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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

OFFICE OF SPECIAL  
ASSISTANTS

PENNSYLVANIA PUBLIC UTILITY :  
COMMISSION LAW BUREAU :  
PROSECUTORY STAFF :

v. :

Docket No. :

PHILADELPHIA GAS WORKS :

M-00041859  
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 while terminating gas service to an account at 2406 Ridge Avenue, Philadelphia, PA 19121. 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 January 24, 2003 Ms. Betty Clark was found dead at her residence at 2406 Ridge Avenue, 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 Ms. Clark's gas service on February 13, 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 by terminating Ms. Clark'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, for the purpose of conducting this investigation.

8. Pursuant to its investigation, Prosecutory Staff requested that PGW provide documents and other background information related to the termination of Ms. Clark'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 May 23, 2000, Ms. Betty Clark called PGW to apply for gas service at 2406 Ridge Avenue, 2<sup>nd</sup> Floor, Philadelphia, Pennsylvania. The Company completed the turn on and obtained a meter reading on that same day. However, PGW never entered the turn-on information onto the Company's computer

system. Consequently, the Company never listed Ms. Clark as the customer of record, nor did the Company ever issue a bill to Ms. Clark, or obtain another meter reading until after service was terminated.

10. On August 31, 2001, Ms. Clark called the company. Though the reason for this call is not documented, the receipt of this call indicates that Ms. Clark continued to have contact with the Company. The Company's representative scheduled an appointment for a "turn-on" reading apparently believing that Ms. Clark was a new customer. On September 5, 2001 as well as on September 10, 2001, a Company service person visited the property but could not gain access to get a meter reading. The Company had no further contact with Ms. Clark.

11. On February 13, 2002 PGW gained access to the first floor commercial account at 2406 Ridge Avenue and terminated service. Having gained access to the meters at 2406 Ridge Avenue, and incorrectly believing that someone was receiving gas service for the second floor illegally, the Company terminated service to the second floor account without notice.

12. PGW never restored Ms. Clark's service and on January 24, 2003, almost a year after service was terminated, Ms. Clark was found dead in her apartment at 2406 Ridge Avenue, Philadelphia, Pennsylvania. According to a representative with the Philadelphia Department of Public Health, the cause of death was hypothermia and heart disease. Ms. Clark was 66 years of age.

13. Based on information provided by the Company, and due to the fact that PGW terminated Ms. Clark's service without notice after failing to recognize her as a legitimate customer, Prosecutory Staff concluded that PGW violated several provisions of its tariff.

#### IV. Violations

14. 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 that was in effect at all relevant times to this investigation as well as the Public Utility Code in that:

- a. The Company failed to obtain monthly meter readings from May 23, 2000 through February 13, 2002.  
If proven, this would have violated PGW Tariff Section 3.21 (Meter Reading Intervals) and 66 Pa.C.S. § 1501.
- b. The Company failed to issue monthly bills from May 23, 2000 through February 13, 2002.  
If proven, this would have violated PGW Tariff Section 3.31 (Billing Practices) and 66 Pa.C.S. § 1501.
- c. The Company terminated Ms. Clark's service even though none of the Company's tariff provisions justified such termination.  
If proven, this would have violated PGW Tariff Section 4.11b (Service Termination) and 66 Pa.C.S. § 1501.
- d. The Company terminated service on February 13, 2002.  
If proven, this would have violated PGW Tariff Section 4.12.1 (Limited Termination During Winter Period) and 66 Pa.C.S. § 1501.
- e. The Company failed to provide the customer with 14 days notice prior to termination.

If proven, this would have violated PGW Tariff Section 4.22 (Notice of Termination) and 66 Pa.C.S. § 1501.

- f. The Company failed to make personal contact with the customer at least 72 hours prior to termination and had no procedure in place for documenting whether attempts to make contact were successful or unsuccessful.

If proven, this would have violated PGW Tariff Section 4.24 (First Attempt to Avoid Shut Off of a Residential Account Through Personal Contact) and 66 Pa.C.S. § 1501.

- g. The Company failed to make a second attempt to contact the customer prior to termination.

If proven, this would have violated PGW Tariff Section 4.25 (Second Attempt to Avoid Shut Off of a Residential Account Through Personal Contact) and 66 Pa.C.S. § 1501.

- h. The Company failed to complete a required follow-up inquiry within a reasonable period of time.

If proven, this would have violated PGW Tariff Section 5.1C2 (Response to Customer Inquiries) and 66 Pa.C.S. § 1501.

15. Throughout the entire investigatory process the Prosecutory Staff and PGW remained active in informal discovery and continued to explore the possibility of resolving this investigation, which ultimately culminated in this Settlement Agreement. During the discovery process, PGW complied with the Prosecutory Staff's requests for information and documentation. Throughout the investigation, PGW and Prosecutory Staff convened meetings and maintained ongoing communications.

16. Prosecutory Staff acknowledges that PGW has fully cooperated with this investigation.

#### **V. Settlement Terms**

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

18. Although PGW may dispute or disagree with some of the allegations above, the Company fully acknowledges the seriousness of such allegations. PGW also recognizes the need to prevent further violations. Moreover, PGW recognizes the benefits of amicably resolving these issues.

19. 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 revise its procedures for following up on missed appointments in order to increase the rate of successful appointments. The revised procedures will provide for both a call back and a letter to the customer whenever necessary to reschedule an appointment.
- b. PGW will devise a procedure to document and verify all attempts to make personal contact.
- c. PGW will pay the amount of \$15,250.00 to resolve the violations uncovered by this informal investigation, enumerated in the following manner:
  1. \$5,000.00 for the Company's failure to obtain a meter reading from May 23, 2000, until February 13, 2002. (20 months @ \$250.00 per month.)

2. \$5,000.00 for the Company's failure to render bills on a monthly basis as required by Tariff Section 3.31. The Company failed to issue a bill throughout the time gas service was on for Ms. Clark, from May 23, 2000, until February 13, 2002. (20 months @ \$250.00 per month.)
3. \$1,000.00 for violating Tariff Section 4.11 by terminating gas service when no grounds for termination existed.
4. \$1,000.00 for terminating service during the winter heating period in violation of Tariff Section 4.12.1.
5. \$1,000.00 for not providing notice of termination at least 14 days prior to termination as required by Tariff Section 4.22.
6. \$1,000.00 for failing to attempt to make personal contact at least 72 hours prior to termination as required by Tariff Section 4.24.
7. \$1,000.00 for failing to make a second attempt to make personal contact as required by Tariff Section 4.25.
8. \$250.00 for failing to complete a timely follow-up to customer inquiry as required by Tariff Section 5.1C2.

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

20. 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 involve 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 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*.

21. 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 relating to this matter, PGW agrees to pay the amount of \$15,250.00 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.

22. This Settlement Agreement is a full and final resolution of the Commission investigations, 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.

23. 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.

24. Prosecutory Staff and PGW have entered into and seek the Commission's approval of the 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. The validity of this Agreement is expressly conditioned upon the Commission's approval under applicable public interest standards without modification, addition, or deletion of any term or condition herein. Accordingly, 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.

25. If the Commission fails to approve by tentative and final order this 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.

26. 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.

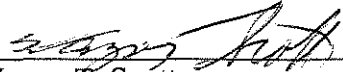
27. None of the provisions of the Agreement or statements herein shall be considered an admission of any fact or culpability. Prosecutory Staff acknowledges that this Agreement is entered into with the express purpose of settling the asserted claims regarding the specific alleged violations of the Public Utility Code and the regulations promulgated thereunder against, or prejudice to, any position which any Party may adopt during any subsequent proceeding of whatever nature.


**WHEREFORE**, the 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.

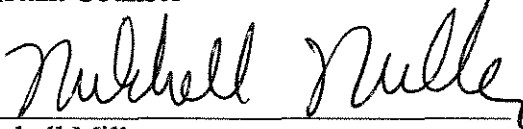
Respectfully Submitted,

Pennsylvania Public Utility Commission  
Law Bureau Prosecutory Staff

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