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January 29, 2010

Via Electronic Filing

James McNulty, Secretary
PA Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265

Re: Petition of Philadelphia Gas works for a Statement of Policy on the Application
of Philadelphia Gas works' Cash Flow Ratemaking Method
Docket No. P-2009-2136508

Dear Secretary McNulty:

On behalf of Philadelphia Gas Works enclosed please find its Comments with regard to the above-referenced matter along with the electronic filing confirmation. Copies have been served in accordance with the attached Certificate of Service.

Very truly yours,



Daniel Clearfield

DC/lww
Enclosure

cc: Cert. of Service w/enc.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of PGW's Comments upon the participants listed below in accordance with the requirements of § 1.54 (relating to service by a participant).

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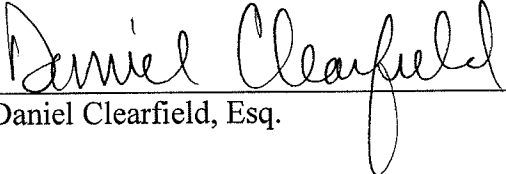
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Daniel Clearfield, Esq.

Dated: January 29, 2010

**BEFORE THE
PENNSYLVANIA UTILITY COMMISSION**

Petition of Philadelphia Gas Works for :
a Statement of Policy on the : Docket No. P-2009-2136508
Application of Philadelphia Gas Works' :
Cash Flow Ratemaking Method :

COMMENTS OF PHILADELPHIA GAS WORKS

I. INTRODUCTION

Philadelphia Gas Works (“PGW”) respectfully submits these Comments to the Pennsylvania Public Utility Commission (“PUC” or “Commission”) in response to the Order and Proposed Policy Statement entered on December 30, 2009 (“December Order”).

Preliminarily, it should be noted that PGW appreciates the PUC’s willingness to clarify the way in which it intends to henceforth apply PGW’s unique Cash Flow ratemaking methodology and appreciates as well this opportunity to present comments to the proposed Policy Statement, as modified by the PUC’s December Order. PGW is proposing several modifications to the draft Policy Statement attached to the December Order. PGW’s suggested changes are shown on Annex A to these Comments, which consists of a black-lined version of the proposed Policy Statement.

PGW’s comments may be briefly summarized as follows: First, with regard to the financial considerations referenced in the Policy Statement, PGW recommends that Item 4 (concerning expense comparisons with other utility enterprises) on the list of factors set forth in § 69.2703(a) be deleted and replaced with a different factor (adding back as a ratemaking consideration the financial performance necessary to permit PGW’s

continued access to the capital markets). Reference to PGW's need to access the capital markets was, apparently inadvertently deleted from PUC's draft of the Policy Statement. Since PGW is almost completely reliant on external financing to fund its capital program and its liquidity, the level of rates needs to permit PGW to access the capital markets in a timely manner is a crucially important measure of the adequacy of PGW's rates and should be explicitly referenced in the Policy Statement.

Second, PGW recommends that the "non-financial" considerations (Items 4, 6, 7, and 8) proposed to be added by the PUC, be removed from the list in § 69.2703(a). These non-financial considerations are not within the stated scope of the Policy Statement because they do not explain the "Cash Flow methodology" as it is applied to PGW under Section 2212(e) of the Public Utility Code and the PGW Management Agreement Ordinance. Additionally, PGW believes that the continued inclusion of these considerations could generate additional controversies in future rate proceedings, which could be mitigated (or avoided) if they were removed from the Policy Statement. PGW readily agrees that these factors are relevant to a determination of the Company's overall just and reasonable rate levels (within the bounds permitted by the Management Agreement). But a better approach, in PGW's view, is to add language making clear that Cash Flow Method interpretative policy statement is not intended to preclude the Commission from considering other legally relevant factors, such as adequacy of service or efficiency of management – i.e., the factors included in the draft by the PUC – in determining the overall just and reasonable rate levels for PGW (to the extent otherwise permitted by law).

Third, in an effort to reduce confusion over the application of the Policy Statement, PGW recommends that the Commission's Order adopting the Policy Statement clearly explain that: (a) the considerations listed in § 69.2703(a) do not constitute filing requirements for PGW; and (b) PGW is not required to affirmatively present evidence on the non-financial considerations added by the PUC in its pending general rate case at Docket No. R-2009-2139884 (although it will respond to contentions made by other parties, as appropriate).

Fourth, PGW recommends that the Commission acknowledge that the Policy Statement would continue to apply to successor municipal entities to a city natural gas operation, which may be formed by the City of Philadelphia ("City") under Section 2212(m) of the Act by adding a reference to such a successor municipal entity, in the background set forth in § 69.2702(a).

II. SPECIFIC COMMENTS BY PGW

A. Add Specific Reference to Access to Capital Markets

PGW recommends that the following additional financial consideration be included in the list of considerations set forth in § 69.2703(a).

A level of financial performance to permit access to the capital markets at the lowest reasonable costs to customers over time.

This consideration was listed in Section (b)(1) of PGW's originally proposed text for the Policy Statement. The December Order did not specifically mention that this consideration was being deleted,¹ and this consideration may have been inadvertently

¹ See December Order, at p. 14 (which discusses the comments and changes to the former Section (b)(1)).

omitted from the proposed Policy Statement attached to the December Order. In any event, PGW requests that this consideration be restored in the final Policy Statement.

PGW submits that this consideration is relevant and should be included explicitly in the Policy Statement. In the 2008 Extraordinary Rate Proceeding, the Commission recognized that maintaining PGW's access to external capital was of crucial importance.² The Commission granted that rate increase, in part, to provide financial support for available short-term borrowing capacity³ (e.g., the continued roll-over of PGW's commercial paper),⁴ and to try to assure that PGW would continue to be able to sell long term debt – crucial for it to continue to operate as a going concern.⁵ While PGW is moving to diminish its reliance on external funds, it still needs to rely on funding from the capital markets in order to fund virtually all of its capital program and most of its needed liquidity.⁶ Therefore, assuring continued access to the capital markets continues to be of crucial importance to PGW and its customers.

Simply put, examining the level of financial performance needed to permit PGW to access the capital markets at the lowest reasonable costs to customers over time is a

² *PUC v. PGW*, Docket No. R-2008-2073938, 2008 Pa. PUC LEXIS 32, at *45-*51 (Order entered December 19, 2008) (“2008 Extraordinary Rate Order”).

³ Short-term borrowing capacity together with free cash make up PGW's liquidity. See PGW's Petition for Policy Statement, at ¶ 24(g).

⁴ *2008 Extraordinary Rate Order*, 2008 Pa. PUC LEXIS 32, at *46 (“PGW shall therefore be granted a \$ 60 million rate increase, effective January 1, 2009, to cover the costs of conversion of the 2006 Bonds to fixed rate bonds, termination of an interest swap agreement associated with these bonds, financial support for the continued roll-over of PGW's commercial paper, and improvement in PGW's financial ratios in order to support an upgrade of its credit rating. This Commission must take affirmative and reasonable steps to ensure that adequate Rinds are available to PGW in case revenues fall as a result of declining economic conditions.”).

⁵ *Id.*

⁶ *2008 Extraordinary Rate Order*, 2008 Pa. PUC LEXIS 32, at *8-*9, *35-*52.

reasonable, and necessary, financial consideration under the Cash Flow methodology.⁷ Accordingly, PGW recommends that the financial consideration concerning access to capital markets be added back to the list of considerations set forth in § 69.2703(a).

B. Removal of Expense Comparisons

PGW recommends that Item 4 (concerning expense comparisons with other utilities) on list of factors set forth in § 69.2703(a) be deleted and replaced with the factor concerning access to the capital markets (discussed above). PGW recommends, instead of adding § 69.2703(a)(4), that the PUC indicate in its Order adopting the final Policy Statement that nothing in the Policy Statement is intended to limit the PUC from considering comparative expense data in determining the reasonableness of a particular expense or category of expense.

Item 4 on list of considerations set forth in § 69.2703(a) provides that the PUC may consider the “[level] of operating and other expenses [of PGW] in comparison to similarly situated utility enterprises.”⁸

Comparisons of expenses may be a part of any rate proceeding. However, most expense comparisons are rather simple and may, therefore, fail to reflect those special circumstances or economies which are unique to each individual utility enterprise. It should be remembered that there are any number of accounting differences and other factors which may cause the level of such expenses to vary among utilities.

In other words, even though expense comparisons can be part of the Commission’s considerations in a rate case, such comparisons, standing alone, do not

⁷ Specifically, this factor will impact the “reasonable” level of cash working capital and internally generated funds allowed by any rate award.

⁸ See December Order, at Annex A.

necessarily support a conclusion that PGW's expenses are reasonable or unreasonable. There is no axiom which states that comparable costs are reasonable or unreasonable by definition.⁹ In fact, the Pennsylvania Supreme Court has found that price comparisons also are largely meaningless when attempting to determine the reasonableness of costs.¹⁰ Singling out this consideration as a basis for determining a level of just and reasonable rates appears to be inconsistent with this case law.

PGW is also concerned that including consideration of cost comparisons (Item 4) within the Policy Statement criteria implies an unnecessary burden on PGW. It is well settled that PGW's expenses included in rates must be reasonable and prudently incurred as well as necessary to the rendition of utility service. But, Item 4 could be read by rate case participants as indicating that PGW must compare every one of its expenses to expenses of similarly situated utility enterprise. Such detailed expense data is not publicly or readily available from other similarly situated utility enterprises and is certainly not a process undertaken for investor owned utilities. Thus, it would be very difficult for PGW to make these comparisons.¹¹

⁹ See, e.g., *PUC v. Pennsylvania Power Company*, Docket No. R-850267, et al., 1987 Pa. PUC LEXIS 239, 85 P.U.R.4th 323 (Order entered July 16, 1987) (comparison of customer service expense costs with those incurred by other utilities, standing alone, does not necessarily support a conclusion that Penn Power's costs are unreasonable); *PUC v. Philadelphia Electric Co.*, 56 Pa. P.U.C. 82 (1982) (wherein the Commission found that a utility's plant construction costs cannot be considered reasonable merely because they are comparable to plant construction costs experienced by another utility). See also *Harmony Electric Company v. P.S.C.*, 99 Pa. Superior Ct. 71, 77-78 (1930) (comparison of rates is meaningless unless there is proof that the utilities are comparable).

¹⁰ *Berner v. PUC*, 382 Pa 622, 116 A2d 738 (1955) (comparisons presented by utility in the record did not justify the findings of the PUC).

¹¹ In contrast, financial results and actual performance of similarly situated utility enterprises are publically available and regularly utilized by all types of utilities in order to assess the reasonableness of various financial indicators. For example, debt-to-equity

Based on the foregoing, even though expense comparisons can be part of the Commission's considerations in a rate case, PGW recommends that Item 4 (concerning expense comparisons with other utilities) on list of factors set forth in § 69.2703(a) be deleted in its entirety from the Policy Statement. Instead, PGW recommends that the PUC indicate in its Order that nothing in the Policy Statement is intended to limit the PUC from considering comparative expense data in determining the reasonableness of a particular expense or category of expense.

C. Remove Explicit Enumeration of Non-Financial Considerations in Policy Statement

PGW recommends that the “non-financial” considerations (Items 6, 7, and 8,¹² and 4 – if not removed by the PUC for the reason stated above) listed in § 69.2703(a) should be removed as explicit “considerations” because they do not explain the “Cash Flow methodology” being applied to PGW under Section 2212(e) of the Act and the PGW Management Agreement Ordinance. Rather, as explained below, PGW recommends that these factors be referenced in a general statement in the Policy Statement if the PUC wishes to assure that the Policy Statement is not construed as barring their consideration in setting just and reasonable rates for PGW.

PGW readily agrees that, in determining just and reasonable rates for any jurisdictional utility the Commission is fully authorized to consider non-financial factors, such as the adequacy and reliability of the utility's service or the efficiency and

ratios of various enterprises are publically available. In fact, such information was filed by PGW in support of its pending rate case at Docket No. R-2009-2139884. See, R-2009-2139884, PGW St. 9 (testimony of Frank L. Hanley) and Exh. FLH-1, Schs. 1-6.

¹² These items read as follows: “(6) PGW's management quality, efficiency and effectiveness; (7) Service quality and reliability; and (8) Effect on universal service.” See December Order, at Annex A.

competence of the utility's management.¹³ Such factors also apply to PGW, although the Commission is constrained by the requirements of the Management Agreement, and the municipal nature of PGW's ownership (no shareholders).¹⁴ PGW's draft Policy Statement never intended to preclude the PUC's consideration of such factors. However, the purpose of the Policy Statement, as explained in the PUC's Order, is to provide a clear and uniform interpretation of the factors that will be considered in determining PGW's rates by applying the mandated "Cash Flow methodology" as it is applied to PGW under Section 2212(e) of the Act. As recognized by the Policy Statement, the Commission is obligated to use the Cash Flow methodology to determine PGW's rates.¹⁵ This methodology is established under Section 2212(e) of the Act and the PGW Management Agreement Ordinance.

In contrast, the non-financial considerations (Items 6, 7 and 8, and 4 - if not removed) do not relate to any aspect of the Cash Flow methodology. The Commission noted that these non-financial considerations were added to show a balance between

¹³ See, e.g., 66 Pa. C.S. § 523 (performance factor consideration); *Pennsylvania Industrial Energy Coalition v. PUC*, 653 A.2d 1336 (Pa. Cmwlth. 1995), affirmed, 670 A.2d 1152 (Pa. 1996) (incentives); *PUC v. Lemont Water Company*, Docket Nos. R-932673, et al., 1993 Pa. PUC LEXIS 197 (Recommended Decision, November 29, 1993), adopted, as modified by, 1994 Pa. PUC LEXIS 44 (Order entered February 3, 1994) (partial downward adjustment).

¹⁴ Some of PGW's revenue requirement items have minimum levels (such as the reasonableness of cash working capital or internally generated funds may have a range (or zone) of reasonableness. 66 Pa. C.S. § 2212(e) (relating to securities of city natural gas distribution operations). See, e.g., *U.S. Steel Corp. v. PUC*, 390 A.2d 865, 872 (Pa. Cmwlth. 1978) (PUC has a flexible limit of judgment in exercising its administrative discretion to approve a utility's rate structure and rate design); *The Peoples Natural Gas Co. v. PUC*, 409 A.2d 446, 458 (Pa. Cmwlth. 1979) (PUC may lawfully establish just and reasonable rates within a "range of reasonableness").

¹⁵ See Policy Statement (Proposed), § 69.2702(b).

consumer and utility interests.¹⁶ But, by apprising the reader of traditional ratemaking factors created by different statutory provisions, the Commission is departing from the stated intention of the Policy Statement. In other words, instead of explaining the “Cash Flow methodology” as applied to PGW, the Commission is explaining traditional ratemaking principles as applied to PGW. This is not necessary and could lead to misunderstandings and further confusion.

For example, it is not clear how these non-financial considerations (Items 4, 6, 7 and 8) relate to the factors directly relevant to determining rate levels needed to cover the various elements of the Cash Flow ratemaking method, such as reasonable levels of cash working capital or internally generated funds. Plainly, while the Commission may consider such factors while considering the range of reasonable rate levels that exceed the minimum levels required by the Management Agreement, the Commission must first determine the minimally required revenue requirement based on the financial factors proposed by PGW and adopted by the Commission. Then, if necessary, the Commission would consider non-financial considerations to determine if any adjustments (upward or downward) are proper and appropriate within the range of reasonableness.¹⁷ In making these adjustments, however, the Commission must remain mindful that the resulting rates

¹⁶ See December Order, pp. 14-15.

¹⁷ See, e.g., *Pennsylvania Public Utility Commission v. Pennsylvania Gas and Water Company*, Docket No. R-00922482, 1993 Pa. PUC LEXIS 115 (Order entered June 23, 1993) (wherein the Commission rejected in its entirety Pennsylvania Gas and Water Company's general rate increase request due to inadequate service pursuant to 66 Pa. C.S. § 526. However, the Commission gave the utility the alternative of filing tariffs or tariff supplements designed to produce an annual revenue increase of \$ 4,968,993 provided that the utility dedicated the entire annual revenue increase of \$ 4,968,993 to augment the improvements to its distribution system.); *PUC v. National Utilities, Inc.*, R-00953416, et al., 1996 Pa. PUC LEXIS 208 (Recommended Decision, November 18, 1996) *adopted as modified* by 1997 Pa. PUC LEXIS 100 (Order entered, January 16, 1997) (100% reduction); *Lemont Water Company*, *supra* (partial reduction).

cannot fall below the minimum requirements mandated by the Management Agreement, or be confiscatory.¹⁸ Thus, the adjustments for non-financial considerations should take place only after consideration of the financial considerations.

Moreover, the continued inclusion of the non-financial considerations (Items 4, 6, 7 and 8) may create more uncertainty for PGW. This would send the wrong message to the capital markets, which could perceive that these non-financial factors as new considerations which could affect PGW's future rate awards. While PGW has so far avoided fiscal catastrophe, several key financial projects are looming in the next 12 months. Any negative perceptions by the capital markets could have a significant effect on the outcome on PGW's efforts to complete these key financial projects.

Uncertainty concerning the non-financial considerations may also exist in rate proceedings. By listing some (but not all) of the potential non-financial considerations that may be considered by the Commission, one is left with the impression that the listed non-financial considerations (Items 4, 6, 7 and 8) will be given more weight by the Commission. One could even conclude that these non-financial considerations would eclipse the consideration of other non-financial factors.

As noted, these non-financial considerations (Items 4, 6, 7, and 8) may be a part of any rate proceeding, and do not need to be explained as part of the Cash Flow methodology. It is beyond cavil that every public utility has a statutory duty to provide

¹⁸ See, e.g., *Bluefield Water Works and Improvement Co. v. Public Service Commission of West Virginia (Bluefield)*, 262 U.S. 679, 690-93 (1923) (“Rate which are not sufficient to yield a reasonable return on the value of the property used at the time it is being used to render the service are unjust, unreasonable and confiscatory, and their enforcement deprives the public utility of its property in violation of the Fourteenth Amendment. ...”).

safe and adequate service.¹⁹ In fact, Section 526 of the Public Utility Code provides that the Commission may reject, in whole or in part, a rate increase request due to inadequate service.²⁰ It has been settled that such statutory standards and the related non-financial considerations apply, at least in the first instance, to PGW,²¹ and PGW is not aware of any continued debate as to their application to PGW. Thus, PGW submits that an explanation of certain non-financial considerations (Items 6, 7, and 8 and, if determined to be relevant, Item 4) is not necessary or appropriate for the Policy Statement.

¹⁹ 66 Pa. C.S. § 1501 (“Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all repairs, changes, alterations, substitutions, extensions, and improvements in or to such service as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public.”).

²⁰ 66 Pa. C.S. § 526(a). *See Pennsylvania Public Utility Commission v. Pennsylvania Gas and Water Company*, Docket No. R-00922482, 1993 Pa. PUC LEXIS 115 (Order entered June 23, 1993) (wherein the Commission rejected in its entirety Pennsylvania Gas and Water Company's general rate increase request due to inadequate service pursuant to 66 Pa. C.S. § 526. However, the Commission gave the utility the alternative of filing tariffs or tariff supplements designed to produce an annual revenue increase of \$4,968,993 provided that the utility dedicated the entire annual revenue increase of \$4,968,993 to augment the improvements to its distribution system.).

²¹ *PUC v. PGW*, Docket No. R-00061931, et al., 2007 Pa. PUC LEXIS 45 (Order entered September 28, 2007) (“2007 Base Rate Order”) (PUC considered, and rejected, challenge to PGW’s 2007 rate increase under 66 Pa. C.S. § 526); *PUC v. PGW*, Docket No. R-00005654, 2000 Pa. PUC LEXIS 65 (Order entered November 22, 2000) (The Courts and this Commission have long held that service is an essential consideration in determining just and reasonable rates.). As noted, however, because of PGW’s special ratemaking mandate in the Public Utility Code, the Commission’s discretion to adjust PGW’s rates would be limited to determining where PGW’s rates may be set, within a range of rate levels that exceeded the minimum levels needed to meet the Cash Flow-mandated rate levels. The Commission must also be mindful that PGW has no shareholders and pays no dividends so that there is limited discretion to adjust PGW’s rates so as to deny or limit shareholder as a penalty for inadequate return service.

In contrast, the financial considerations (Items 1, 2, 3, and 5²² and the consideration related to access to capital markets) do relate to unique aspects of ratemaking by PGW under Section 2212 of the Act and the PGW Management Agreement Ordinance. They are considerations that PGW can use to justify a request for rate relief. These financial considerations are factors on which PGW bears the burden of proof,²³ and evidence with respect to them may be presented in PGW's case-in-chief to justify a request for rate relief. These financial considerations can, of course, be challenged in whole or in part by others in the proceeding.

Based on the foregoing, PGW submits that the Policy Statement would be more useful and accurate, and less confusing, if the reference to the non-financial considerations (Items 6, 7 and 8, as well as 4 if the PUC does not delete it for the reasons stated in Section B, above) be removed in their entirety from § 69.2703(a) so that the final Policy Statement is limited to the unique aspects of the "Cash Flow methodology" as applied to PGW. This is not intended to preclude the Commission from considering other legally relevant factors in determining just and reasonable rate levels for PGW, such as the adequacy of service. And, PGW recommends that the order adopting the final Policy Statement so state. Moreover, if there any remaining concerns over the Commission's ability to consider non-financial factors, then PGW suggests that language

²² These factors read as follows: "(1) PGW's test year end and (as a check) projected future levels of non-borrowed yearend cash; (2) Available short term borrowing capacity and internal generation of funds to fund construction; (3) Debt to equity ratios and financial performance of similarly situated utility enterprises; ... (5) Level of financial performance needed to maintain or improve PGW's bond rating." *See* December Order, at Annex A.

²³ 66 Pa. C.S. § 315 (burden of proof).

to resolve this concern be added by a new subsection (d) under § 69.2703. This new subsection (d) could read as follows:

(d) To the extent otherwise permitted by law, nothing in this Policy Statement shall preclude the Commission from considering other legally relevant factors in determining the justness and reasonableness of rates, including, but not limited to the quality of service provided by PGW. *See, e.g.,* 66 Pa. C.S. § 526.

D. The Commission Should Clarify the Application of the Policy Statement

If the Commission continues to list the non-financial considerations (Items 4, 6, 7, and 8) as factors to be considered in § 69.2703(a), PGW urges that the Commission explain that: (a) the considerations listed in § 69.2703 (or the revision proposed above by PGW) do not constitute filing requirements for PGW; and (b) in any event, the PGW is not required to present affirmative evidence on these the non-financial considerations in its pending general rate case at Docket No. R-2009-2139884.

The PUC Should Clarify that Policy Statement Considerations Are Not Filing Requirements

PGW believes that it would be helpful if the Order adopting the Policy Statement would explain that the considerations listed in § 69.2703(a) do not constitute filing requirements for PGW. PGW is concerned that interested parties may view the considerations listed in § 69.2703(a) as filing requirements that must be established as a part of PGW's case-in-chief. Despite the text of § 69.2703(a), which states that the list of considerations is illustrative, and the notice in the December Order that the Commission "is not prepared to state that each of these factors is required,"²⁴ parties in PGW's base

²⁴ December Order, p. 15.

rate cases may treat the considerations are filing requirements and time and effort may be expended debating the PUC's intentions and desires.

The continued inclusion of the non-financial considerations (Items 4, 6, 7 and 8) could also lead to disagreements about whether PGW has met its *prima facie* case for a rate increase. While the burden of going forward may shift from PGW, the burden of establishing the justness and reasonableness of every component of a requested rate increase remains on PGW.²⁵ The continued inclusion of the non-financial factors (Items 4, 6, 7 and 8) might be interpreted as requiring that PGW must carry the burden of establishing the adequacy of all of these factors, such as adequacy of its service or the "efficiency of its management" as part of its case-in-chief and before any party raises service issues.

Based on the foregoing, an explanation by the Commission that the considerations listed in § 69.2703(a) do not constitute filing requirements for PGW (and do not need to be part of PGW's case in chief when seeking a rate change) should be included in the Order adopting the Policy Statement. This explanation should include an indication that PGW is not required to present evidence in its case-in-chief on the considerations listed in § 69.2703(a). PGW or other parties are free to raise such issues in the context of recommending just and reasonable rate levels for PGW and, in such an event, PGW and all parties will be given the opportunity to respond to any such contentions, consistent with the established procedural schedule and due process requirements.

²⁵ *Id.*; *Berner, supra.*

Pending Rate Case

Whether or not the Commission adopts PGW's suggestion about the nature of the non-financial considerations as a general matter, PGW request that the Commission make clear that any affirmative requirements created by the non-financial considerations (Items, 4, 6, 7 and 8), do not apply to PGW's pending general rate case at Docket No. R-2009-2139884.

In its pending rate case, PGW has presented evidence to address the financial factors it proposed be part of the Policy Statement. It has not presented evidence specifically addressing the non-financial factors that the PUC added in its December Order. Even if the Commission decides that PGW should present evidence on these factors in its rate proceedings, such a directive should apply to future cases. PGW doesn't believe that it will be able to do the studies or analysis needed to present any meaningful analyses in the time available in the pending case. A final decision on PGW's filing is required by September 13, 2010, to meet the requirements of Section 1308(d) of the Public Utility Code. It is probably well to recall that the PUC ordered PGW to file the pending case by the end of December 2009.²⁶ Presumably, the Commission was desirous of making a final decision on PGW's pending and requested rate levels as expeditiously as possible. Requiring additional evidence on the non-financial factors at this point in the proceeding can only serve to unnecessarily complicate the present proceeding and could prejudice the rights of other parties to respond to such evidence.

²⁶ *2008 Extraordinary Rate Order*, 2008 Pa. PUC LEXIS 32, at *74 (Ordering Paragraph 6(b)).

E. Acknowledgement Of Other Entities

Section 2212 of the Act²⁷ clearly applies to PGW. But, it should be remembered that PGW is an unincorporated group of assets owned by the City.²⁸ Under Section 2212(m) of the Act, the City “may form a nonprofit corporation or public corporation or municipality authority ... to own, manage, operate, lease or carry out natural gas supply and/or distribution services for, in place of or on behalf of the city natural gas distribution operation.”²⁹ This fact is also reflected in the definition of “city natural gas distribution operation” in the Public Utility Code.³⁰

To reflect these statutory provisions, PGW believes that it is appropriate to expand the background in § 69.2702(a) as follows.

(a) The Act brought city owned natural gas operations, including PGW and entities formed pursuant to Section 2212(m) of the Act, under the Commission’s jurisdiction. 66 Pa.C.S. § 2212(b) (relating to Commission jurisdiction).

This additional phrase should signal the Commission’s intention to apply the Policy Statement to any entities formed pursuant to Section 2212(m) of the Act, and could help resolve future confusion over the application of the Policy Statement to such entities.

²⁷ 66 Pa. C.S. § 2212 (city natural gas distribution operations).

²⁸ PGW’s Petition for Policy Statement, at ¶ 1. Philadelphia Facilities Management Corporation (“PFMC”) is the legal entity that manages these assets. In addition to PFMC and the PUC, the Philadelphia Gas Commission (“PGC”) and the City (*e.g.*, City Council, and the Mayor’s Office) have oversight of PGW.

²⁹ 66 Pa. C.S. § 2212(m) (corporate action).

³⁰ 66 Pa. C.S. § 102, which defines a “city natural gas distribution operation” as a “collection of real and personal assets used for distributing natural gas to retail gas customers owned by a city or a municipal authority, nonprofit corporation or public corporation formed pursuant to section 2212(m) (relating to city natural gas distribution operations.”

III. CONCLUSION

PGW appreciates the opportunity to present comments to the proposed Policy Statement from the December Order. PGW's comments have been provided with the objective of maintaining the purposes of enhanced and succinct guidance on the application of the Cash Flow methodology to PGW.

Respectfully submitted,



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PGW'S COMMENTS

APPLICATION OF PGW CASH FLOW RATEMAKING METHOD –
PROPOSED STATEMENT OF POLICY

§ 69.2701. Definitions. The following words and terms, when used in §§ 69.2701-69.2703, have the following meanings, unless the context clearly indicates otherwise:

Act – The Natural Gas Choice and Competition Act (66 Pa.C.S. §§ 2201-2212).

PGW – Philadelphia Gas Works.

§ 69.2702. Background and ratemaking elements.

(a) The Act brought city owned natural gas operations, including PGW and entities formed pursuant to Section 2212(m) of the Act, under the Commission's jurisdiction. 66 Pa.C.S. § 2212(b) (relating to Commission jurisdiction).

(b) The Commission is obligated under law to use the cash flow methodology to determine PGW's just and reasonable rates. Included in that requirement is the subsidiary obligation to provide revenue allowances from rates adequate to cover its reasonable and prudent operating expenses, depreciation allowances and debt service, as well as sufficient margins to meet bond coverage requirements and other internally generated funds over and above its bond coverage requirements, as the Commission deems appropriate and in the public interest for purposes such as capital improvements, retirement of debt and working capital.

§ 69.2703. Ratemaking procedures and considerations.

(a) In determining just and reasonable rate levels for PGW, the Commission will consider, among other relevant factors:

(1) PGW's test year end and (as a check) projected future levels of non-borrowed yearend cash;

(2) Available short term borrowing capacity and internal generation of funds to fund construction;

(3) Debt to equity ratios and financial performance of similarly situated utility enterprises;

(4) ~~Level of operating and other expenses in comparison to similarly situated utility enterprises~~ A level of financial performance to permit access to the capital markets at the lowest reasonable costs to customers over time; and

(5) Level of financial performance needed to maintain or improve PGW's bond rating;

~~(6) PGW's management quality, efficiency and effectiveness;~~

~~(7) Service quality and reliability; and~~

~~(8) Effect on universal service.~~

(b) The Commission is obligated to establish rate levels adequate to permit PGW to satisfy its bond ordinance covenants, consistent with the requirements of Section 2212(e) of the Act, 66 Pa.C.S. § 2212(e) (relating to securities of city natural gas distribution operations).

(c) These financial measures will be considered by the Commission in determining just and reasonable rates for PGW under the Public Utility Code and are consistent with the PGW Management Agreement Ordinance.

(d) To the extent otherwise permitted by law, nothing in this Policy Statement shall preclude the Commission from considering other legally relevant factors in determining the justness and reasonableness of rates for PGW, including, but not limited to the adequacy and quality of service provided by PGW. See, e.g., 66 Pa. C.S. § 526.