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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION** OFFICE OF SPECIAL ASSISTANTS

**PENNSYLVANIA PUBLIC UTILITY :  
COMMISSION LAW BUREAU :  
PROSECUTORY STAFF :**

**V.**

**PHILADELPHIA GAS WORKS :**

*M-00041858*

**Docket No.**

SECRETARY'S BUREAU

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**SETTLEMENT AGREEMENT**

**I. Introduction**

1. The parties to this Settlement Agreement (Agreement) are the Pennsylvania Public Utility Commission's Law Bureau Prosecutory Staff (Prosecutory Staff), P.O. Box 3265, Harrisburg, PA 17105-3265, and the Philadelphia Gas Works (PGW or the Company), 800 W. Montgomery Avenue, Philadelphia, PA 19122.

2. PGW is a collection of real and personal assets owned by the City of Philadelphia (City) and used for the acquisition, storage, processing, and distribution of natural gas within the city. PGW is a "city natural gas distribution operation" as defined in Section 102 of the Public Utility Code.

3. This matter concerns an informal investigation regarding PGW's violation of its tariff and the Public Utility Code while terminating gas service to an account at 3041 N. Carlisle Street, Philadelphia, PA 19132. As a result of negotiations, the Prosecutory Staff and PGW (Parties) have agreed to resolve their differences as encouraged by the Commission's policy to promote Settlements. (See 52 Pa. Code §5.231.) The duly authorized Parties executing this Settlement Agreement agree to the settlement terms set forth herein and urge the Commission to approve them as being in the public interest.

## **II. Background**

4. On December 4, 2002, Mr. O'Kelley Barlow was found dead at his residence at 3041 N. Carlisle Street, Philadelphia, Pennsylvania. The cause of death was heart disease and hypothermia.

5. In accordance with the Commission's procedures regarding cold-weather-related deaths the Bureau of Consumer Services conducted preliminary discussions with Philadelphia Gas Works. These discussions revealed that the Company terminated Mr. Barlow's gas service on Friday, November 1, 2002.

6. Based on these findings, the Bureau of Consumer Services requested that the Commission's Law Bureau initiate an informal investigation to determine whether the Company violated its tariff or the Public Utility Code while carrying out the termination of Mr. Barlow's service.

7. On January 8, 2003 the Law Bureau initiated an informal investigation. The Law Bureau and the Bureau of Consumer Services formed an investigative team, identified as Prosecutory Staff (Staff), for the purpose of conducting this investigation.

8. Prosecutory Staff requested that PGW provide documents and other background information related to the termination of Mr. Barlow's service. Prosecutory Staff also conducted interviews of PGW personnel who had first-hand knowledge of the Company's collections and termination procedures.

## **III. Law Bureau Prosecutory Staff Investigation**

9. As a result of Prosecutory Staff's investigation it was found that on October 30, 2001, PGW initiated a gas account for Mr. O'Kelley Barlow at 3041 N. Carlisle Street, Philadelphia, Pennsylvania. The Company used July 24, 1997 as the effective date of the account.

10. The Company immediately issued a bill in the amount of \$2,524.91 for the period of July 24, 1997 through July 15, 1999. The Company also issued a bill in the amount of \$4,585.69 for the period from July 15, 1999 through October 15, 2001.

11. The customer made no payments on either of these bills.

12. PGW attempted to terminate service on April 2, 2002, June 3, 2002, and August 5, 2002, but repeatedly failed to establish contact with the customer or to complete the termination process.

13. Pursuant to a termination notice issued on October 7, 2002, on Friday, November 1, 2002, PGW collectors went to the customer's property in an attempt to make personal contact in accordance with the Company's tariff termination procedures.

14. The collectors were unsuccessful in contacting the customer. However, instead of leaving a 24-hour notice as required by the tariff, the collectors made the immediate, but erroneous, determination that the property was vacant, open and abandoned and terminated the service even though the Company's records indicated that it did not have contact with the customer.

15. Interviews conducted during the investigation and written documents provided by the Company, indicated that service was terminated because the customer had moved and the property was vacant, open and abandoned. Nevertheless, Mr. Barlow was subsequently found deceased in the residence on December 4, 2002. Moreover, other Company records list non-payment (not vacancy, open property or abandoned) as the grounds for termination. The Company could not explain these discrepancies.

16. During this investigation the Company submitted documentation that indicated it had made telephone attempts to contact the customer on April 10, 2002, June 11, 2002, August 13,

2002, and October 15, 2002. This is also reflected in the computer records provided by the Company. However, during the course of the investigation the Company eventually admitted that it did not have a telephone number for the customer and that its statements, both verbal and written, that it had attempted to make telephone contact were incorrect.

17. Though the Company terminated the service on November 1, 2002, and knew the property was vacant after December 4, 2002, the Company continued to bill this account and assess late payment charges until May, 2003. The Company ultimately wrote off \$11,320.91 from this account.

#### **IV. Violations**

18. Prosecutory Staff has reviewed the actions and business practices of PGW with respect to this investigation. If this matter had been litigated, Prosecutory Staff would have contended that PGW violated certain provisions of its Commission-approved tariff and the Public Utility Code in that:

a. The Company terminated this service on the grounds that the property appeared to be vacant, open and abandoned. Vacancy is not a ground for termination in the tariff. The Company did not utilize sound objective standards when determining whether the property was vacant, open and abandoned. Therefore, the Company failed to establish or document grounds to terminate the service.

If proven, this would violate of Tariff Section 4.11 (Service Termination).

b. The Company terminated service on Friday, November 1, 2002. The Company's tariff specifically prohibits termination of service on Friday except for safety-related emergencies.

If proven, this would violate of Tariff Section 4.12 (a) (Non-Termination Periods).

c. The Company terminated service without first attempting to make personal contact with the customer, specifically for the purpose of noticing the customer, by visiting the property since the customer did not have a telephone.

If proven, this would violate of Tariff Section 4.24 (First Attempt to Avoid Shut Off of a Residential Account Through Personal Contact).

d. The Company terminated this service without making a second attempt at making personal contact.

If proven this would violate of Tariff Section 4.25 (Second Attempt to Avoid Shut Off of a Residential Account Through Personal Contact).

e. The Company repeatedly initiated its termination process without completing it. If proven, this would violate of Tariff Section 4.29 (Limitation on Use of Termination Notice).

f. The Company failed to provide reasonable and adequate service in that the Company initiated termination procedures on three separate occasions and failed to follow through on those procedures and by allowing the account to continue to accumulate an arrearage that ultimately reached over \$11,000.00.

If proven, this would violate of 66 Pa.C.S.A. §1501 (Character of Service and Facilities)

g. The PGW failed to provide complete and accurate information to the Commission in that during the course of this investigation the Company failed, on numerous occasions, to provide complete, adequate, and timely information to Prosecutory Staff.

If proven, this would violate of 66 Pa.C.S.A. §505 (Duty to Furnish Information to Commission).

## **V. Settlement Terms**

19. Although PGW may dispute or disagree with some of the assertions and allegations above, PGW recognizes that the allegations set forth are serious and acknowledges that the acts alleged, if proven, constitute violations of certain provisions of its tariff and the Public Utility Code.

20. Throughout the entire investigatory process numerous meetings were held between the Prosecutory Staff and PGW and the parties continued to explore the possibility of resolving this investigation. These efforts ultimately culminated in this Settlement Agreement.

21. PGW and Prosecutory Staff desire to settle this matter fully and completely without further litigation.

22. For the purposes of this Settlement Agreement, PGW admits to the above-mentioned Tariff and Code violations and fully acknowledges the seriousness of such violations. PGW also recognizes the need to prevent further violations. Moreover, PGW recognizes the benefits of amicably resolving these differences.

23. Prosecutory Staff and PGW, intending to be legally bound and for consideration given, desire to conclude this informal investigation and agree to stipulate as to the following terms solely for the purposes of this Settlement Agreement:

- a. PGW will eliminate the practice of terminating service based solely on the belief that a property is vacant, open and abandoned. The Company has submitted a satisfactory procedure to deal with this issue to the Bureau of Consumer Services.
- b. PGW has revised its billing procedures so that the Company can more efficiently cease billing an account after service has been terminated. Final bills will be issued

based on the last obtained reading and will be adjusted when the Company obtains a confirmed final reading.

c. PGW will pay the amount of \$7,000.00 to resolve the violations uncovered by this informal investigation, enumerated in the following manner:

1. \$1,000.00 for terminating this service without proper grounds for the termination.
2. \$1,000.00 for terminating service on Friday, November 1, 2002 contrary to its tariff.
3. \$1,000.00 for terminating the service without first attempting to make personal contact with the customer by visiting the property since the customer did not have a phone.
4. \$1,000.00 for terminating this service without making a second attempt at making personal contact as required by Tariff Section 4.25.
5. \$1,000.00 for violating 66 Pa.C.S.A. §1501 by failing to provide reasonable and adequate service in that the Company initiated termination procedures on three separate occasions and failed to follow through on those procedures and by allowing the account to continue to accumulate a high arrearage that ultimately reached over \$11,000.00.
6. \$2,000.00 for violating 66 Pa.C.S.A. §505 by failing to provide complete and accurate information to the Commission during the course of this investigation.

d. Within ninety (90) days from the date of this Agreement, the Philadelphia Gas Works will commence training all current Field Collectors and Field Collection

Supervisors in shut-off issues and procedures, including but not limited to shut-offs that involve properties that appear to be vacant and/or abandoned. All individuals newly hired and/or assigned to field collection duties will also receive this training at the time they begin their employment in this position. Training for current Field Collectors will be completed by February 28, 2005. Personnel who have received this training will receive periodic in-service training.

The initial training course will last approximately two hours and will cover the following subject areas:

- (1) The concept of due process—notice and opportunity to be heard;
- (2) Hardships associated with gas shut-offs and why due process is vitally important in these situations;
- (3) Applicable laws and regulations;
- (4) Applicable PGW written policies and procedures affecting gas shut-offs;
- (5) Factors to determine whether a property is vacant or abandoned;
- (6) Practical considerations that come into play when determining whether a property is vacant or abandoned;
- (7) The importance of customer contact and communication;
- (8) The importance of accurate records and timely record-keeping;
- (9) Availability of supervisory and Legal Department advice and consultation.

**VI. Applicability of Joseph A. Rosi v. Bell Atlantic Pennsylvania, Inc. and Spirit Communications Company, LLP, C-00992409**

24. The standards set forth in *Rosi* were reviewed by the parties. The parties submit that this Settlement Agreement does not violate the requirements for settlements found in *Rosi*.

The first standard in *Rosi*, which addresses whether the violation was intentional or unintentional, cannot clearly be applied to this case. This is because this was a settled matter and, therefore, no witnesses were called or findings of fact entered. In fact, the very purpose of this Settlement is to avoid the litigation required to address each possible violation.

The second and third tests found in *Rosi* do not apply to the present case. This is because both of these tests use slamming cases. With regard to the fourth test in *Rosi*, there was only one customer involved in this matter.

The parties submit that the fifth test addressed in *Rosi*, which relates to whether the case was settled or litigated is of pivotal importance to this Settlement Agreement. A settlement avoids the necessity for the prosecuting agency to prove elements of each violation. In return, the opposing party in a settlement agrees to a lesser fine or penalty. Both parties negotiate from their initial litigation positions. The fines and penalties in a litigated proceeding, such as *Rosi*, have always been different from those that a result from a settlement.

The parties submit that this is the reason that *Rosi* listed whether penalties arise from a settlement or a litigated proceeding as one of its tests.

In the process of negotiating this Settlement Agreement, all of the other factors in *Rosi* were considered. Specifically, the parties reviewed the number of customers affected, the compliance history of the company, the company's cooperation with the Commission, and the amount necessary not only to deter future violations but to recognize possible violations in the past. This Settlement Agreement was negotiated over several meetings so that a fair and

equitable settlement that is in the public interest could be reached. The Commission has consistently encouraged Settlements to avoid the cost, expense and time of litigation.

The parties submit that the Settlement Agreement is in the public interest because it effectively addresses the issues set forth in the Complaint, avoids the time and expense of litigation which entails hearings, filings of briefs, exceptions, reply exceptions, and possible appeals. The company has also agreed to pay a fair and equitable penalty and to improve its customer service practices. Moreover, the Settlement Agreement clearly meets the standards set forth in *Rosi*.

25. With the Commission's approval that the terms and conditions in this Agreement are in the public interest and cannot be used against PGW in any future proceeding, PGW agrees to pay the amount of \$7,000.00 to the Commonwealth of Pennsylvania, pursuant to Section 3301 of the Public Utility Code, to resolve, through this Agreement, the allegations raised by Prosecutory Staff's investigation.

26. This Settlement Agreement is a full and final resolution of the Commission's investigation related, in any way, to PGW's alleged actions described in this Agreement, up to and including the date this Settlement Agreement is signed by the parties.

27. Prosecutory Staff and PGW have agreed to this amicable settlement in the interests of avoiding formal litigation and moving forward in the conduct of business in Pennsylvania.

28. Prosecutory Staff and PGW have entered into and seek the Commission's approval of this Settlement Agreement pursuant to 52 Pa Code § 3.113. This Agreement is subject to all applicable administrative and common law treatments of settlements, settlement offers, and/or negotiations.

29. The validity of this Agreement is expressly conditioned upon the Commission's approval under applicable public interest standards as addressed in the Joint Statement In Support, which is attached hereto and incorporated herein by reference.

30. This Agreement is made without any admission against or prejudice to any position which any party might adopt during litigation of this case if this Settlement is rejected by the Commission or withdrawn by any of the parties as provided below. This Agreement is, therefore, a compromise and is conditioned upon the Commission's approval of any of the terms and conditions contained herein without modification or amendment.

31. If the Commission fails to approve by tentative and final order this Settlement Agreement, or any of the terms or conditions set forth herein, without modification, addition, or deletion, then either Party may elect to withdraw from this Agreement by filing a response to the tentative or final order within twenty (20) days of the date the tentative or final order is entered. None of the provisions of this Agreement shall be considered binding upon the parties if such a response is filed.

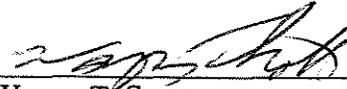
32. This document represents the Settlement Agreement in its entirety. No changes to obligations set forth herein may be made unless they are in writing and are expressly accepted by the parties involved. This Agreement shall be construed and interpreted under Pennsylvania law.

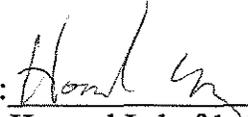
**WHEREFORE**, Prosecutory Staff and PGW respectfully request that the Commission adopt an order approving the terms and conditions of this Settlement Agreement as being in the public interest.

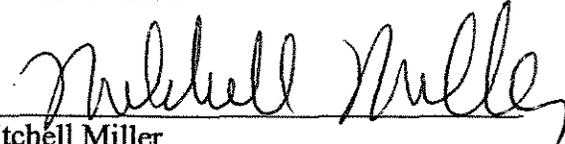
Respectfully Submitted,

Pennsylvania Public Utility Commission  
Law Bureau Prosecutory Staff

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