

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility
Commission

DOCUMENT
FOLDER

Docket Number

v.

R-00017034F0002

Philadelphia Gas Works

DOCKETED

MAY 04 2002

ORDER CERTIFYING THE RECORD

HISTORY

On February 25, 2002, Philadelphia Gas Works ("PGW" or "Respondent") filed Supplement No. 17 to Tariff Gas – Pa. P.U.C. No. 1 to become effective April 26, 2002. Concurrently,¹ PGW filed a Petition for Extraordinary Rate Relief, pursuant to Sections 1308(e) and 2212 of the Public Utility Code, 66 Pa. C. S. §§1308 (e) and 2212. In the Petition, PGW requested that \$44 million of its \$60 million base rate request be approved as extraordinary rate relief. PGW asked the Commission to address the Petition pursuant to a 45 day schedule instead of the 30 day schedule set forth in Section 1308(e) and rule on the petition at the April 11, 2002 Commission meeting. The rate increase would be effective on April 12, 2002. Furthermore, PGW requested that the Commission declare the rate of return requirement, which sets a limit on the amount of extraordinary rate relief, inapplicable.

The matter was assigned to the Office of Administrative Law Judge for resolution by hearings. By Secretarial letter, dated March 4, 2002, the Commission directed the certification of the record without a decision by the Office of Administrative

¹ PGW filed a corrected petition on February 27, 2002.

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Law Judge, pursuant to section 335 of the Public Utility Code, 66 Pa. C.S. §335, and the Commission's regulations at 52 Pa. Code §5.531. Furthermore, the parties were directed to submit written memoranda to the Commission no later than noon on April 3, 2002.

The Consumers Education and Protective Association ("CEPA"), the Association of Community Organizations for Reform Now ("ACORN"), Action Alliance of Senior Citizens of Greater Philadelphia ("Action Alliance") and Tenants' Action Group ("TAG") (collectively "CEPA et al"), through its attorney, filed a complaint against the base rate case. In paragraph 13 and 14 of the complaint, CEPA et al objected to PGW's request for extraordinary rate relief.

Prehearing memoranda were submitted by OCA and OSBA.

A prehearing conference in this matter was held on Thursday, March 7, 2002 at 10:00 a.m. The Philadelphia Gas Works (PGW); the Office of Consumer Advocate (OCA); the Office of Trial Staff (OTS); the Office of Small Business Advocate (OSBA); CEPA et al and the Philadelphia Industrial & Commercial Gas Users Group (PICGUG) participated.

OSBA, through its counsel, filed an answer to the Petition. OSBA requested that the Petition be denied and requested that a thorough investigation be conducted.

OTS, through its counsel, filed an answer to the Petition. OTS requested that the Commission allow other evidentiary testimony to be presented prior to determining whether to grant or deny the Petition for Extraordinary Rate Relief.

OCA, through its counsel, filed an answer to the Petition. OCA argued that PGW's request for extraordinary rate relief may not meet the standards for extraordinary

relief in Section 1308(e) or in Commission Orders applying Section 1308(e). OCA cited Pa. PUC v. Metropolitan Edison Co, Docket Nos. R-80051196 and P-80070235 (Order entered August 28, 1980). In that case, the Commission held that the Company bears a heavy burden to show that relief is immediately necessary. OCA asked the Commission to deny PGW's request to waive the requirement in Section 1308(e) that any extraordinary relief be "no more than the rate of return on the utility's common equity established by the commission in consideration of the utility's preceding rate filing." 66 Pa. C. S. §1308(e). OCA submitted that the appropriate limitation on the amount of extraordinary rate relief that could be awarded to PGW through Section 1308(e) should be based on PGW's bond coverage requirements.

Petitions to Intervene were filed by the Philadelphia Industrial and Commercial Gas Users Group (PICGUG), PECO Energy Company ("PECO"), Trigen-Philadelphia Energy Corporation ("Trigen") and Grays Ferry Cogeneration Partnership ("Grays Ferry"). All of the petitions were granted. Trigen and Grays Ferry requested inactive status in the extraordinary rate relief procedure. PECO filed a prehearing memorandum.

Informal discovery was conducted and discovery conferences were held on March 13 and 14, 2002.

PGW filed the testimony of five witnesses with its Petition. On March 12, 2002, PGW filed the testimony of Craig White.² OTS filed the testimony of two witnesses and OCA filed the testimony of one witness on March 21, 2002.

² Mr. White's testimony was not admitted into evidence because the parties reached a stipulation regarding the allocation of the extraordinary rate increase to the classes of customers. See page 4, infra.

A hearing was held in this matter on Tuesday, March 26, 2002 at 10:00 a.m. in the Philadelphia State Office Building. Philadelphia Gas Works (PGW), the Office of Consumer Advocate (OCA), the Office of Trial Staff (OTS), the Office of Small Business Advocate (OSBA), CEPA et al and the Philadelphia Industrial & Commercial Gas Users Group (PICGUG) participated. PECO did not participate. Counsel for Trigen and Grays Ferry was excused after the petition to intervene was granted.

The presiding officer issued three orders concerning the procedure, the schedule, testimony and the parties' memoranda.

STIPULATIONS

There were two written stipulations and one oral stipulation in this matter. PGW, OTS, OCA, OSBA, and PICGUG entered into a Stipulation and Settlement regarding the allocation of extraordinary rate increase (Tr. 39, 40). Although CEPA et al did not join in the Stipulation and Settlement, their counsel signed the stipulation to show that they do not oppose the Stipulation. The stipulation removes the issue of the allocation of the rate increase from the proceeding. The parties agreed that any extraordinary rate increase should be attributed only to the volumetric charge and allocated among the customer classes as follows: residential (ResGS/PHAGS) 83.75%, commercial (firm customers) 13.53%, industrial (firm customers) 1.83% and PHA/PHA 0.89% (Stipulation p. 2, ¶1). Moreover, as part of the stipulation, PGW did not offer Mr. White's testimony into the record (Tr. 40).

PGW, OTS, OCA, OSBA, CEPA et al and PICGUG stipulated that the base rate testimony of Joseph Bogdonavage (PGW B.R.P. St. 1), the supporting financial schedules sponsored by Mr. Bogdonavage (Volume II) and the testimony of William

Muntzer (PGW B.R.P. St. 3) would be admitted into the record of the PGW's Petition for Extraordinary Rate Relief proceeding at Docket No. R-00017034F0002 (Tr. 41, 42).

The third stipulation was oral. The parties stipulated to the authenticity of the testimony to be admitted into the record (Tr. 42, 43).

ISSUES

PGW filed this Petition pursuant to Section 1308(e) of the Public Utility Code. Said section reads as follows:

Section 1308. Voluntary changes in rates

(e) Extraordinary rate relief. - Upon petition to the commission at the time of filing of a rate request or at any time during the pendency of proceedings on such rate request, any public utility may seek extraordinary rate relief of such portion of the total rate relief requested as can be shown to be immediately necessary for the maintenance of financial stability in order to enable the utility to continue providing normal services to its customers, avoid reductions in its normal maintenance programs, avoid substantially reducing its employment, and which will provide no more than the rate of return on the utility's common equity established by the commission in consideration of the utility's preceding rate filing, except that no utility shall file, either with a request for a general rate increase or at any time during the pendency of such a request, more than one petition under this subsection pertaining to rates for a particular type of service, nor any supplement or amendment thereto, except when permitted to do so by order of the commission. Any public utility requesting extraordinary rate relief shall file with the petition sufficient additional testimony and exhibits which will permit the commission to make appropriate findings on the petition. The public utility shall give notice of the petition in the same manner as its filing upon which this petition is based. The commission shall within 30 days from the date of the filing of

a petition for extraordinary rate relief, and after hearing for the purpose of cross-examination of the testimony and exhibits of the public utility, and the presentation of such other evidentiary testimony as the commission may by rule prescribe, by order setting forth its reasons therefor, grant or deny, in whole or in part, the extraordinary relief requested. Absent such order, the petition shall be deemed to have been denied. Rates established pursuant to extraordinary rate relief shall not be deemed to be temporary rates within the meaning of that term as it is used in section 1310.

1. Whether PGW has met the requirements of Section 1308(e) for the grant of extraordinary rate relief?

a. Whether rate relief is immediately necessary for the maintenance of financial stability in order to enable the utility to continue providing normal services to its customers?

b. Whether rate relief is immediately necessary for the maintenance of financial stability in order to avoid reductions in its normal maintenance programs?

c. Whether rate relief is immediately necessary for the maintenance of financial stability in order to avoid substantially reducing its employment?

d. Whether Standard & Poor's will downgrade PGW's bond rating absence an emergency rate increase?

e. What criteria will Standard & Poor's use to decide whether to downgrade PGW's bond rating?

f. Whether PGW has accurately reflected Standard & Poor's calculation of the fixed charge coverage ratio?

g. Whether there are alternative measures PGW can take even if Standard & Poor's does downgrade PGW's bond rating?

h. Whether Section 1308(e) applies to capital deficiencies as well as the inability to pay operating expenses?

2. If PGW has met the criteria set forth in Section 1308(e), what level of rate relief should be granted?

a. Should the fourth prong of Section 1308(e), which reads: "which will provide no more than the rate of return on the utility's common equity established by the commission in consideration of the utility's preceding rate filing," be waived in this proceeding?

b. What is the minimum amount of emergency rate relief needed to satisfy Standard & Poor's requirements for PGW's bonds to retain an investment grade rating?

c. What responsibility does the City of Philadelphia have?

1). Should PGW's \$18 million payment to the City of Philadelphia be granted back to PGW?

2.) Should repayment of the \$45 million loan from the City of Philadelphia be deferred or waived?

d. Whether PGW should consider alternatives such as selling part or all of PGW?

3. If extraordinary relief is awarded, are there other conditions necessary to adequately protect ratepayers?

a. Should emergency relief be conditioned on the City granting back the \$18 million loan?

b. Should emergency relief be conditioned on the City deferring or waiving repayment of the \$45 million loan?

THE RECORD

The record consists of the transcripts of the March 7, 2002 prehearing conference and the March 26, 2002 hearing (a total of 244 pages); written direct testimony of eight (8) witnesses; the written rebuttal testimony of one witness; the base rate testimony of Joseph Bogdonavage (PGW B.R.P. St. 1), the supporting financial schedules sponsored by Mr. Bogdonavage (Volume II); the base rate testimony of William Muntzer (PGW B.R.P. St. 3), two written stipulations and nineteen (19) exhibits. The following witnesses were cross-examined on March 26, 2002 in the following order: Barbara C. Bisgaier, Managing Director of Public Financial Management, Inc. and Financial Advisor to the City of Philadelphia (PGW E.R.P. Statement No. 4); Joseph R. Bogdonavage, PGW's Senior Vice President Finance (PGW E.R.P. Statement No. 2); Gary Krellenstein, Senior Analyst and Vice President in JPMorgan's Municipal Finance Department (PGW E.R.P. Statement No. 3); Thomas E. Knudsen, PGW's Interim President and Chief Executive Officer (PGW Statement E.R.P. No. 1); and Janice Davis, Director of Finance of the City of Philadelphia and Board member of the Philadelphia Facilities Management Corporation (PGW E.R.P. Statement No. 5 and PGW E.R.P.

Statement No. 5.1); Charles Weakley, a Fixed Utility Analyst in the Commission's Office of Trial Staff, (OTS Statement No. 1); Kevan Deardorff a Fixed Utility Financial Analyst in the Commission's Office of Trial Staff (OTS Statement No. 2); and Richard W. LeLash, an independent financial and regulatory consultant (OCA Statement No. 1-ERP).

The other parties did not agree that PGW was entitled to \$44 million in extraordinary relief. OTS stated that PGW was entitled to \$25 million of extraordinary relief (OTS Statement No. 1, p. 4). OCA's position is that the Section 1308(e) provisions are not applicable to PGW's rate relief request. OCA argues that the request is a capital requirement under the cash flow method (OCA Statement No. 1, pp. 27, 28). If the Commission believes that PGW's current financial condition warrants assistance from its customers, OCA recommends that the ratepayers pay a time-limited capital surcharge (OCA Statement No. 1 pp. 30-41). OCA contends that the Commission should insure that the City of Philadelphia and PGW recognize their responsibility to reduce the financial instability (OCA Statement No. 1 pp. 31-40).

ORDER

THEREFORE,
IT IS ORDERED:

That the record in the proceeding at Docket No. R-00017034F0002 is closed and the matter is certified to the Commission for its consideration.

Date: April 3, 2002

Cynthia Williams Fordham
CYNTHIA WILLIAMS FORDHAM
Administrative Law Judge

Attachment A

The following statements and exhibits have been admitted into the record:

PGW Statement E.R.P. No. 1 - Thomas E. Knudsen
Interim President and Chief Executive Officer

Exhibit TEK-1 - Chart of PGW FY 1992-2003 Capital Spending, & Internally Generated Funds

Knudsen Rebuttal Exhibit 1 – Responses to OTS' Data Request – OTS Set I-RS-1 and OTS Set I-RS-6 and Response to OCA's Data Request – OCA Set II-3.

OTS Cross-Examination Exhibit No. 1 – Response to OTS Set III RE-20.

PGW E.R.P. Statement 2 -Joseph R. Bogdonavage
Senior Vice President Finance

JRB Ex. 1 - Actual Weather Thru 2/15/02 No financial transactions, Estimate of Cash receipts and disbursements Fiscal year ending August 31, 2002
Page 2-Details of Receipts and Details of other Disbursements

JRB Ex. 2 - PGW FY 2001-02 Projected Income Statement and Projected Debt Service Coverage

Bogdonavage Rebuttal Exhibit No. 1 - PGW Fiscal Year 2001-02 Projected Income Statement; Projected Debt Service Coverage and Revised Standard & Poor's Fixed Charge Coverage Ratio

Bogdonavage Rebuttal Exhibit No. 2 - PGW Operating Margin Lost Due to Weather

BRP Statement No. 1 - Joseph Bogdonavage with Volume II (Supporting Testimony & Documentation)

BRP Statement No. 3 - William Muntzer

(PGW, OTS, OCA, OSBA, CEPA et al and PICGUG stipulated that the base rate testimony of Joseph Bogdonavage (PGW B.R.P. St. 1), the supporting financial schedules sponsored by Mr. Bogdonavage (Volume II) and the testimony of William Muntzer (PGW B.R.P. St. 3) would be admitted into the record of the PGW's Petition for Extraordinary Rate Relief proceeding at docket No. R-00017034F0002. See Tr. 41, 42.)

PGW E.R.P. Statement No. 3 - Gary Krellenstein

Senior analyst and Vice President in JPMorgan's Municipal Finance Department

PGW E.R.P. Statement No. 4 - Barbara C. Bisgaier

Managing Director of Public Financial Management, Inc.; Financial Advisor to the City of Philadelphia

Exhibit BCB-1 - PGW's Ratings Remain on CreditWatch Due to Worsened Liquidity Position

Exhibit BCB-2 - PGW's Rating Standard and Poor's July 20, 2000 letter-CreditWatch

Exhibit BCB-3 - PGW's Revenue and Debt Service Analysis

OCA Cross-Examination Ex. 1 - Response to OCA's Data Request OCA Set II-5, 6 and 7-Moody's Investors Service February 2002 analysis

OCA Cross-Examination Ex. 2 - Response to OCA's Data Request OCA Set I-2, 4, 6 and e-mail from Aneesh Prabhu of Standard and Poor's to Thomas Knudsen, dated February 11, 2002.

PGW E.R.P. Statement No. 5 - Janice Davis

Director of Finance of the City of Philadelphia; Board member of the Philadelphia Facilities Management Corporation

Exhibit JD-1 - Davis' Curriculum Vitae

PGW E.R.P. Statement No. 5.1 - Janice Davis Rebuttal Testimony

Exhibit JD-R-1 - City of Philadelphia Five Year Financial Plan FY 2003-FY2007

Exhibit JD-R-2 - Fiscal Health

OTS Statement No. 1-Charles Weakley

OTS Ex. No. 1

Schedule 1 Actual Weather thru 2/15/02 Financial Transactions

Schedule 2-Budget of Cash Receipts and Disbursements FY ending August 31, 2003

Schedule 3-OTS Calculation of the Cash Flow Impact of a \$25 Million Increase For the Fiscal Year 2002.

OTS Statement No. 2-Kevan Deardorff

OTS Ex. No. 2

Schedule 1 Standard and Poor's February 12, 2002 Summary regarding PGW.
Schedule 2-PGW FY 2001-2002 Projected Income Statement and PGW FY 2001-2002 Projected Debt Service Coverage and Standard and Poor's Fixed Charge Coverage Ratio

OCA Statement No. 1-ERP Richard W. LeLash

With supporting schedules

Schedule 1-PGW's Debt Service Coverage FY 2001-2002.
Schedule 2-PGW Fixed Rate Coverage Ratio FY 2001-2002
Schedule 3-PGW Debt and Equity Data

PGW Cross-Examination Ex. 1 - The Bond Buyer for Thursday, February 21, 2002.

Stipulation and Settlement (Regarding Allocation of Extraordinary Rate Increase).

Stipulation (Regarding Admission of Testimony and Volume II from Base Rate Case)

Please note that the testimony of Craig White was filed on March 12, 2002 but not admitted into evidence since the parties stipulated to the allocation of the extraordinary rate relief among the classes. PGW E.R.P. Statement No. 6-Craig White Acting Chief Operating Officer with Attachments 1 and 2.

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