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James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
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:

On behalf of Tenant Union Representative Network (TURN) and Action Alliance of Senior Citizens of Greater Philadelphia (collectively "TURN et al."), enclosed please find for filing the original and three (3) copies of the Reply Comments of TURN et al. to the Proposed Policy Statement in the above-captioned matter.

Copies of these documents are being served on the parties as indicated on the Certificate of Service attached to the filing.

Very truly yours,

Philip A. Bertocci, Esquire
Thu B. Tran, Esquire

Attorneys for TURN et al.

Enclosures

cc: Certificate of Service

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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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 :

REPLY COMMENTS OF TURN et al. TO PROPOSED POLICY STATEMENT

I. Introduction.

The Tenant Union Representative Network (TURN) and Action Alliance of Senior Citizens of Greater Philadelphia (collectively "TURN et al.") are two Philadelphia based membership and advocacy organizations who work to defend and advance the interests of low and lower income persons in consumer matters, including issues concerning access to reliable, efficient and affordable utility service. Through their attorneys, Community Legal Services, Inc., TURN et al. submit the following Reply Comments in response to the March 9, 2010 Reply Comments of Philadelphia Gas Works in the above-captioned matter.

On October 16, 2009, PGW filed a Petition for a Statement of Policy on the Application of PGW's Cash Flow Ratemaking Method. PGW's initial proposed Policy Statement represented the most recent of a succession of PGW efforts over a ten year period to persuade the PUC that its historical ratemaking method, which the Gas Choice and Competition Act required the PUC to adopt, mandated the utilization of a set financial formula which, if followed, produced rates which were presumptively "just and reasonable." On December 30, 2009, after

receiving answers in opposition and objections to PGW's Petition, the Commission issued its own Proposed Statement of Policy. This Policy Statement implicitly recognized the self-serving and one-sided character of PGW's Policy Statement and, in contrast, added "consideration factors" that would require evidence concerning whether, in the broadest terms, PGW is providing "adequate, efficient, safe, and reasonable service and facilities" including the fulfillment of its universal service obligation to assist all consumers to obtain and maintain access to its natural gas services. The Commission accordingly added Sections 69.2703(a)(4) concerning the reasonableness of "operating and other expenses," 69.2703(a)(6) concerning "management quality, efficiency and effectiveness," 69.2703(a)(7) concerning "service quality and reliability," and 69.2703(a) (8) concerning the effect of the proposed rates on "universal service."

TURN et al. supported these amendments which go in the direction of providing more specific guidance on considerations which are necessary in order to implement the Cash Flow Method. However, in their January 28, 2010 Comments on the Commission's Proposed Policy Statement, TURN et al. submitted that for the Commission's Policy Statement to be more than a partial statement of PGW's ratemaking method, it should also incorporate specific acknowledgment that at its foundation, any rate determined for PGW must satisfy the constitutionally based "just and reasonable" standard requiring a balancing of the interests of customers and of the utility. TURN et al. accordingly proposed that the Commission add the following Subsection (c) to Section 69.2702 of the Proposed Policy Statement:

In determining PGW's "just and reasonable" rates, the Commission will apply the paramount federal standard arising from the 5th and 14th amendments to the U.S.

Constitution mandating the balancing of consumer and utility interests.¹

In these Reply Comments, this proposed amendment shall be referred to as the TURN Amendment.

II. In Light of the Comments of All Parties Except PGW, the Commission Should Withdraw Its Proposed Policy Statement and Deny PGW's Petition for a Statement of Policy on the Application of Philadelphia Gas Works' Cash Flow Ratemaking Method.

In the Answer of TURN et al. to Philadelphia Gas Works' Petition for a Statement of Policy, filed on November 10, 2009, TURN et al. requested that the Commission deny the Petition, stating that PGW's Petition was aimed at obtaining "Commission authorization to reduce application of the constitutionally mandated 'just and reasonable' ratemaking standard, in which customer interests must be balanced against the interest of the utility, to an arithmetic financial formula, in which virtually no account may be taken of less quantifiable interests of customers in affordable rates and reasonable and efficient service."²

When the Commission granted PGW's Motion in part (and issued the Commission's own Proposed Statement of Policy), indicating that PGW and other parties to the Company's rate cases could benefit from some "guidance," TURN et al. felt obliged to shift emphasis to identify an area where it submits, PGW is particularly in need of such guidance. TURN et al. accordingly recommended that the Commission incorporate the TURN Amendment in the Statement of Policy expressly recognizing that the ratemaking methodology applicable to PGW, even with its

¹ Comments of TURN et al. to Proposed Policy Statement (filed January 28, 2010), at 2.

² Answer of TURN et al. to Philadelphia Gas Works' Petition for a Statement of Policy (filed November 9, 2009), at 7.

Management Agreement Ordinance, has the same federal constitutional dimension as ratemaking for investor owned utilities.

However, TURN's first preference is, and has always been, that the Commission deny PGW's Petition. If the issue concerning whether there should be any Statement of Policy at all is still before the Commission, TURN et al. desire to go on record here as opposing the issuance of a Statement of Policy. For these reasons, TURN et al. incorporate by reference as if set forth herein in full the Comments contained in Section II of the Comments of the Office of Consumer Advocate (filed January 29, 2010) in this matter.

III. If the Commission Determines a Statement of Policy to Be Necessary, It Should Include the TURN Amendment in the Final Statement of Policy.

PGW opposes the TURN Amendment, on the grounds that it is not "necessary." PGW further submits that the Policy Statement has numerous references to the "just and reasonable" standard and that the Commission has previously determined that the state statutory "just and reasonable" standard in Section 1301 of the Public Utility Code is "coextensive" with the federal constitutional standard for determining utility rates." PGW also asserts that the Commission strives to decide rate cases based on the statutory Public Utility Code Section 1301 "just and reasonable" standard. PGW Reply Comments, at 9.

These arguments are without merit because they are all quite beside the point. The issue is not whether the "just and reasonable" standard is mentioned in the Proposed Policy Statement, or whether the PUC has held that the state "just and reasonable" standard is "co-extensive" with the federal constitutional standard, or whether specifically constitutional precedent is

determinative in all rate cases. Rather, TURN et al. submit that PGW and other parties require guidance on the jurisprudence surrounding that “just and reasonable” standard, which applies at the federal and state level – specifically, that the standard is a test, based on basic property protections contained in the Bill of Rights of the U.S. Constitution, which focuses on whether the impact of rates to be established, *as a whole*, appropriately balances the interests of customers in reasonable, affordable and efficient service against the clearly substantiated financial requirements of the utility.

Thus, in Public Advocate, a case involving PGW; the Pennsylvania Supreme Court rejected a challenge to PGW rates based on a claim that one element, the \$18 million City payment (included in the Management Agreement Ordinance to be covered by rates) was itself unconstitutional. In reaching this conclusion, the Supreme Court held that to determine whether a rate is “just and reasonable,” the Court must focus on “the overall impact of the ... rate order,” not on “one element of the ratemaking formula.” Public Advocate v. Philadelphia Gas Commission, 544 Pa. 129,141 674 A.2d 1056,1062 (1996).

TURN et al. submit that there when guidance is being provided, there is a particular need for Commission guidance on this point, particularly where PGW is concerned, because PGW has over the years repeatedly asserted that the test is applied in a supposed balancing to be applied to *each* of the particular rate components of the Cash Flow Method. The Commission has never upheld this manner of interpreting the “just and reasonable” standard. However, in this proceeding, we find once again PGW claiming that the “just and reasonable” standard is applicable only to *each* of the Cash Flow Ratemaking requirements individually, and is not a

balancing standard applicable to the overall, total impact of the resulting rates.³

In sum, if the purpose of the Commission's Statement of Policy is to provide guidance to parties who might benefit from such guidance, focusing their attention more precisely on truly relevant issues, the Commission should include the TURN Amendment in its final Statement of Policy.

IV. Conclusion.

For all the foregoing reasons, the Commission should withdraw its Proposed Statement of Policy, or in the alternative, accept the TURN Amendment as part of any final Statement of Policy that might be issued.

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Date: March 12, 2010

Respectfully submitted,

Philip A. Bertocci

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³ In its Petition, PGW erroneously claims: "... the PUC has discretion to determine a 'just and reasonable' level of each of the ratemaking requirements set forth in the Management Agreement, including the key financial items listed above, based on record evidence. This application of the 'just and reasonable' requirement is consistent with the Management Agreement." PGW Petition, at 17-18 (emphasis added).

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of TURN et al.'s Reply Comments (P-2009-2136508) upon the participants listed below in accordance with the requirements of 52 Pa.Code § 1.54 (relating to service by a participant).

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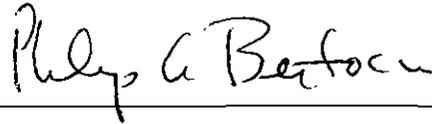
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