



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

IN REPLY PLEASE
REFER TO OUR FILE

February 19, 2010

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
P.O. 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:

Enclosed please find an original and three (3) copies of the Office of Trial Staff's
(OTS) **Objection to Philadelphia Gas Works' Motion for Leave to Submit Reply
Comments** in the above-captioned proceeding.

Copies are being served on all active parties of record.

Sincerely,

Adeolu Bakare
Prosecutor
Office of Trial Staff
PA Attorney I.D. #208541

Enclosure
AAB/edc
cc: Parties of record

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**BEFORE THE
PENNSYLVANIA PUBLIC 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 :

**OFFICE OF TRIAL STAFF
OBJECTION TO PHILADELPHIA GAS WORKS'
MOTION FOR LEAVE
TO SUBMIT REPLY COMMENTS**

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I. Introduction

The Office of Trial Staff (“OTS”) of the Pennsylvania Public Utility Commission (“Commission”), by and through its Prosecutor Adeolu A. Bakare and Senior Prosecutor Richard A. Kanaskie, and pursuant to at 52 Pa. Code §§ 5.103(c), 5.61(a)(1), hereby submits the following Objection to Philadelphia Gas Works’ (“PGW”) Motion for Leave to Submit Reply Comments (“Motion”) filed with the Commission Secretary by PGW on February 16, 2010 at the above captioned docket.

On October 16, 2009, PGW filed the *Petition of Philadelphia Gas Works for a Statement of Policy on the Application of Philadelphia Gas Works’ Cash Flow Ratemaking Method* (“Petition”) with the Commission. Subsequently, Answers to the Petition were filed by various parties including OTS. As authorized by the Commission,

PGW filed a Reply to the parties' Answers. On December 30, 2009, the Commission entered an Order granting the Petition in part and denying it in part. The Commission's Order ultimately adopted a Proposed Policy Statement. Because the Commission's Proposed Policy Statement included revisions from PGW's filed proposal, the Order provided a 30 day period for parties to file Comments to the Proposed Policy Statement. Parties including OTS and PGW, filed timely Comments on January 29, 2010 in compliance with the Commission's December 30, 2009 Order. Through the instant Motion, PGW now seeks to provide further comments not provided for in said Order.

OTS contends that the submitted motion must be denied as it lacks the necessary procedural authority under the Commission's Order. In addition, the Motion must be denied as lacking in substantive merit. As a result, the Reply Comments attached to the Motion must be rejected. In the event the Commission determines that the Motion can be reviewed, OTS will submit its Reply Comments in a timely manner.

II. PGW's Motion Lacks Procedural Authority

The Commission's Order did not provide for Reply Comments and therefore PGW's Motion should be summarily rejected. In the December 30, 2009 Order, the Commission provided a clear directive regarding the allowable procedures for input from parties, stating only that "comments to the Proposed Policy Statement shall be filed within thirty (30) days of entry of this order." December Order, p. 16. The Commission's Order solicited Comments and made no provision for Reply Comments. PGW's Motion is a

deliberate attempt to circumvent the directives in the December 30, 2009 Order. Even assuming, as PGW alleges, that OTS raised substantive new issues, such issues are appropriate for review as all parties were given the opportunity to file Comments on the Proposed Policy Statement. Commission Regulations permit Replies to *Answers* seeking affirmative relief or new matter, but this regulation is inapplicable as an authority for filing Reply Comments. 52 Pa. Code § 5.63. Regardless of any new matter raised, no party, including PGW, is entitled to file Reply Comments under the provisions of the December Order.

The egregiousness of PGW's filing is further exacerbated by the attachment of the Reply Comments to the Motion itself. Such action clearly shows that PGW had no intention of providing the Commission with as much as a bonafide Motion. Rather, the Company seeks to affirmatively force Reply Comments upon the Commission and the other parties. The Commission should not permit or encourage such overt disregard for the proper administrative procedures. Accordingly, OTS strongly recommends that the Commission reject PGW's Motion and disregard the attached Comments.

III. PGW's Motion Lacks Substantive Authority

PGW's Motion must also fail on the merits as the OTS Comments filed in this proceeding raised no new substantive issues. In the Motion, PGW claims that "Comments filed by OTS and OCA have raised for the first time substantive issues with the application of the Cash Flow Methodology to PGW. For example, (1) both OTS and

OCA challenge the use of projections as a check... .” PGW Motion, p. 1-2. OTS certainly challenged the use of projections as a check but this issue was not raised for the first time in its Comments. To the contrary, the issue was initially raised by PGW, then responded to by OTS and again addressed by PGW.

The issue of using projections as a check was initially raised by PGW itself and has been contested by OTS throughout this proceeding. PGW claims that OTS raised the issue of using projections as check for the first time in the OTS Comments on the Proposed Policy Statement filed on January 29, 2010. In truth, the issue was raised as early as October 16, 2009, when PGW filed the Petition commencing this proceeding. Paragraph 24(f) of the Petition introduced PGW’s proposal to use a five-year planning period for future budgets, thereby marking the *first time* a party raised the issue of use of projections as a check. PGW Petition, p. 18-19. OTS filed its Answer on November 10, 2009 in which we specifically denied the averments of Paragraph 24(f) and noted that “there is no statutory support for consideration of PGW’s five-year planning horizon.” OTS Answer, pp.12, 14 n.31. This marks the *second time* a party raised the subject issue.

PGW then filed its Reply to Answers on November 17, 2009 in which it noted that “OTS and TURN, *et al.* deny that post-test year budget information can provide a good check on test year normality. PGW Reply to Answers, p. 9. PGW proceeded to argue the issue, claiming that “it is reasonable to examine forecasted financial results *as a check* on test year results.” PGW Reply to Answers, p. 9. This marks the *third time* a party raised

the subject issue. The record evidence establishes the discussion on using projections as a check in the OTS Comments as the *fourth time* a party raised the issue. At the time PGW filed its Comments, it had full notice and knowledge of the contention surrounding this issue. The assertion that OTS raised the issue for the first time in its January 29, 2009 Comments is clearly unfounded. Therefore, OTS recommends that the Commission reject the Motion in its entirety.

IV. Conclusion

For the foregoing reasons, the Office of Trial Staff respectfully requests that the Commission reject the Philadelphia Gas Works' Motion for Leave to File Reply Comments.

Respectfully submitted,



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PA Attorney ID # 208541

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Senior Prosecutor
PA Attorney ID # 80409

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Dated: February 19, 2010

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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 :

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Objection** dated February 19, 2010, either personally, by first class mail, electronic mail, express mail and/or by fax upon the persons listed below, in accordance with the requirements of § 1.54 (relating to service by a party):

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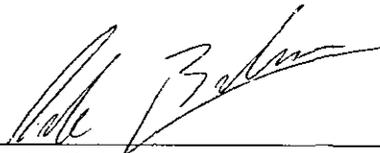
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