requested. *Id.*

For three years after the approval of this Settlement, PGW agrees not to enter into a new swap agreement (i.e., an interest rate hedge) without providing at least sixty days notice to the Commission and to the active Parties to this proceeding. *Id*.

**5. Revenue Allocation and Rate Design**

While the Settlement provides for a total net $16 million revenue increase, to move the various rate classes to a more equitable cost-of-service allocation, the residential class will receive an increase of $20 million. The Commercial, Industrial, Municipal and PHA classes will receive rate decreases aggregating to $4 million. The Interruptible Transportation and Gas Transportation Service – Interruptible rates classes will remain unchanged. Settlement at ¶ 22 and Exhibit 1; R.D. at 19.

**6. Demand Side Management Plan**

PGW shall be permitted to implement its proposed five-year DSM Plan with the specific modifications set forth in Paragraph 24 of the Settlement Agreement. Among the modifications set forth in the Settlement, the yearly DSM budget shall not exceed 1% of PGW’s total projected gross intrastate operating revenue, and DSM program costs will be recovered through an automatic adjustment clause pursuant to 66 Pa. C.S. § 1307. PGW agrees not to make a claim for lost revenues during the two-year stay-out period. After the approval of the initial implementation plan through FY 2011, PGW will make a filing with the Parties and the Commission four months prior to the end of each implementation year. The Settlement contains a process for the Parties to comment on future annual plans and budgets and how modifications proposed by the parties are to be addressed. PGW will seek to coordinate its DSM program with those of other programs being deployed within its service territory. Settlement at ¶ 24.

**7. Customer Responsibility Program (CRP)**

PGW’s Customer Responsibility Program (CRP) is a low-income payment assistance program available to low-income residential customers with gross income at or below 150% of the Federal Poverty Level. As addressed in our discussion of the Exceptions filed by Denise Devlin, *infra,* PGW has filed a proposal to implement further changes to its CRP. These changes are being addressed in a separate Commission proceeding. By this Settlement, PGW has agreed that its changes to the CRP will include a proposal to create a positive incentive to encourage conservation by CRP participants. Settlement at ¶25.

**8. Bad Debt Offset**

This adjustment corrects a double-recovery of bad debt expense when a customer enrolls in the CRP between rate cases. Before a customer enrolls in the CRP, the portion of the bill the customer could not pay becomes an uncollectable expense that is recovered in base rates. When a customer enrolls in the CRP, the portion of the bill that a customer could not pay becomes a CRP credit recovered a second time through the Universal Service and Energy Conservation (USEC) Rider. R.D. at 33. To remedy this double recovery, PGW has agreed to implement a Bad Debt Expense Offset which will reduce the amount of the CRP funded by all non-CRP ratepayers by 7.1% on a monthly basis. Settlement at ¶ 26.

**9. Meter Relocation**

PGW’s current policy is to terminate service when it discovers that a meter has been tampered with. PGW initially proposed that its tariff be changed to allow it to relocate a customer’s meter from inside the dwelling to an outside location, at the customer’s expense, whenever the meter has been tampered with. TURN, *et al*. opposed this amendment because the meter relocation charge was likely to be over $2,000 and customers may have to endure many months without service before they could establish that they were not responsible for the tampering through the Commission’s complaint process. R.D. at 36. In the Settlement, PGW agreed to amend the proposed tariff language so that it may relocate the meter after it has discovered tampering two times within a twelve-month period. Settlement at ¶ 28.

**10. Collection Issues**

Some low-income customers will not benefit from CRP because they have a relatively high number of people in the household or have relatively low gas usage. Because these customers have low incomes, they have little disposable income for a security deposit to obtain gas service. R.D. at 40. Consequently, PGW has agreed to waive imposition of a security deposit on a Level-1 income non-CRP applicants. Settlement at ¶ 30.

When CRP participants experience an increase in income and are no longer eligible to participate in the CRP, they may have pre-CAP arrearages placed on their bill. If the customer has defaulted on a prior payment arrangement, they may be precluded from another payment arrangement by 66 Pa. C.S. §§1405(d) and 1407(c)(2)(i). R.D. at 40. Under the Settlement, PGW agrees to give customers leaving CRP one additional payment plan regardless of the customers’ prior payment history. Settlement at ¶ 31.

**11. Competitive Issues**

The Settlement would change PGW’s tariff rules pertaining to competitive gas suppliers by, *inter alia*, increasing the tolerance for daily imbalances from 5% to 10% and eliminating the carryover for monthly balances. In addition, within sixty days of the entry of this Opinion and Order, PGW will convene a collaborative to address all issues within the scope of establishing a Purchase of Receivables (POR) program and implementing systems and billing improvements such as electronic data interchange and utility consolidated billing. If the parties to the collaborative process are unable to reach an agreement within 180 days of the entry of this Opinion and Order, the unresolved matters will be sent to the Commission for resolution. Settlement at ¶¶ 32 and 33.

**B. Exceptions - Customer Responsibility Program (CRP)**

As noted, PGW’s Customer Responsibility Program (CRP) is a low-income payment assistance program available to low-income residential customers with gross income at or below 150% of the Federal Poverty Level. CRP customers pay a fixed monthly amount for gas service equal to between eight and ten percent of their household income plus five dollars per month toward any pre-CRP participation arrearage. The CRP also has an arrearage forgiveness component where CRP participants are eligible for a 1/36 reduction of the outstanding arrearage for each month they make their required payment for gas service on time. The CAP is funded through PGW’s Universal Service and Energy Conservation (USEC) rider, which is an automatic adjustment charge established under 66 Pa. C.S. § 1307(f). The rider is adjusted quarterly and is included in the bills of all firm non-CRP customers. PGW Petition to Modify its Universal Service and Energy Conservation Plans with Respect to the Customer Responsibility Program at Docket P-2010-2178610 (USEC Petition) at 2-3.

Prior to the 2009-10 heating season, PGW used the Low Income Home Energy Assistance Program (LIHEAP) grants it received to offset the cost of the CRP on non-CRP customers. In 2009, the Pennsylvania Department of Public Welfare (DPW) changed its policies to require that, instead of offsetting the cost of the CRP, LIHEAP cash grants must be applied directly against the payments for gas service that CRP participants are required to pay. On July 8, 2009, PGW filed a Petition with the Commission at Docket No. M-00072021, seeking Commission approval of amendments to its CRP to comply with the change in DPW policy. By Order entered October 23, 2009 (*October 2009 Order*), the Commission, *inter alia*, approved a Settlement Agreement (CRP Settlement) which authorized changes to PGW’s CRP. USEC Petition at 3-4. The Commission’s approval of the CRP Settlement was conditioned on, *inter alia*, PGW’s commitment to file a separate proceeding to examine PGW’s CRP and determine whether additional modifications will be necessary in light of DPW’s directive. *October 2009 Order* at 9. The CRP Settlement also provided that the CRP proceeding will be separate from PGW’s next base rate filing and PGW agreed to meet with the Joint Petitioners to the CRP Settlement, the OCA and other interested stakeholders to seek input on appropriate modifications to the CRP. *Id.* at 6. Accordingly, PGW filed its USEC Petition on June 4, 2010.

In the instant Settlement, PGW agreed to include, as part of the USC Petition, a proposal to create a positive incentive to encourage conservation by CRP participants. Settlement ¶ 25. The ALJ concluded that this “provision is in the public interest as it is intended to help payment troubled low income customers reduce their gas bills, while lowering PGW’s costs and fostering energy conservation for a cleaner and healthier environment.” R.D. at 32. It is with respect to this part of the Recommended Decision that the Exceptions were filed by Denise Devlin.

Any issue or Exception that we do not specifically address has been duly considered and will be denied without further discussion. It is well settled that we are not required to consider, expressly or at length, each contention or argument raised by the parties. *Consolidated Rail Corporation v. Pennsylvania Public Utility Commission*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also*, *generally*, *University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

We note at the outset that the Exceptions of the Complainant are not in strict compliance with Section 5.533(b) of our Rules of Administrative Practice and Procedure, 52 Pa. Code § 5.533(b), which provides that:

(b) An exception shall be stated in specific, numbered paragraphs, identify the finding of fact or conclusion of law to which exception is taken and cite relevant pages of the decision. Supporting reasons for the exception shall follow a specific exception.

We recognize, however, that the Complainant is appearing *pro se* in this proceeding. As discussed, *supra*, we have been hesitant to rule unfavorably against *pro se* litigants based on technical grounds. See, *e.g.*, *Destefano,* *Halpern and Schlinder.* In our view, it is in the public interest that all litigants, particularly *pro se* litigants**,** be afforded a meaningful opportunity to be heard. We will, therefore, consider the merits of the Complainant's Exceptions.

In her Exceptions, Denise Devlin objects to this provision of the Settlement because it does not specify what the “incentive” to CRP participants will be. Ms. Devlin recommends that a “reasonable” cap be placed on the amount of gas CRP participants receive. She suggests that the cap can be adjusted for the heating and non-heating seasons. Ms. Devlin argues that it is “inherently unfair” that CRP customers use the same amount of gas as those PGW customers who pay 100% of their own bills plus a percentage of the cost of the CRP customers who only are required to pay a small portion of their bill (regardless how high or low) as payment in full. Devlin Exc. at 1.

In its Reply Exceptions, PGW avers that the lack of specifics regarding the CRP incentives in the Settlement Agreement was intentional. PGW states that the settling Parties agreed that the specifics of PGW’s proposed changes to the CRP would be set forth by PGW and resolved by the Commission through a separate filing. PGW states that Ms. Devlin is free to participate in that proceeding and raise any concerns that she may have about the proposed structure of the conservation incentive presented in the USC Petition. PGW R. Exc. at 1.

As stated *supra*, and in our *October 2009 Order*, modifications to PGW’s CRP will be addressed in a proceeding separate from a rate proceeding, and consequently, will not be addressed in our review of the instant Settlement. In addition, a provision of the CRP Settlement is that the OCA and other interested stakeholders would provide input on appropriate modifications to the CRP. Consequently, we will deny Ms. Devlin’s Exceptions but invite her to participate, either directly or through the OCA, in our proceeding to address PGW’s USC Petition at Docket No. M-00072021.

**C. ALJ’s Recommendation**

On June 28, 2010, PGW filed a letter which was served on the ALJ and the Parties to this proceeding. That letter requests a clarification of the funding for post-employment benefits liabilities, citing GASB Statement 45. PGW specifically requests that the sentence on page 8 of the Recommended Decision which states:

Due to changes in accounting standards it is necessary to fund PGW’s obligations with regard to post-employment health care and life insurance.

be modified as follows:

Due to changes in the accounting and reporting standards it is necessary for ~~to fund~~ PGW~~’s~~ to recognize the costs and obligations with regard to post-employment health care and life insurance as a liability for accounting and financial reporting purposes.

As a result of the proposed modifications, the sentence will read as follows:

Due to changes in the accounting and reporting standards it is necessary for PGW to recognize the costs and obligations with regard to post-employment health care and life insurance as a liability for accounting and financial reporting purposes.

Under our Regulation which permits liberal construction at 52 Pa. Code § 1.2 , we view PGW’s letter as essentially a limited Motion to Reopen the Record in this proceeding for the purpose of clarifying this specific point. See, 52 Pa. Code § 5.431(b). We note that no objection to the PGW request has been received from any Party to this proceeding, nor did the presiding ALJ object to this request for clarification. In addition, this clarification does alter the need to fund PGW’s OPEB liability as proposed by the Settlement. We will, therefore, consider the Recommended Decision with the clarification proposed by PGW.

In his Recommended Decision, the ALJ conducted a thorough review and analysis of each of the terms of the Settlement Agreement and has found that each provision of the Settlement is in the public interest. We concur with the ALJ’s analysis and findings and adopt them by this Opinion and Order. In particular, we find that: 1) reducing the requested revenue increase from $42.5 million to $16.0 significantly reduces the rate increase imposed on PGW’s customers while providing the revenue needed to fund PGW’s OPEB obligation; 2) the two-year stay-out provision provides an increased level of rate stability for PGW customers; 3) the proposed allocation of the revenue increase moves the various rate classes gradually closer to a more equitable cost-of–service allocation; 4) the proposed DSM program will, *inter alia*, promote conservation and reduce customer bills in a cost-effective manner and provide for an appropriate level of review and participation by the Commission, the parties and interested stakeholders; 5) PGW’s commitment to monitor its options with regard to its interest rate swap agreement and not to recover specific costs from ratepayers will help insulate ratepayers from future risks; 6) the changes related to the CRP should, *inter alia*, reduce the costs of the program that are recovered from other ratepayers, make the program more effective for CRP participants, and enhance the availability of service for some low-income customers that are unable to benefit from CRP; and 7) the changes to tariff rules pertaining to competitive gas suppliers and the collaborative process to implement systems and billing improvements will enhance the availability of competitive gas supplies for PGW customers. Therefore, the ALJ’s Recommended Decision to adopt Settlement Agreement without modification is approved.

**IV. Conclusion**

Based upon our review of the record in this proceeding, the supporting statements of the Parties, and the Recommended Decision of the ALJ, we shall deny the Exceptions of Denise Devlin and conclude that the rates, terms and conditions contained in the Settlement Agreement, are just, reasonable and in the public interest and are in accord with the rules and Regulations of this Commission and the provisions of the Public Utility Code; **THEREFORE,**

**IT IS ORDERED:**

1. That the Exceptions filed by Denise Devlin on June 29, 2010, are denied.
2. That the Recommended Decision of Administrative Law Judge Charles E. Rainey, Jr., recommending approval of the Joint Petition for Settlement is adopted without modification, except as clarified by this Opinion and Order.
3. That Philadelphia Gas Works shall be permitted to increase annual operating revenues in the total amount of $16 million consistent with the rates, rules and regulations set forth in Exhibit 3 (proposed tariff modifications) and Exhibit 4 (proof of revenues) to the Joint Petition for Settlement.
4. That upon entry of this Opinion and Order, Philadelphia Gas Works shall be permitted to file tariff supplements in the form set forth in Exhibit 3 to the Joint Petition for Settlement, to become effective upon at least one day’s notice.
5. That the statements and exhibits listed in the Stipulation for Admission of Evidence filed on May 13, 2010, are admitted into evidence.
6. That the complaint of the Office of Consumer Advocate at Docket No. C‑2010-2153064 is deemed satisfied.
7. That the complaint of the Office of Small Business Advocate at Docket No. C-2010-2151419 is deemed satisfied.
8. That the complaint of Philadelphia Industrial and Commercial Users Group at Docket No. C-2010-2160512 is deemed satisfied.
9. That the complaint of Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia at Docket No. C-2010-2155856 is deemed satisfied.
10. That the complaint of Philadelphia Housing Authority at Docket No. C‑2010-2160858 is deemed satisfied.
11. That the complaint of Stanton Bubis at Docket No. C-2010-2160918 is deemed satisfied.
12. That the complaint of George W. Craigie at Docket No. C-2010-2160860 is dismissed.
13. That the complaint of Denise Devlin at Docket No. C-2010-2160919 is dismissed.
14. That the complaint of Kathleen Golden at Docket No. C-2010-2169748 is dismissed.
15. That the complaint of Sydella Hodge at Docket No. C-2010-2160924 is dismissed.
16. That the complaint of Floyd M. Jones at Docket No. C-2010-2160929 is dismissed.
17. That the complaint of Linda J. Montgomery at Docket No. C-2010-2160887 is dismissed.
18. That the complaint of Dominic A. Stango at Docket No. C-2010-2167827 is deemed satisfied.
19. That upon acceptance and approval by the Commission of the tariff supplements and proof of revenues filed by Philadelphia Gas Works consistent with this Order, this proceeding shall be marked closed.

**BY THE COMMISSION**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: July 29, 2010

ORDER ENTERED: **July 29, 2010**

1. The Secretarial Letter transmitting the Recommended Decision established an “in the hands” deadline of June 28, 2010, for Exceptions, and July 1, 2010 for Reply Exceptions. Denise Devlin’s Exceptions were mailed on Saturday, June 26, 2010, but not received by the Commission until Tuesday, June 29, 2010. In the interest of fairness to a *pro se* Complainant and in light of the fact that we have been hesitant to rule unfavorably against *pro se* litigants based on technical grounds, we will accept Ms. Devlin’s Exceptions as timely filed. See, e.g. *Destefano v. Peoples Natural Gas Company*, 56 Pa. P.U.C. 489 (1982); *Halpern v. The Bell Telephone Company of Pennsylvania*, Docket No. C-00923950 (October 19, 1992); *William Schlinder v. The Bell Telephone Company of Pennsylvania,* Docket No. F-00161252 (March 26, 1993). [↑](#footnote-ref-1)
2. Consistent with our consideration of Ms. Devlin’s Exceptions, discussed *supra*, we will also consider the Reply Exceptions filed *nunc pro tunc* by PGW. [↑](#footnote-ref-2)
3. RESA was permitted to participate in this proceeding on the issues it raised in its petition to intervene with the exception of those issues that are the subject of a Commission ordered collaborative process. The CAC’s Petition to Intervene was granted at the hearing held on May 10, 2010. [↑](#footnote-ref-3)
4. *See*, 52 Pa. Code § 69.406(a) (“Review of full and partial settlements”). [↑](#footnote-ref-4)