



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

IN REPLY PLEASE
REFER TO OUR FILE

March 15, 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 ten (10) copies of the Office of Trial Staff's
(OTS) **Reply Comments** in the above-captioned proceeding.

Copies are being served on all active parties of record.

Sincerely,

Adeolu A. 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-2009-2136598
Application of Philadelphia Gas Works' :
Cash Flow Ratemaking Method :

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**REPLY COMMENTS OF THE
OFFICE OF TRIAL STAFF**

I. PROCEDURAL HISTORY

On October 16, 2009, Philadelphia Gas Works (“PGW” or “Company”) filed a petition with the Pennsylvania Public Utility Commission (“Commission”) requesting the issuance of a Policy Statement identifying the intended application of the Company’s Cash Flow Ratemaking Method for future filings. On October 21, 2009, a Secretarial Letter was issued giving notice of the *Petition of Philadelphia Gas Works for a Statement of Policy on the Application of Philadelphia Gas Works’ Cash Flow Ratemaking Method*. The Secretarial Letter allowed interested parties the opportunity to submit Answers and Replies following publication in the *Pennsylvania Bulletin*. Notice of the Company’s petition was published in the *Pennsylvania Bulletin* on October 31, 2009. Timely Answers in opposition to the petition were filed by the Office of Trial Staff (“OTS”), the

Office of Consumer Advocate (“OCA”), the Office of Small Business Advocate (“OSBA”), the Philadelphia Industrial and Commercial Gas Users Group (“PICGUG”), the Tenant Union Representative Network (“TURN”) and the Action Alliance of Senior Citizens of Greater Philadelphia (“Action Alliance”) (collectively referred to as “TURN et al.”).

On December 17, 2009, the Commission issued an Order and Proposed Policy Statement at Docket Number P-2009-2136508. As the Commission’s Statement of Policy contained revisions to the original petition, an allowance for Comments from interested parties within thirty (30) days of the Entry of the Order was allowed. The Commission’s Order did not contemplate further filings. On January 29, 2009, OTS, OCA, TURN et al. and PGW submitted Comments to the proposed Policy Statement.

On February 16, 2010, PGW filed a Motion for Leave to file Reply Comments citing its wish to address substantive issues it claims were raised by both OTS and OCA for the first time in their respective Comments. As noted above, the Commission’s Order did not contemplate the submission of additional comments. Notwithstanding the fact that there was no allowance for additional comments pending review of its Motion, PGW attached Reply Comments to its submission and provided them to the Commission. OTS submitted its Objection to PGW’s Motion for Leave to file Reply Comments on February 19, 2010 urging the Commission to deny the Motion as lacking procedural authority. Furthermore, OTS noted that the basis for the Motion was without merit as the issues allegedly raised for the first time had indeed been presented in earlier OTS documents. These arguments were echoed by OCA in its Answer filed on February 24, 2010.

The Commission issued a Secretarial Letter on March 5, 2010 rejecting the argument that OTS and OCA raised issues for the first time in their respective Comments and allowed ten (10) days for interested parties to file Reply Comments. In accordance with that determination, OTS affirms its Comments and submits these timely Reply Comments addressing the issues raised by PGW in its Comments.

II. REPLY COMMENTS

As presented in its Comments, OTS continues its position that the Commission and Commonwealth Court have provided clear and consistent guidance as to the ratemaking methodology to be applied to PGW through the Orders and Opinions issued in base rate cases while under Commission jurisdiction. Furthermore, a Policy Statement will not override the Commonwealth Court's affirmation of the Commission's application of the Cash Flow method in evaluating PGW's regulatory needs.

A. Add Specific Reference to Access to Capital Markets

The Commission was correct in not including the provision requiring “[a] level of financial performance to permit access to the capital markets at the lowest reasonable costs to customers over time.” PGW's asserts that this provision was inadvertently omitted and argues for its inclusion. The proposed statement should not be included as it is not instructive and will create additional burdens in the review of subsequent PGW filings. The proposed statement is vague and offers little information that would be of any probative value. The Company has not suggested what level of financial performance is necessary nor has it attempted to quantify what the lowest reasonable costs would entail. The suggested language would create more problems than it solves

and must be rejected. Interestingly, a review of recent rate related proceedings will show that PGW continues to have adequate access to the capital markets, even through the market downturn.

The proposed language has no support in any regulatory provisions and was properly rejected by the Commission. In the event the Commission determines that a Policy Statement is appropriate, the addition of this language is not warranted. In the alternative, the proposed language only makes sense if it is included as the resulting clause in Section 69.2703(a)(5) wherein the section would read “(5) *Level of financial performance needed to maintain or improve PGW’s bond rating thereby permitting PGW to access the capital markets at the lowest reasonable cost to customers.*” This structure matches the language from PGW’s filed Petition which references the Company’s access to financial markets as a consequence of the more targeted objective of improving PGW’s bond rating. To the extent the proposed terminology is necessary, it should merely explain the consequences of the bond rating language that is already appropriately included. Otherwise, the proposed language may foster confusion and unnecessary litigation.

B. Removal of Expense Comparisons

The Company’s request to remove the language allowing the Commission to consider the “[l]evel of operating and other expenses in comparison to similarly situated utility enterprises” is inappropriate and should not be considered. Furthermore, the request to replace this language with the offered “financial performance” clause is improper. Just and reasonable rates cannot rely solely on the financial factors that PGW

suggests. The proper regulatory review of PGW's rates requires a thorough examination of the Company's expenses and it is perfectly acceptable to evaluate its claimed expenses in relation to similarly situated enterprises. Deletion of this clause and replacement with a financial performance clause appears to be PGW's attempt to deflect attention away from its internal operations and focus only on its constant external requests for additional funds from its ratepayers. There is no sound regulatory basis for the removal of this clause. As such, the Company's recommendation to remove and replace this provision must be ignored.

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

The inclusion of subsections (6), (7) and (8) to 69.2702 is appropriate and those subsections must not be removed and/or replaced by any other provisions. The Company's request to remove this clause and replace it with the above discussed financial performance language is without merit and should be ignored. Furthermore, PGW's proposals appear to be inconsistent. On the one hand, PGW opines that "non-financial consideration" language should be removed, but, conversely the Company would add language allowing the Commission to consider "other legally relevant factors in determining the justness and reasonableness of rates." Notwithstanding the Company again overstating the importance of a Policy Statement in their Comments, the inclusion of the provisions allows for the proper review of all relevant factors in the regulatory review of any rate related filing. The issues represented by these provisions are at issue in every PGW rate related proceedings and are necessary and proper in every regulatory

review. The rejection of these provisions is yet another attempt by PGW to strip the Commission of every opportunity to evaluate all activities of the Company.

If the Commission were to determine that a Policy Statement is necessary to guide the review of PGW filings, OTS maintains that the proper regulatory review includes all factors that impact the provision of service to the Company's customers. Mandated by Commission Order to represent the public interest, OTS opines that the review of this very type of information is necessary to discharge that duty. Proper ratemaking includes recognition of these factors so their inclusion in a Policy Statement is appropriate.

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

This clarification requested by PGW is unnecessary and should be ignored. The legal impact of a Policy Statement was discussed in the Commission's Order and PGW's request is simply a means of trying to raise the level of the provision far beyond its legal importance. Clearly, a Policy Statement does not result in requirements that lead to the creation of a filing requirement; therefore, no explanation is necessary. PGW's lengthy discussion expressing concern that a Policy Statement will create new filing requirements that should not apply to the review of its current base rates as well as its requested increase in the proceeding currently assigned to the Office of Administrative Law Judge is without merit and must be dismissed.

E. Acknowledgement of Other Entities

There is no basis for PGW's request to include this expansive provision in the Policy Statement set forth by the Commission. The governing statute speaks for itself

and the Company's suggestion to use a Policy Statement to interpret or expand a statute is without merit and must be rejected. As the stated purpose of the Policy Statement is to remove confusion claimed to be evident from prior applications of the Cash Flow Ratemaking Method, it is entirely inappropriate to address matters that have not been previously litigated. Furthermore, this language was not included in PGW's original proposal and the request to acknowledge entities that don't yet exist is clearly premature. To the extent a Policy Statement is warranted, the determination made by the Commission correctly identifies the parameters for this clause.

III. CONCLUSION

WHEREFORE, for the reasons set forth above, OTS maintains its position that the issuance of a Policy Statement is not necessary and will only serve to complicate litigation. Clear guidance on the application of the Cash Flow Ratemaking Method has been given in prior proceedings. In the event the Commission determines that a Policy Statement has merit and will effectuate its claimed purpose, OTS recommends the modifications suggested in its Comments and Reply Comments.

Respectfully submitted,



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Dated: March 15, 2010

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of Philadelphia Gas Works for a :
Statement of Policy on the Application of : Docket No. P-2009-213658
Philadelphia Gas Works Cash Flow :
Ratemaking Method :

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CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Reply Comments** dated March 15, 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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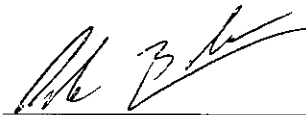
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Dated: March 15, 2010
Docket No. P-2009-2136508