



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE  
REFER TO OUR FILE

July 24, 2007

James McNulty, Secretary  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

**Re: Pennsylvania Public Utility Commission Law Bureau  
Prosecutory Staff v. Philadelphia Gas Works  
Docket Number: M-00072017**

Dear Secretary McNulty:

Enclosed for filing you will find the original and three (3) copies of the revised Settlement Agreement in the above referenced matter. Law Bureau Prosecutory Staff is requesting that this document be forwarded to the Office of Special Assistants for the purpose of preparing a decision for the Commission.

Thank you for your cooperation in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Wayne T. Scott".

Wayne T. Scott  
Prosecutory Staff

cc: Howard Lebofsky, Esquire  
Thomas Knudsen, CEO  
Joseph Farley, Bureau of Consumer Services  
Kathryn Sophy, Office of Special Assistants

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**V. :**

**Docket No. M-00072017**

**PHILADELPHIA GAS WORKS :**

**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 3324 North 16<sup>th</sup> Street, 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 March 13, 2006, Ms. Hilda Bousley, of 3324 North 16<sup>th</sup> Street, Philadelphia, Pennsylvania died in a house fire. Ms. Bousley was 91 years old. In accordance with the BCS's procedures, the Bureau reviewed the status of utility service at the residence.

5. Upon reviewing the status of Ms. Bousley's utility service the Bureau of Consumer Services discovered that PGW had terminated Ms. Bousley's service on April 26, 2005, for failure to provide access to the meter so the Company could install an automatic meter reading device (AMR). Ms. Bousley was **not** a heating customer of PGW.

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. Bousley's service.

7. Pursuant to this request, on or about June 1, 2006, 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. Prosecutory Staff requested that PGW provide documents and other background information related to the termination of Ms. Bousley'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 April 20, 2005, PGW was scheduled to install the AMR at Ms. Bousley's residence. On that day the Company was

unable to gain entry into the residence. Subsequently, on April 26, 2005, PGW terminated Ms. Bousley's service.

10. The next day Ms. Bousley's daughter contacted PGW and disputed both the termination and PGW's position that a reconnection fee needed to be paid to restore the service. Moreover, PGW did not recognize this as a dispute.

11. Upon reviewing the Company's records relating to this matter, it was learned that on April 20, 2005, a person identifying themselves as Ms. Bousley's daughter called PGW to cancel the appointment to install the AMR that was scheduled for that day because of a sewage problem in the basement. During this contact PGW advised the person to fix the problem and call back to reschedule the appointment.

12. It was also learned that PGW had failed to obtain an actual meter reading at this residence since some time prior to June of 1977.

13. Based on information obtained through this investigation, 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. During the contact with the customer on April 20, 2005, the Company failed to explain all of the methods for avoiding termination of service.

If proven, this would have violated 52 Pa.Code § 56.97 and 66 Pa.C.S. § 1501.

- b. The Company failed to apply reasonable and adequate service standards when the Company terminated service since there was no legitimate basis on which to terminate.

If proven, this would have violated 52 Pa.Code § 56.81 and 66 Pa.C.S. § 1501.

- c. The Company failed to restore service to the customer within 24 hours of the erroneous termination.

If proven, this would have violated 66 Pa.C.S. §§ 1407(B)(1) and 1501.

- d. The Company failed to recognize a customer's complaint when the customer disputed their termination of service.

If proven, this would have violated 52 Pa.Code § 62.79 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 provide training for employees on the recognition and identification of customer disputes.
- b. PGW will provide training to its customer representatives on the handling of calls after a termination notice has been issued to customers.
- c. PGW will pay civil settlement amount of ten thousand dollars (\$10,000.00) to resolve the alleged violations uncovered by this informal investigation. This amount will be paid by the Company to its pilot conservation program which provides extensive services including, but not limited to, heating system replacements to lower income customers.

**VI. Applicability of *Rosi v. Bell Atlantic Pennsylvania, Inc.*, C-00992409**

20. In *Rosi v. Bell Atlantic Pennsylvania, Inc.*, 2000 Pa. PUC Lexis 5, C-00992409 (Order entered Feb. 10, 2000), and specifically *Pennsylvania Public Utility Commission v. NCIC Operator Services*, M-00001440 (Dec. 20, 2000), the Commission adopted a test for determining whether a particular enforcement outcome is in the public interest. 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* and that the terms of the Agreement are in the public interest.

21. The Parties further assert that approval of this Settlement is consistent with the proposed *Policy Statement for Litigated and Settled Proceedings Involving Violations of the Public Utility Code and Commission Regulations*, M-00051875 (Order entered Aug. 12, 2005).<sup>1</sup> Under the proposed policy statement, while many of the *Rosi* standards may still be applied, the Commission specifically recognized that in “settled cases the Parties should be afforded more flexibility in determining the amount of a fine, penalty, or other resolution.” *Id.* at 4.

22. The first standard in *Rosi*, which addresses whether the violation was intentional or unintentional, cannot clearly be applied to this case. This proceeding is a settled matter and, therefore, no witnesses were called and no findings of fact were entered. In fact, the very purpose of this Settlement is to avoid the litigation required to address each possible violation. There is, however, no indication whatsoever that the Company committed intentional violations. In fact, it appears that the Company made an inadvertent error that attempted to correct immediately.

23. The second test found in *Rosi* does not apply to the present case because that test dealt specifically with slamming cases.

24. With regard to the third and fourth tests in *Rosi*, this was the first time that each of these alleged violations has been addressed, and it appears that the Company is taking the appropriate actions to prevent future occurrences.

25. 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,

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<sup>1</sup> The Commission has issued a proposed policy statement that establishes the standards it will consider in evaluating the merits of a settlement involving violations of the Public Utility Code and Commission regulations. When a final policy statement is issued, the standards set forth therein will replace the use of the *Rosi* standards.

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.

26. 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 a long period of time and recognizes the Respondent's good faith efforts to comply with the regulations.

27. 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*.

28. 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 \$10,000.00 to its pilot conservation program to resolve, through this Agreement, the allegations raised by Prosecutory Staff's investigation.

29. 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.

30. 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.

31. 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.

32. 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.

33. 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.

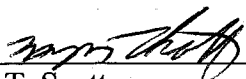
34. None of the provisions of the Agreement or statements herein shall be considered an admission of any fact or culpability. Prosecutory Staff acknowledges that this Agreement is entered into with the express purpose of settling the asserted claims regarding the specific alleged violations of the Public 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.

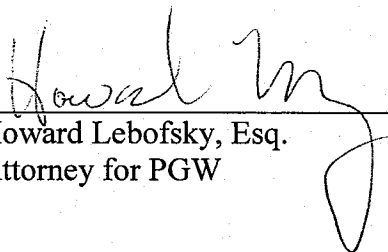
**WHEREFORE**, the Prosecutory Staff and PGW respectfully request that the Commission adopt an order approving the terms and conditions of this Settlement Agreement as being in the public interest.

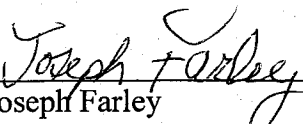
Respectfully Submitted,

Pennsylvania Public Utility Commission  
Law Bureau Prosecutory Staff

Philadelphia Gas Works

By:   
Wayne T. Scott  
Prosecuting Attorney

By:   
Howard Lebofsky, Esq.  
Attorney for PGW

By:   
Joseph Farley  
Manager of Field Review,  
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