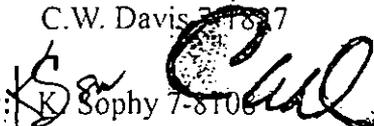


PENNSYLVANIA PUBLIC UTILITY COMMISSION
Uniform Cover and Calendar Sheet

1. <u>REPORT DATE:</u> July 5, 2005	2. <u>BUREAU AGENDA NO.</u> JUL-2005-OSA-0220*
3. <u>BUREAU:</u> Office of Special Assistants	
4. <u>SECTION(S):</u>	5. <u>PUBLIC MEETING DATE:</u>
6. <u>APPROVED BY:</u> Director: C.W. Davis 7-1887 Mgr/Spvr:  Legal Review:  K. Sophy 7-8108	July 14, 2005
7. <u>PERSONS IN CHARGE:</u> KM K. Miceli 7-1888	9. <u>EFFECTIVE DATE OF FILING:</u>
8. <u>DOCKET NO.:</u> P-00042090; R-00049157; M-00021612; P-00032061; P-00042117	N/A

**DOCUMENT
FOLDER**

10. (a) CAPTION (abbreviate if more than 4 lines)
(b) Short summary of history & facts, documents & briefs
(c) Recommendation

(a) Petition for Reconsideration and Clarification (Petition) of the Philadelphia Gas Works (PGW)

(b) On October 27, 2004 the Commission entered a Final Order wherein it denied the Petition of PGW to implement a means-tested Senior Citizens' Discount Program (SCD), and for a Limited Waiver or Modifications of Certain Regulations which appear in Chapter 56 of Title 52 of the Pennsylvania Code, 52 Pa. Code § 56.1 *et seq.* On November 12, 2004, PGW filed a Petition for Reconsideration and Clarification of the Opinion and Order entered October 27, 2004. The Action Alliance *et al.* (Action Alliance), the Office of Small Business Advocate (OSBA) and the Office of Consumer Advocate (OCA) filed Answers to the Petition on November 17, 2004, November 19, 2004, and November 22, 2004, respectively. By Letter dated January 4, 2005, PGW withdrew its request for waiver of Chapter 56 Recommendations due to the enactment of Chapter 14 of the Public Utility Code, 66 Pa. C. S. § 1401 *et seq.*

(c) The Office of Special Assistants recommends that the Commission adopt a proposed draft Opinion and Order.

DOCKETED
JUL 20 2005

Order Doc. No 546160v1

Cal Sheet Doc. No. 548709v1

11. MOTION BY: Commissioner Chm.: Holland	Commissioner Shane - Yes
SECONDED: Commissioner Cawley	Commissioner Pizzingrilli - Yes
	Commissioner Fitzpatrick - Yes

CONTENT OF MOTION: Staff recommendation adopted.



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

July 18, 2005

REFER TO OUR FILE

P-00042090
R-00049157
M-00021612
P-00032061
P-00042117

GREGORY J STUNDER ESQUIRE
PHILADELPHIA GAS WORKS
800 WEST MONTGOMERY AVENUE
PHILADELPHIA PA 19122

DOCKETED
SEP 30 2005

Investigation into Financial and Collections Issues
Regarding the Philadelphia Gas Works

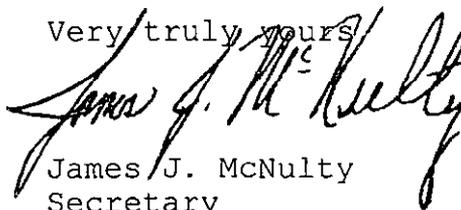
**DOCUMENT
FOLDER**

To Whom It May Concern:

This is to advise you that an Order has been adopted by the Commission in Public Meeting on July 14, 2005 in the above entitled proceeding.

An Order has been enclosed for your records.

Very truly yours



James J. McNulty
Secretary

Enclosure
Certified Mail
jeh

See Attached Listing for Additional Parties of Record

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held July 14, 2005

Commissioners Present:

Wendell F. Holland, Chairman
James H. Cawley, Vice Chairman
Bill Shane
Kim Pizzingrilli
Terrance J. Fitzpatrick

DOCKETED
SEP 30 2005

Investigation into Financial and Collections Issues
Regarding the Philadelphia Gas Works

P-00042090
R-00049157
M-00021612
P-00032061
P-00042117

OPINION AND ORDER

BY THE COMMISSION:

**DOCUMENT
FOLDER**

Before the Commission for consideration is the Petition for Recon- sideration and Clarification (Petition) filed by the Philadelphia Gas Works (PGW) on November 12, 2004, of our Opinion and Order which was entered on October 27, 2004 (October 27 Order) . The Action Alliance *et al.* (Action Alliance), the Office of Small Business Advocate (OSBA) and the Office of Consumer Advocate (OCA) filed Answers to the Petition on November 17, 2004, November 19, 2004, and November 22, 2004, respectively.

History of the Proceeding

On March 1, 2004, PGW made its annual Gas Cost Rate (GCR) filing pursuant to 66 Pa. C.S. § 1307(f) with the Commission. On March 1, 2004, PGW also filed a Petition to Establish a Cash Receipts Reconciliation Clause (CRRC), pursuant to 66 Pa. C.S. §§ 1307(a); 2212(c) and 52 Pa. Code § 5.41, to impose a surcharge to recover money due from non-paying customers. On March 1, 2004, PGW also filed a motion to consolidate its CRRC petition with its GCR filing.

By Order entered June 2, 2004, the Commission directed the ALJ to submit a Recommended Decision in regard to the GCR filing within the statutory deadline. In regard to the CRRC Petition, the Commission directed the ALJ to issue an order certifying the record, in time for the Commission's consideration at its July 8, 2004 Public Meeting.

In that Order, we consolidated with the GCR and CRRC proceeding, PGW's Senior Citizen Discount Petition pending at Docket Nos. M-00021612 and P-00032061 and a newly-instituted investigation into PGW's collection practices and universal service costs. The Commission also consolidated, with these matters, two issues described in its Secretarial Letter dated May 14, 2004, regarding Docket No. M-00021612. Those two issues are PGW's request that the Commission approve tariff provisions: (1) allowing PGW to collect a \$10.00 residential field visit charge; and (2) requiring applicants for service with existing civil judgments against them for unpaid PGW balances to enter into payment arrangements.

In its June 2, 2004 Order, the Commission also stated that if PGW filed within thirty (30) days of entry of the Order, a petition for waiver of certain Commission regulations, then that petition would also be consolidated with these matters. The

Commission directed the ALJ assigned to these additional matters (collectively referred to herein as "Commission Investigation" or "Investigation") to conduct hearings and issue a Recommended Decision for consideration at its September 30, 2004 Public Meeting.

On June 1, 2004, a Joint Petition for Settlement of Philadelphia Gas Works' 2004-2005 GCR Proceeding was filed. On June 29, 2004, the ALJ issued a Recommended Decision regarding the GCR filing. At Public Meeting of July 23, 2004, the Commission adopted the Recommended Decision, approving the Joint Petition for Settlement of Philadelphia Gas Works' 2004-2005 GCR Proceeding.

On June 3, 2004, ALJ Rainey issued an order certifying the record in regard to the CRRC Petition. The Parties filed main and reply briefs. At Public Meeting of July 8, 2004, the Commission adopted an Order denying PGW's CRRC Petition.¹ At that Public Meeting, the Commission also adopted an Order denying PGW's Motion to Certify Petition for Limited Waiver or Modification of Chapter 56 Rules and Administrative Interpretations to the PUC for Concurrent Disposition with Petition for Cash Receipts Reconciliation Clause.

On June 10, 2004, a Prehearing Conference was held in regard to the Commission Investigation. The Parties present at the Prehearing Conference were PGW, the Office of Trial Staff (OTS), the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA), the Action Alliance of Community Organization for Reform Now, and the Tenants Action Group, (collectively referred to as Action Alliance, *et al.*), State Senators Vincent J. Fumo, Michael J. Stack and Anthony H. Williams, Philadelphia City Council President Anna C. Verna, Philadelphia City Council Members

¹ On July 22, 2004, PGW filed a Petition for Reconsideration of its CRRC. At its Public Meeting held on August 5, 2004, the Commission denied PGW's Petition for Reconsideration.

James F. Kenney, Frank DiCicco, Michael A. Nutter, David Cohen, Joan L. Krajewski, and Juan Ramos and Philadelphia District Attorney Lynne Abraham (collectively referred to as the Philadelphia Public Officials), Philadelphia Housing Authority (PHA), Philadelphia Industrial and Commercial Gas Users Group (PICGUG) and PECO Energy Company (PECO).

Also on June 10, 2004, OCA filed a Motion to Dispense with Preparation of a Recommended Decision. By Order dated June 28, 2004, the Commission denied OCA's Motion to Dispense with Preparation of a Recommended Decision. However, the Commission directed that the procedural schedule be adjusted to allow additional time for discovery and briefing.

On June 16, 2004, PGW filed a Petition for Limited Waiver or Modification of PUC Chapter 56 Rules and Administrative Interpretations. On that day PGW also filed a Petition for Limited Waiver or Modification of Chapter 56 Rules and Administrative Interpretations to the PUC for Concurrent Disposition with Petition for a Cash Receipts Reconciliation Clause.

On July 6, 2004, an evidentiary hearing was held on the Commission Investigation. The Parties present at the evidentiary hearing included PGW, OTS, OCA, OSBA, Action Alliance, *et al.*, Philadelphia Public Officials and PECO. During the evidentiary hearing, the written testimonies of the various parties were moved into evidence and the sponsoring witnesses were examined.

On August 13, 2004, ALJ Rainey issued his Recommended Decision. On September 2, 2004, Exceptions were filed by PGW, OTS, OSBA, and Action Alliance, *et al.* The OCA informed the Commission, by letter dated September 2, 2004, that it would not be filing Exceptions to the Recommended Decision. The Parties agreed to waive

Reply Exceptions. A more detailed history of the proceeding, which appears at pages 1 through 7 of the Recommended Decision, is incorporated herein by reference.

On October 27, 2004, we entered an Opinion and Order wherein we granted in part, and denied in part, the Exceptions filed by PGW, OTS, OSBA, and Action Alliance, *et al.*

On November 12, 2004, PGW filed the instant Petition. PGW has made five requests of the Commission to reconsider and revise its rulings, claiming the Commission has misinterpreted the record. (Petition at 1). First, PGW asks the Commission to reconsider rejection of the requested waivers of Commission regulations. (Petition at 4-11). Second, PGW requests that the Commission clarify its Order granting, in part, PGW's request to demand a \$500 deposit for customers who reapply for service after termination. (Petition at 12-16). Third, PGW asks the Commission to reverse its denial of PGW's proposed means-tested Senior Citizen Discount (SCD) Program. (Petition at 16-20). Fourth, PGW seeks reversal of the Commission's denial of the proposed residential field visit charge. (Petition at 16-24). Fifth, PGW requests the Commission to reconsider its rejection of PGW's proposal to require applicants to pay outstanding liens or judgments prior to receiving service. (Petition at 24-26).

On December 14, 2004, Chapter 14 of the Public Utility Code was enacted. Chapter 14 relaxed the customer service provisions of Chapter 56 for certain utilities, including PGW. By letter dated January 4, 2005, PGW withdrew its Petition for Reconsideration insofar as it pertained to the waivers of Commission Regulation because it views Chapter 14 as comprehensively addressing collection enhancements. PGW stated that the sole issue for which the Company seeks reconsideration is the Commission's denial of the means-tested SCD program.

Discussion

As we review the merits of each of these Petitions, we note that petitions for reconsideration must make new and novel arguments not previously considered or raise matters which are designed to convince us to exercise our discretion to rescind or amend the order under consideration. *Duick v. PG & W*, 56 Pa. P.U.C. 553, 51 P.U.R. 4th 284 (1982) (*Duick*), citing *Pa. Railroad Co. v. Pa. PSC*, 179 A. 850 (Pa. Super. 1935). Our decisions in these types of cases are left to our sound discretion and will not be disturbed on appeal absent bad faith, fraud, capricious action, or abuse of power. *West Penn Power v. Pa. PUC*, 659 A.2d 1055 (Pa. Cmwlth. 1995). It has also been held that because a grant of relief on such petitions may result in the disturbance of final orders, it should be granted judiciously and only under appropriate circumstances. *Id.*; *City of Pittsburgh v. PennDOT*, 490 Pa. 264, 416 A.2d 461 (1980).

Senior Citizen Discount

Prior to its regulation by this Commission, PGW was permitted to provide a SCD program, which provided PGW customers 65 years of age or older a 20% discount on their monthly gas bills. Section 2212(r)(2) of the Natural Gas Choice and Competition Act (Gas Choice Act) required continuation of the SCD program for those customers enrolled before PGW filed its first tariff with the Commission on September 1, 2003. 66 Pa. C.S. § 2212(r)(2).

PGW's current SCD program does not involve a means-test. PGW proposed expanding its existing SCD program to offer a means-tested program, which is not guaranteed by statute and is subject to the Commission's standard approval process. Specifically, the proposed means-tested process would provide a 20% discount to new

applicants of 65 years of age or older who have a household income (regardless of family size) that does not exceed 250% of the federal poverty level for a two person family (currently \$30,000).

In our October 27 Order, we concluded that we could not justify approval of PGW's SCD program based upon the circumstances present in this proceeding. We reasoned therein, among other things, that PGW's assertion that households with incomes above 150% of the Federal Poverty Level (FPL) have the ability to pay is contrary to its proposal to provide a discount for customers who could pay their full bills. We also found that it was inconsistent that PGW proposed to give discounts to senior citizens at 250% above the FPL at the same time as denying payment arrangements after termination to non-seniors at 250% above the FPL. (Opinion and Order, at 8-9).

We also did not accept PGW's estimate of the annual cost of this SCD program. In the Opinion and Order we concluded as follows:

We agree with the OTS that the estimated enrollment of 1,300 households and the estimated cost of \$365,000 per year seem exceedingly optimistic. The OTS claimed that PGW failed to account for the cumulative effect of additional senior citizens enrolling in the SCD program in subsequent years. (OTS St. 1 at 19). PGW stood by its estimate even though its witness testified that she did not disagree with the OTS calculation of cumulative costs. (Tr. at 613).

PGW provided testimony that despite a trend of increased longevity and the fact that the nation's baby boom population will begin reaching age 65 in 2011, Philadelphia's senior citizen population is not likely to escalate in 2011. (Tr. at 649; PGW St. CP-2, Exhibit SCD/CC-4 at 6). As the OTS noted, PGW based its estimated enrollment on a presumption that residents of Philadelphia will follow the trend of a population movement out of cities. (OTS Exc. at 7; Tr. at 617). PGW assumes that this expected movement out of the city will offset the increasing senior citizen population as the baby-boom generation comes of age. (OTS Exc. at 7; Tr. at

617). Even if the general population of Philadelphia follows the trend and moves to the surrounding counties, we are not convinced that lower-income senior citizens will be among the emigrants.

(Opinion and Order at 9-10).

Finally, we found that setting the eligibility threshold at 250% of the federal poverty level allows the discount to apply to senior citizens with the ability to pay full bills. Moreover, low-income senior citizens are eligible for other programs designed to assist households with lowering or meeting their utility bills. (Opinion and Order at 10).

In its Petition, PGW argues that we should revisit and reverse our decision to reject its proposed SCD program based upon two arguments: (1) the means-tested program will not reduce cash flow; and (2) the cost projections presented by PGW are correct. PGW argues first that although there would be a decrease in revenue resulting from the SCD, PGW would recover the subsidy from its Universal Service Charge (USC) revenue.

PGW continues that those customers receiving the 20% discount may be more likely to pay a higher percentage of their total bills while the total percentage of the non-discounted customers would be largely unaffected given the “*de minimis*” increase in their bills resulting from the small increase required to fund the SCD. (Petition at 17-18).

PGW contends that it did not assert that the revised SCD would cost \$365,000 per year. According to PGW, the average annual cost of the means-tested SCD that would be funded by the remaining customers was \$3.4 million which is the same as the revised OTS estimate. (Petition at 18-19).

The Action Alliance argues that our disposition of the SCD issue should be revisited and reversed. The Action Alliance argues that customers with household income between 110% and 250% of the FPL often need more assistance than is currently available. (Action Alliance Answer at 7-8).

The Answers which were filed by the OCA and the OSBA only addressed PGW's request for us to reconsider our disposition of its Petition for Waiver of Commission Regulation. As stated previously, PGW withdrew its Petition for Reconsideration as it pertained to the waivers of Commission Regulation.

Upon our consideration of the Petition and the Answer submitted by the Action Alliance, we will not disturb our Opinion and Order entered on October 30, 2004. We reach this conclusion for several reasons.

First, we find that PGW has not met the standards for reconsideration as articulated in *Duick, supra*. In its Petition, PGW repeats the same arguments made in its case-in-chief and its Exceptions regarding the benefits of establishing a second SCD program.

We find PGW's assertion that those customers receiving the 20% discount may be more likely to pay a higher percentage of their total bills was unsupported by evidence of record. We find further that the SCD would be offered at the expense of PGW's other customers, including those with a household income of less than 250% of the FPL.

We conclude that PGW failed to demonstrate why customers of less means should assist in providing a discount to those with greater household incomes. We are of the opinion and so find that this argument is speculative, and we reject it without further comment.

We observe that PGW did not refute our finding that it was inconsistent that PGW proposed to give discounts to senior citizens at 250% above the FPL at the same time as denying payment arrangements after termination to non-seniors at 250% above the FPL.

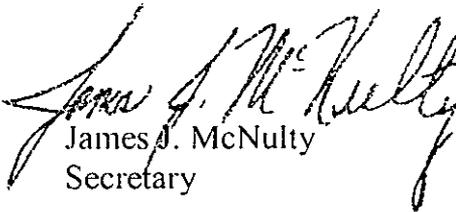
Conclusion

Based upon the foregoing discussion, the Petition for Reconsideration and Clarification is denied. We shall not disturb our Opinion and Order entered October 27, 2004; **THEREFORE,**

IT IS ORDERED:

- 1 That the Petition of Philadelphia Gas Works for Reconsideration and Clarification of our Opinion and Order entered on October 27, 2004 is denied.
2. That this proceeding be marked closed.

BY THE COMMISSION,


James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: July 14, 2005

ORDER ENTERED: **JUL 18 2005**