

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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February 24, 2010

James J. McNulty
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

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:

Enclosed for filing is the Answer of the Office of Consumer Advocate to the Motion of Philadelphia Gas Works for Leave to File Reply Comments, in the above-referenced proceeding.

Copies have been served as indicated on the enclosed Certificate of Service.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Darryl Lawrence".

Darryl Lawrence
Assistant Consumer Advocate
PA Attorney I.D. # 93682

Enclosures

cc: Stanley E. Brown, Law Bureau

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of Philadelphia Gas Works for a :
Statement of Policy on the Application of : Docket No. P-2009-2316508
Philadelphia Gas Works' Cash Flow :
Ratemaking Method :

ANSWER OF THE OFFICE OF CONSUMER ADVOCATE
IN OPPOSITION TO PHILADELPHIA GAS WORKS'
MOTION FOR LEAVE TO FILE REPLY COMMENTS

Pursuant to 52 Pa. Code Sections 5.61 and 5.103 of the regulations of the Pennsylvania Public Utility Commission (Commission), the Pennsylvania Office of Consumer Advocate (OCA) hereby files this Answer in opposition to the Motion of Philadelphia Gas Works (PGW or Company) for Leave to File Reply Comments (Motion) in the above-captioned matter. In support of its Answer, the OCA submits the following:

I. INTRODUCTION

On October 16, 2009, PGW filed a Petition requesting the Commission to issue a statement of policy as to the application of the Cash Flow Ratemaking Method. Along with its Petition, PGW provided a proposed policy statement for the Commission to adopt. On October 26, 2009, the Commission provided a Notice of Publication as to PGW's Petition, which provided for answers to be filed on or before November 10, 2009, and replies to be filed on or before November 17, 2009. On November 10, 2009, in accord with the published procedural schedule and the Commission's regulations, the OCA filed its Notice of Intervention, Public

Statement and Answer (OCA Answer). On November 17, 2009, as authorized by the published procedural schedule, PGW filed its Reply to Answers.

On December 17, 2009, the Commission issued a Proposed Policy Statement. In Re PGW Petition, Order and Proposed Policy Statement, Dock. No. P-2009-2136508 (entered December 30, 2009) (Order). The Proposed Policy Statement included revisions and additions to the policy statement that PGW had originally submitted. Accordingly, the Order provided that comments to the Proposed Policy Statement would be due within 30 days of entry of the Order. Importantly, the Order did not provide any schedule or opportunity for the submission of reply comments.

On January 29, 2010, in accord with the procedural schedule established in the Order, the OCA filed its Comments (OCA Comments). PGW also provided the Commission with its comments on the Proposed Policy Statement, to go along with PGW's original Petition and its Reply to Answers in this docket. On February 16, 2010, PGW filed a Motion for Leave to File Reply Comments (PGW Motion). In its Motion, PGW avers that it wishes to address the "substantive issues" that OCA and OTS "have raised for the first time." Motion at 1. For a number of reasons, the OCA submits that PGW's Motion must be denied.

PGW's Motion lacks any reasonable basis in procedure or fact. First, PGW's Motion is improper as the Commission has chosen not to provide the parties with an opportunity to file reply comments in this matter. As such, PGW's Motion should be denied and its attached Reply Comments should be disregarded. Second, PGW's Motion is incorrect as to "issues being raised for the first time" in the comment phase of this proceeding, and PGW's Reply Comments support this fact. The Comments of the OCA merely expanded on the same general issues previously raised in the OCA Answer.

Lastly, this is a matter of basic fairness to the OCA, OTS and the other parties. PGW has already had a full and fair opportunity to be heard on these issues. PGW's Motion should be denied, and its attached Reply Comments should in no way become a part of this record. Alternatively, should the Commission decide to create an opportunity for all parties to file reply comments, the OCA will then submit such full and complete reply comments at the appropriate time.

II. NO PROCEDURE OR FACTS EXIST TO SUPPORT PGW'S MOTION

A. Reply Comments Were Not Authorized In This Matter.

The Commission's Order did not provide for reply comments. Specifically, the Order provided:

That comments to the Proposed Policy Statement shall be filed within thirty (30) days of entry of this order.

Order at 16. No mention nor provisions were made in the Order for the submission of reply comments. As such, PGW's Motion is lacking any reasonable basis for consideration and should be summarily dismissed. PGW's reference to 52 Pa. Code Section 5.103 as a basis for filing its Motion is similarly unconvincing. PGW Motion at 1.

Section 5.103 provides, in relevant part:

(a) Scope and content. A request may be made by motion for relief desired, except as may be otherwise expressly provided in this chapter and Chapters 1 and 3 (relating to rules of administrative practice and procedure; and special provisions). A motion must set forth the ruling or relief sought, and state the grounds therefor and the *statutory or other authority* upon which it relies.

52 Pa. Code § 5.103(a), (emphasis added). PGW's Motion fails to provide any reference to the authority that it relies on to provide a reasonable basis for the Commission to accept the Company's unsolicited Reply Comments. PGW's only assertion to this end is that OCA and

OTS have “raised issues for the first time” during the comment phase of this proceeding. PGW Motion at 1. As the following section will explain, however, PGW’s assertions in this area are incorrect. The fact that OCA and other parties have chosen to provide the Commission with information on this issue in the form of comments, as the Commission instructed the parties to do, cannot form a basis for PGW to respond further. PGW’s Motion must be denied.

B. PGW’s Factual Support For Its Motion Lacks Merit.

PGW avers that the OCA and OTS have raised certain issues for the first time in its Comments, and thus PGW should have the right to file reply comments in order to address these substantive issues. PGW Motion at 1-2. As the following shows, however, the OCA Comments were completely consistent with the information that the OCA had already provided in its Answer. The OCA’s Comments discussed this information in relation to the Proposed Policy Statement, issued by the Commission after a review of the initial filings.

In its Motion, PGW alleges that the OCA raised the issue of “internally-generated funds” and “non-borrowed cash” for the first time in its Comments. The OCA raised these issues in its Answer by arguing that the elements of the Cash Flow Method are set out in the Management Agreement Ordinance (MAO) and have been interpreted by the Commission and the Courts of Pennsylvania on numerous occasions. OCA Answer at 2-6. The OCA Answer went on to provide that no further clarifications or additional statements were necessary in order to apply the Cash Flow Method to PGW. These arguments are completely consistent with the OCA’s Comments that argued against using new terminology, not found in the MAO, such as “internally-generated funds” and “non-borrowed cash” that are nothing more than an attempt by PGW to refashion the MAO. Contrary to PGW’s assertions, there are no “new” issues here.

PGW also alleges that the OCA's arguments against using "projections as a check" are a new substantive issue to which the Company must be allowed the opportunity to respond. PGW Motion at 1-2. As discussed above, the OCA's Answer directly addressed the issue of PGW attempting to seek clarification where none was required. OCA Answer at 2-6. As the OCA argued there:

Here, PGW is essentially asking the Commission to completely redraw the lines as to how the Cash Flow Method is applied to PGW, within the context of a petition proceeding.

OCA Answer at 8. PGW's proposal to add its future financial projections has been a continued argument of PGW through this proceeding and the OCA Comments pointed to the Commonwealth Court Order that had rejected this very argument. PGW's protestations of "new matter" being raised lack any merit. Moreover, PGW's Reply Comments admit this very fact, in relevant part, as follows:

These comments [by OTS and OCA] do not raise novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission.

PGW Reply Comments at 10. PGW essentially admits that its Motion lacks any reasonable basis, and thus the OCA submits that it should be denied.

III. CONCLUSION

WHEREFORE, for the reasons set forth above, the Office of Consumer Advocate respectfully submits that the Motion for Leave to File Reply Comments filed by the Philadelphia Gas Works should be denied. Alternatively, should the Commission decide to amend its Order and allow all parties the opportunity to submit reply comments, the OCA will submit reply comments at the appropriate time.

Respectfully Submitted,



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Dated: February 24, 2010

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CERTIFICATE OF SERVICE

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

I hereby certify that I have this day served a true copy of the foregoing document, the Answer of the Office of Consumer Advocate to the Motion of Philadelphia Gas Works for Leave to File Reply Comments, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 24th day of February 2010.

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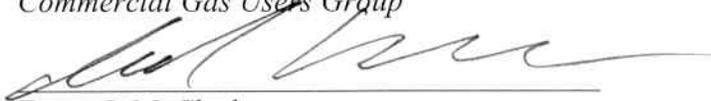
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