

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Public Meeting held April 15, 2004

Commissioners Present:

Terrance J. Fitzpatrick, Chairman
Robert K. Bloom, Vice Chairman
Glen R. Thomas, Dissenting – Statement attached
Kim Pizzingrilli
Wendell F. Holland

DOCKETED
JUN 07 2004

Pennsylvania Public Utility Commission

M-00021612

v.

Philadelphia Gas Works

Petition for Rescission and Amendment of Philadelphia Gas Works P-00032061

Edward Morrison v. Philadelphia Gas Works

C-20030297

OPINION AND ORDER

BY THE COMMISSION:

DOCUMENT

Before the Commission is the Recommended Decision (R.D.) of Administrative Law Judge (ALJ) Allison K. Turner, issued on February 6, 2004, regarding the Senior Citizen Discount (SCD) Program proposed by the Philadelphia Gas Works (PGW). The ALJ recommends that this Commission adopt a proposed Settlement which is either joined in, or not opposed by, the Parties remaining in this case. For the reasons set forth below, we will hold the proposed Settlement in abeyance and remand this matter to the Office of Administrative Law Judge to afford the Parties the opportunity to further develop the record in support of the proposed Settlement.

History of the Proceeding

In our Opinion and Order which established PGW's restructuring plan, we approved PGW's request that the existing, non-means tested SCD Program continue for those participants enrolled as of September 1, 2003. However, as proposed by PGW, the SCD Program would no longer be available for those customers reaching age 65 on or after September 1, 2003. (*Pennsylvania Public Utility Commission v. Philadelphia Gas Works*, Docket No. M-00021612, Opinion and Order entered March 31, 2003, at 44) (March 31, 2003 Order).

On July 7, 2003, PGW filed a Petition for Rescission and Amendment seeking an amendment to the treatment of the SCD Program approved in our March 31, 2003 Order. In that Petition, PGW sought to modify the SCD Program by proposing a means-tested SCD Program. The new proposal would provide a discount of 20% and be available to customers age 65 or older on and after September 1, 2003, whose household income (regardless of size) does not exceed 250% of the federal poverty level (FPL) for a two person family (currently approximately \$30,000 per year). Participants in the existing non-means tested SCD Program (those customers attaining the age of 65 before September 1, 2003) would continue in the existing SCD Program without change.

On October 9, 2003, we entered our Opinion and Order which referred the proposed amendment to PGW's SCD Program to the Office of Administrative Law Judge for the development of a factual record and the issuance of a Recommended Decision. On January 9, 2004, PGW filed a Stipulation and Settlement which was joined by the Office of Small Business Advocate (OSBA), the Consumers Education and Protective Association, the Association of Community Organizations for Reform Now, the Tenants' Action Group and the Action Alliance of Senior Citizens of Greater Philadelphia (collectively, CEPA). The Office of Consumer Advocate (OCA) expressed support for

the proposed Settlement. The remaining Party, Philadelphia Industrial Consumers and Gas Users Group (PICGUG), did not oppose the proposed Settlement. As stated above, ALJ Turner issued her Recommended Decision on February 6, 2004, recommending approval of the proposed Settlement.

Discussion

While the Commission generally favors settlements over litigated proceedings, any settlement must be in the public interest to be approved. In our Opinion and Order entered October 9, 2003, we expressed concern that a SCD Program of this magnitude must be properly supported by facts of record. In referring the proposal to the Office of Administrative Law Judge, we noted that our responsibility in these matters extends to all of PGW's customers, not just those who may benefit from the proposed discount. (Opinion and Order entered October 9, 2003, at 4).

As noted above, we previously remanded this matter for the development of a record in support of the proposed SCD Program. However, there remain important factual and policy issues that must be further developed before this Commission can reach a determination of whether the proposed Settlement is in the public interest. The proposed Settlement indicates that PGW proposes to collect the costs of the means-tested program from all firm customers via its Universal Service Surcharge. Such a proposal obviously will have a significant long term impact on all PGW customers. Accordingly a record should be developed on the following issues:

- 1) Does any utility regulated by this Commission (other than PGW) have a program to provide discounts limited to senior citizens? If so, what percentage is the discount and what are the income limitations, (i.e., percentage of FPL)?

2) Does any other utility in Pennsylvania have a customer assistance program for which customers above 150% of the FPL are eligible?

3) What does the average residential PGW customer pay a month to fund customer assistance programs?

4) How was the 20% discount derived?

5) While the Settlement Petition states that the yearly cost of the means-tested SCD would be between \$366,500 and \$371,316, it fails to estimate the total cost of the Program for the general body of ratepayers in later years:

What is the estimated cumulative cost for the means-tested SCD Program in each year through 2020?

What is the combined estimated cumulative cost of the means-tested SCD Program and the non-means-tested SCD Program in each year through 2020?

What are the anticipated costs of the proposed audit and efficacy calculation of the means-tested SCD Program and how was this amount developed?

6) What is the estimated cost per mcf of the means-tested SCD and non-means-tested SCD for each year through 2020? What is the monthly average consumption (Ccf) per residential heating and non-heating customers?

7) How did PGW determine that the new means-tested SCD would result in 1,300 applicants being enrolled each year?

8) In its Petition at Docket No. R-0004915 seeking to establish a “cash receipts reconciliation clause” (“CRRC”), PGW asserts that:

It is in a “precarious financial position.” (CRRC Petition at 2).

“[H]ousehold and business income levels continue to drop [in Philadelphia], making it increasingly difficult for those customers to absorb such increases [in the commodity price of natural gas].” (*Id.*).

“[P]rice levels are projected to remain at close to the current levels for the foreseeable future.” (CRRC Petition at 3).

Due to these persistently high prices, an increasing number of formerly “good paying” residential and small business customers are now having difficulty paying their bills. (*Id.* at 8).

For purposes of this proceeding, the foregoing assertions in the CRRC Petition are relevant to whether the general body of customers can afford to pay for the proposed means-tested SCD. The parties should either stipulate to these assertions or develop a record setting forth their position on the allegations.

Two additional matters remain outstanding. First, the Office of Trial Staff (OTS) withdrew from this proceeding on December 15, 2003. Given our decision to remand this matter to the ALJ for further development of the issues described herein, the OTS should review this Opinion and Order to determine whether it wishes to renew its participation in the proceeding. If the OTS chooses, it may file the appropriate entry of appearance and fully participate in this proceeding on remand.

Second, on January 20, 2004, PGW and CEPA filed a Joint Petition for Appeal from Action by Staff, or, in the alternative, a Petition for Interlocutory Review and Answer to Material Question at M-00021612 and P-00032061. The filing resulted

from the ALJ's approval of a proposed interim SCD program. The Petition filed on January 20, 2004, seeks to resolve an apparent conflict between the ALJ's Prehearing Order No. 2, which approved an interim SCD Program, and a Secretarial Letter issued January 7, 2004, which rejected PGW's proposed tariff filing implementing an interim SCD.

As we have stated in this Opinion and Order, the record developed on the SCD Program at this time does not permit a finding that the SCD Program is in the public interest. On that basis, we have concluded that the proposed SCD Program should be held in abeyance until the record is further developed. For the same reasons, there is no basis upon which we could conclude that an interim SCD Program is in the public interest at this time. Accordingly, the Petition filed on January 20, 2004, shall be denied.

Conclusion

We cannot lose sight of the reality that, under programs such as this, some customers are required to pay more so that others can pay less. The Settlement Petition focuses on the benefit of the program to those who would pay less. Development of a record on the issues listed above will allow the Commission to fully consider all of the impacts of this program; **THEREFORE,**

IT IS ORDERED:

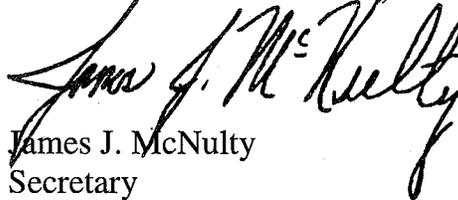
1. That the Stipulation and Settlement filed by the Philadelphia Gas Works on January 9, 2004, shall be held in abeyance pending the development of a record consistent with this Opinion and Order.

2. That this proceeding is remanded to the Office of Administrative Law Judge for further proceedings consistent with this Opinion and Order.

3. That the Joint Petition for Appeal from Action by Staff, or, in the alternative, a Petition for Interlocutory Review and Answer to Material Question filed by the Philadelphia Gas Works and the Consumers Education and Protective Association, *et al.*, at M-00021612 and P-00032061 on January 20, 2004, is denied.

4. That a copy of this Opinion and Order shall be served upon the Office of Trial Staff in addition to all Parties to the proceeding.

BY THE COMMISSION



James J. McNulty
Secretary

SEAL

ORDER ADOPTED: April 15, 2004

ORDER ENTERED: **MAY 18 2004**

PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17105-3265

PA PUC v. Philadelphia Gas Works
Petition for Rescission and Amendment
of PGW; Edward Morris v. PGW

PUBLIC MEETING April 15, 2004
APR-2004-ALJ-0338
DOCKET NOS. M-00021612
P-00322061; C-20030297

STATEMENT OF COMMISSIONER GLEN R. THOMAS

This matter involves a Petition for Rescission and Amendment of Philadelphia Gas Works (Petition). In the Petition, Philadelphia Gas Works (PGW) seeks approval of a means-tested senior citizens' discount (SCD), which would provide a 20% rate discount to PGW customers of age 65 and over whose household income is at or below the 250% federal poverty level. On October 9, 2003, the Commission entered an Order referring the Petition to the Office of Administrative Law Judge (ALJ) for an expedited hearing and preparation of a Recommended Decision.

On January 9, 2004, PGW filed a Stipulation and Settlement (Settlement) that would adopt the proposed means-tested SCD with minor modifications. On February 6, 2004, the presiding ALJ issued a Recommended Decision recommending that the Commission adopt the Settlement.

The Commission is remanding the SCD matter to the ALJ to establish a record on a list of specified issues. I respectfully disagree with this action.

In order for any settlement to be approved by the Commission, it must be deemed to be in the public interest. I believe there are more than enough facts before us today to make such a final determination. The Commission is legally positioned to conclude if the settlement is in the public interest and therefore should either reject or approve the settlement as it stands before the Commission without further delay. Considering that the SCD has remained an issue since the PGW Restructuring Proceeding approved by the Commission over one year ago, I believe this matter is more than ripe for a decision that would help provide an important degree of regulatory certainty for this utility.

4/15/04
April 15, 2004


GLEN R. THOMAS
COMMISSIONER