



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

IN REPLY PLEASE
REFER TO OUR FILE

December 13, 2011

Secretary Rosemary Chiavetta
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Pennsylvania Public Utility Commission v. Philadelphia Gas Works

Docket Nos. R-2008-2073938
P-2009-2097639

Dear Secretary Chiavetta:

Enclosed please find an original copy of the Bureau of Investigation and Enforcement's (I&E) **Answer to Petition for Settlement** in the above-captioned proceeding.

Copies are being served on all active parties of record. If you have any questions, please contact me at (717) 783-6184.

Sincerely,

Richard A. Kanaskie
Deputy Chief Prosecutor
Bureau of Investigation and Enforcement
PA Attorney ID #80409

Enclosure
RAK/edc

cc: Parties of Record

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
	:	
	:	Docket No. R-2008-2073938
v.	:	
	:	
Philadelphia Gas Works	:	

**THE BUREAU OF INVESTIGATION AND ENFORCEMENT’S
ANSWER TO JOINT PETITION FOR SETTLEMENT
COLLABORATIVE PROCESS RE: ALTERNATIVE
DEFAULT SERVICE SUPPLY**

On November 23, 2011, Philadelphia Gas Works (“PGW” or the “Company”), Interstate Gas Supply, Inc. (“IGS”), Dominion Retail (“Dominion”), Hess Corporation (“Hess”) and Direct Energy Services, LLC (“Direct”) (collectively, “Joint Petitioners”) filed a document entitled *Joint Petition For Settlement, Collaborative Process Re: Alternative Default Service Supply* (“Joint Petition”). This document was submitted to the Pennsylvania Public Utility Commission (“Commission”) purportedly as a settlement of some of the issues presented in the Secretarial Letter dated April 13, 2011.

Pursuant to 52 Pa. Code Section 5.61, the Bureau of Investigation and Enforcement (“I&E”) files this Answer requesting the Pennsylvania Public Utility Commission deny this Joint Petition. I&E maintains that the submitted document represents nothing more than a stipulation among the signatories and must not be construed as a settlement of the issues presented in the April 13, 2011 Secretarial Letter. The Secretarial Letter cited by the Joint Petitioners referred “the Supplier Proposal to the

Office of Administrative Law Judge (“OALJ”) for an on the record proceeding in which the suppliers will bear the burden of proof.”¹ Furthermore, the Secretarial Letter indicated that:

“[i]f the suppliers wish to pursue the matter before the OALJ, the suppliers should be prepared to supplement their proposal and provide evidence to support the following concerns and policy preferences of the Commission. Specifically, the Supplier Proposal should:

- Satisfy the least cost procurement requirements of the Public Utility Code;
- Use a balanced supply portfolio that uses existing storage assets to level purchases and reduce seasonal volatility;
- Use a customer assignment process that results in a single Clearing price paid by all members of the same customer class (e.g., such as a declining block auction used in default service Electric procurements);
- Include a detailed implementation plan for review by all parties;
- Include contingency plans for what happens to affected customers if an alternative supplier defaults on its obligation. For example, The affected customers could be reassigned to the remaining suppliers.²

I&E maintains that the submitted Joint Petition does not satisfy the standards set forth in the Secretarial Letter and, therefore, should be denied. The offered stipulation lacks the necessary evidence to support its review. The court in *Burleson* opined that:

...the elements of that cause of action are proven with substantial evidence that enables the party asserting the cause of action to prevail, precluding all reasonable inferences to the contrary.³

1 Secretarial Letter issued April 13, 2011, p. 2.

2 Id.

3 *Burleson v. Pennsylvania Public Utility Commission*, 501 Pa. 437, 461 A.2d 1234 (1983).

Furthermore, substantial evidence has been defined as "... that quantum of evidence which a reasonable mind might accept as adequate to support a conclusion."⁴

I&E is of the opinion that the Joint Petitioners have not presented sufficient evidence to satisfy its burden of proof. This failure to provide relevant evidence in support of the joint stipulation renders that submitted document insufficient to satisfy all applicable legal standards.

In support of this Answer recommending that the Joint Petition be denied, I&E offers the following enumerated responses:

1. Admitted. It is admitted that PGW filed a petition seeking emergency rate relief on November 14, 2008.
2. Admitted. The Prehearing Order speaks for itself and any offered interpretation is denied.
3. Admitted.
4. Admitted.
5. Admitted.
6. Admitted.
7. Admitted.
8. Admitted. The Order speaks for itself and any offered interpretation is denied.

⁴ *Dutchland Tours, Inc. v. Pennsylvania Public Utility Commission*, 19 Pa. Cmwlth. 1, 337 A.2d 922 (1975), as quoted in *Norfolk & Western Railway Co. v. Pennsylvania Public Utility Commission*, 489 Pa. 109, 128 (1980).

9. Admitted. The quoted section is an excerpt of the Commission's Order. The Order speaks for itself and any offered interpretation is denied.
10. Admitted.
11. Admitted. It is admitted that IGS, Dominion, Hess and Direct presented a proposal approximately two and one-half years ago. The joint proposal represents the limited position of the submitting parties and is not dispositive of any issue in this proceeding.
12. Admitted in part. It is admitted that the Collaborative participants met on September 23, 2009. It is further admitted that comments at this meeting included concerns with adherence to the Public Utility Code.
13. Admitted. The referenced Secretarial Letter speaks for itself and any offered interpretation is denied.
14. I&E is without sufficient knowledge or information to form a belief as to the accuracy of the averments contained in this paragraph. Further evaluation is necessary to determine the validity of the claims presented in this averment. As indicated, I&E was not a participant in these discussions. The representation that the submitted document is a settlement is denied as it represents nothing more than a stipulation among the offering parties.
15. This averment represents a Prayer for Relief to which no response is required.
16. I&E is without sufficient knowledge or information to form a belief as to the accuracy of the averments contained in this paragraph. This averment

presents the terms of the stipulation and is not binding on I&E as it represents nothing more than a stipulation among the signatories. Further evaluation is necessary to determine the effectiveness of the claims presented in this averment. By way of further explanation, I&E opines that the offered document cannot be used as a vehicle to establish a Purchase of Receivables (“POR”) program. This joint stipulation represents the opinions of a limited number of parties and attempts to move the agreement away from the parameters of the April 13, 2011 Secretarial Letter. As discussed earlier, the joint stipulation fails to address the issues clearly identified in the Secretarial Letter. Instead, the agreement is offered to promote a limited agenda without sufficient evidentiary support. The intent of the Secretarial Letter was not to establish a POR at this point. A thorough evaluation of the financial condition of PGW is necessary to determine whether a POR is in the public interest. The genesis of the collaborative was an emergency rate relief proceeding. To suggest that a POR of any design is appropriate at this stage without a thorough investigation is ill founded. Furthermore, I&E opposes the contents of this averment referring to the choice consumer education program as there is not sufficient evidence to support its efficacy. As the proposal requires an additional customer surcharge, further investigation is needed to establish whether any proposed increase in rates is reasonable.

17. I&E is without sufficient knowledge or information to form a belief as to the effectiveness of this proposal. This averment presents the terms of the stipulation and is not binding on I&E. Further investigation is necessary to determine whether this averment is in the public interest.
18. I&E is without sufficient knowledge or information to form a belief as to the effectiveness of this proposal. This averment presents the terms of the stipulation and is not binding on I&E. Further investigation is necessary to determine whether this averment is in the public interest.
19. I&E is without sufficient knowledge or information to form a belief as to the effectiveness of this proposal. This averment presents the terms of the stipulation and is not binding on I&E. Further investigation is necessary to determine whether this averment is in the public interest.
20. I&E is without sufficient knowledge or information to form a belief as to the effectiveness of this proposal. This averment presents the terms of the stipulation and is not binding on I&E. Further investigation is necessary to determine whether this averment is in the public interest.
21. I&E is without sufficient knowledge or information to form a belief as to the effectiveness of this proposal. This averment presents the terms of the stipulation and is not binding on I&E. Further investigation is necessary to determine whether this averment is in the public interest.
22. I&E is without sufficient knowledge or information to form a belief as to the effectiveness of this proposal. This averment presents the terms of the

stipulation and is not binding on I&E. Further investigation is necessary to determine whether this averment is in the public interest and whether PGW should implement a Purchase of Receivables (“POR”) program.

23. I&E is without sufficient knowledge or information to form a belief as to the effectiveness of this proposal. This averment presents the terms of the stipulation and is not binding on I&E. Further investigation is necessary to determine whether this averment is in the public interest. The Secretarial Letter speaks for itself. To the extent any interpretation of the Secretarial Letter is offered, it is strictly denied.
24. I&E is without sufficient knowledge or information to form a belief as to the effectiveness of this proposal. This averment presents the terms of the stipulation and is not binding on I&E. Further investigation is necessary to determine whether this averment is in the public interest.
25. I&E is without sufficient knowledge or information to form a belief as to the effectiveness of this proposal. This averment presents the terms of the stipulation and is not binding on I&E. Further investigation is necessary to determine whether this averment is in the public interest. By way of further explanation, I&E opposes the establishment of a Purchase of Receivables program until a thorough investigation of the financial condition of PGW is completed. The submitted stipulation offers no evidentiary support for the establishment of a POR program by PGW.

26. I&E is without sufficient knowledge or information to form a belief as to the effectiveness of this proposal. This averment presents the terms of the stipulation and is not binding on I&E. Further investigation is necessary to determine whether this averment is in the public interest. By way of further explanation, I&E submits that this averment is of no probative value as it merely represents the opinion of PGW and refers to a settlement petition that does not exist.
27. I&E is without sufficient knowledge or information to form a belief as to the effectiveness of this proposal. This averment presents the terms of the stipulation and is not binding on I&E. By way of further explanation, I&E has not been served any Statement in Support.
28. Denied. The reasons offered in this averment are unsupported by any credible evidence. The limited provisions in the Joint Petition do not resolve the issues presented in the April 13, 2011 Secretarial Letter. As the Joint Petitioners are proposing an additional surcharge on PGW's ratepayers, strict proof of the benefits of these programs is demanded. The record evidence in this proceeding does not support the adoption of this proposal.
29. I&E is without sufficient knowledge or information to form a belief as to the effectiveness of this proposal. This averment presents the terms of the stipulation and is not binding on I&E. Further investigation is necessary to determine whether this averment is in the public interest.

30. I&E is without sufficient knowledge or information to form a belief as to the effectiveness of this proposal. This averment presents the terms of the stipulation and is not binding on I&E. Further investigation is necessary to determine whether this averment is in the public interest.
31. I&E is without sufficient knowledge or information to form a belief as to the effectiveness of this proposal. This averment presents the terms of the stipulation and is not binding on I&E. Further investigation is necessary to determine whether this averment is in the public interest.
32. I&E is without sufficient knowledge or information to form a belief as to the effectiveness of this proposal. This averment presents the terms of the stipulation and is not binding on I&E. By way of further explanation, I&E recommends that the submission be rejected as being unsupported with substantial evidence. In the alternative, if the stipulation is presented to the Office of Administrative Law Judge, I&E recommends a thorough investigation is necessary in order to develop a full and complete record. The investigation should include a full litigation schedule consisting of direct and responsive testimonies, Evidentiary Hearings and Briefs. I&E maintains that further investigation is necessary to determine whether this proposal is in the public interest.
33. I&E is without sufficient knowledge or information to form a belief as to the effectiveness of this proposal. This averment presents the terms of the stipulation and is not binding on I&E.

WHEREFORE, for the reasons state herein, the Bureau of Investigation and Enforcement respectfully requests that the Pennsylvania Public Utility Commission deny the Joint Petition submitted by Philadelphia Gas Works, Dominion Retail, Hess Corporation and Direct Energy Services, LLC. There is insufficient evidence to support the premise that the provisions contained in the stipulation are in the public interest and that and the subsequent additional surcharge to be levied on PGW's ratepayers is justified.

Respectfully submitted,



Richard A. Kanaskie
Deputy Chief Prosecutor
Attorney I.D. #80409

Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
Post Office Box 3265
Harrisburg, PA 17105-3265
(717) 787-1976
Dated: December 13, 2011

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	:	
	:	
v.	:	Docket Nos. R-2008-2073938
	:	P-2009-2097639
Philadelphia Gas Works, Inc.	:	

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Answer to Petition for Settlement**, dated December 13, 2011, 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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