

Philadelphia Gas Works

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ORIGINAL

June 11, 2004

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Secretary
PA Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Re: Philadelphia Gas Works 2004-2005 Gas Cost Rate Filing;
Docket No. ~~R-00049157~~ & P-00042090

Dear Secretary McNulty: *R-00049157*

Enclosed for filing please find an original and three (3) copies of Philadelphia Gas Works' Statement in Support of the Unopposed Joint Petition for Complete Settlement of Its 2004-2005 Purchased Gas Cost Proceeding that was originally filed on May 28, 2004.

If you have any questions regarding this matter, please contact me. Thank you for your assistance with this matter.

Respectfully submitted,

Gregory J. Stunder

cc: Parties of record
Administrative Law Judge Charles E. Rainey, Jr.

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY
COMMISSION, et al.

v.

PHILADELPHIA GAS WORKS

Docket Nos. R-00049157
R-00049157C0001-C0145
P-00042090

**PHILADELPHIA GAS WORKS' STATEMENT IN SUPPORT
OF THE UNOPPOSED JOINT PETITION FOR COMPLETE SETTLEMENT
OF ITS 2004-2005 PURCHASED GAS COST PROCEEDING**

The Philadelphia Gas Works ("PGW") submits this Statement in Support of the Unopposed Joint Petition for Complete Settlement of PGW's 2004-2005 Purchased Gas Cost (PGC) Proceeding and respectfully requests that Administrative Law Judge Charles E. Rainey, Jr. and the Pennsylvania Public Utility Commission (Commission) approve the Joint Petition, make the findings required by Public Utility Code, 66 Pa. S.C. §§ 1317 and 1318, and deem this settlement in the public interest.

I. BACKGROUND

On February 1, 2004, PGW filed at the above docket number the information required by 66 Pa. C.S. § 1307 and 52 Pa. Code § 53.64 to be submitted in advance of its annual PGC filing. Then on March 1, 2004, PGW submitted its annual PGC filing for the year 2004-2005 consistent with the above provisions and Commission regulations which establish procedures for evaluating and determining an appropriate level of gas costs.

The Office of Trial Staff (OTS), Office of the Consumer Advocate (OCA), Office of Small Business Advocate (OSBA), the Association of Community Organizations for Reform

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now (ACORN), the Tenant's Action Group (TAG) and Action Alliance of Senior Citizens of Greater Philadelphia (Action Alliance) (hereinafter collectively Action Alliance, et al.), Philadelphia Industrial and Commercial Users Group (PICGUG), Philadelphia Housing Authority ("PHA"), Senator Vincent Fumo, Philadelphia City Council President Anna Verna, Philadelphia City Council Members: James Kenney, Frank DiCicco, Michael Nutter, David Cohen, Joan Krajewski, Juan Ramos, and Philadelphia District Attorney Lynne Abraham have all intervened, entered an appearance or filed a complaint in the matter.

A Prehearing Conference was held before ALJ Rainey on March 15, 2004 and on March 17, 2004, ALJ Rainey issued a Prehearing Order which established the schedule and the procedures applicable to this proceeding.

The parties participated in a discovery process with OTS, OCA and OSBA submitting numerous interrogatories to PGW. In addition to participation in the discovery process, the parties also conducted settlement discussions and negotiations. These discussions resulted in resolution of all matters.¹ The attached Joint Petition for Complete Settlement of Philadelphia Gas Works' 2003-2004 PGC embodies the terms of the Settlement.

II. PGW IS PURSUING A LEAST COST FUEL PROCUREMENT POLICY CONSISTENT WITH PGW'S OBLIGATION TO PROVIDE SAFE, ADEQUATE AND RELIABLE SERVICE TO ITS CUSTOMERS

Currently, PGW pursues a least cost procurement policy consistent with PGW's obligation to provide safe, adequate and reliable service by among other things: 1) using a

¹ Philadelphia Industrial and Commercial Gas Users Group ("PICGUG"), the Office of Small Business Advocate ("OSBA"), Philadelphia Housing Authority ("PHA"), Senator Vincent Fumo, Philadelphia City Council President Anna Verna, Philadelphia City Council Members: James Kenney, Frank DiCicco, Michael Nutter, David Cohen, Joan Krajewski, Juan Ramos, and Philadelphia District Attorney Lynne Abraham are not participating in this Settlement but have reviewed the Settlement and have informed the Settling Parties that they do not oppose the Settlement.

portfolio approach in contract structure and pricing; and 2) utilizing capacity release & off system sales and interruptible revenue credits to offset the cost of the PGC.

The proposed settlement advances the above goal by 1) further defining gas purchasing programs that increases the program to include purchasing for both the 2004-2005 and 2005-2006 PGC periods; and 2) incorporating a rolling three year average credit for gross capacity release & off system sales and interruptible sales.

The aforementioned portfolio approach utilizes a mix of first of the month index pricing, storage and winter only supply contracts to protect ratepayers from some of the risk of natural gas market volatility. The Gas Purchasing Program submitted with this settlement is intended to further reduce PGW's ratepayers exposure to price volatility by hedging some portion of the company's firm requirements against significant swings in the price of natural gas and establish agreed to standards governing PGW's gas procurement practices. The settlement agreement of the parties recognizes that PGW will also submit quarterly adjustments to the PGC factor in order to account for changes in forecasted price and demand. Also as part of this settlement, PGW has agreed to incorporate credits into the PGC factor for gross capacity release & off system sales and interruptible sales.

Therefore, the above settlement terms certainly meet the Commission's goal in ensuring the least cost procurement policy consistent with PGW's obligation to provide safe, adequate and reliable service.

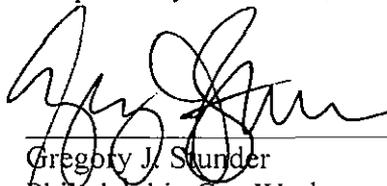
III. APPROVAL OF THE JOINT PETITION IS IN THE PUBLIC INTEREST

The Joint Petition is in the public interest because it fairly and reasonably resolves a number of significant issues affecting PGW and its customers for the reasons stated above.

All of the facts necessary to approve the settlement are included in the record of the proceeding through either the filing and supporting data itself, the testimony of PGW, OCA, OTS, or OSBA or the attachments to the settlement agreement and additional schedules submitted to the Administrative Law Judge through stipulation of the parties.

Having found that PGW pursues a least cost procurement policy consistent with PGW's obligation to provide safe, adequate and reliable service, that this settlement satisfies the Commission's requirements at Sections 1317 and 1318 and is in the public interest, PGW supports the Joint Petition and urges the Administrative Law Judge and the Commission to approve it in its entirety.

Respectfully submitted,



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Dated: June 11, 2004

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document of Philadelphia Gas Works' upon the participants listed below in accordance with the requirements of § 1.54 (relating to service by a participant).

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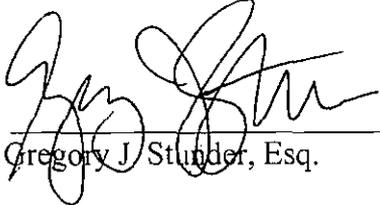
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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Re: Philadelphia Gas Works 2004-2005 Gas Cost Rate Filing;
Docket No. R-00049157 & P-00042090

Dear Secretary McNulty:

Enclosed for filing please find an original and three (3) copies of a corrected page 10 for Philadelphia Gas Works' ("PGW") Joint Petition for Settlement that was originally filed on May 28, 2004. The enclosed corrects a reference in paragraph V.1.a.i. which originally incorrectly referenced Section III, paragraph 11 of the Petition. The enclosed now contains the corrected reference as Section III, paragraph 8.

If you have any questions regarding this matter, please contact me. Thank you for your assistance with this matter.

Respectfully submitted,

Gregory J. Stunder

cc: Parties of record
Administrative Law Judge Charles E. Rainey, Jr.

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document of Philadelphia Gas Works' upon the participants listed below in accordance with the requirements of § 1.54 (relating to service by a participant).

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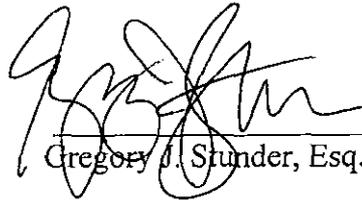
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Gregory J. Struder, Esq.

Dated: June 11, 2004

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

i. PGW met the requirements of Section 1318(a) of the Public Utility Code by pursuing a least-cost fuel procurement policy, consistent with its obligation to provide safe, adequate and reliable service to its customers (except for the condition set forth in Section III, paragraph 8 of this agreement); and

ii. PGW met the requirements of Section 1318(b) of the Public Utility Code relating to purchases from and services provided by affiliates.

2. Interim and Projected Period Findings

a. With respect to the eight-month interim period beginning on January 1, 2004, and with respect to the twelve-month period beginning September 1, 2004, when rates contained in this Settlement will be in effect, it is requested that the Commission find, based upon information presently available and based upon evidence of record in this proceeding concerning PGW's projected purchases and purchasing policies, that the rates to be adopted by the Commission result from PGW's compliance with the provisions of Section 1318 of the Public Utility Code, including Sections 1318(a)(1), 1318(a)(2), 1318(a)(3), 1318(a)(4), 1318(b)(1), 1318(b)(2) and 1318(b)(3), 66 Pa.C.S. §§ 1318(a)(1), 1318(a)(2), 1318(a)(3), 1318(a)(4), 1318(b)(1), 1318(b)(2) and 1318(b)(3).

b. The Settling Parties agree, based upon evidence of record in this proceeding concerning PGW's projected gas purchases and gas purchasing policies, that PGW's projected gas purchases and projected gas purchasing policies may comply with the standards of Section 1318 of the Public Utility Code. Nevertheless, it is expressly understood and agreed that this Section of the Settlement is made solely for the purpose of setting prospective rates that shall be subject to the standards of Section 1318 of the Public Utility Code, 66 Pa.C.S. § 1318, and further review in an appropriate future proceeding. This Section of the Settlement is not

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June 14, 2004

Hand Delivered

Honorable Charles E. Rainey, Jr.
Administrative Law Judge
Pennsylvania Public Utility Commission
1302 Philadelphia State Office Building
1400 West Spring Garden Street
Philadelphia, PA 19130

Re: Pennsylvania Public Utility Commission v. Philadelphia Gas Works
R-00049157 (Gas Cost Rate)

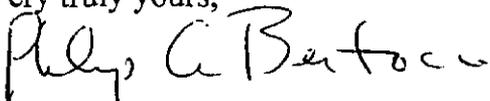
Dear Judge Rainey:

We represent Action Alliance of Senior Citizens, ACORN and Tenants' Action Group (collectively "Action Alliance et al.") in the above-captioned matter.

Action Alliance et al. is a signatory of the Joint Petition for Settlement of the Philadelphia Gas Works' 2004-2005 GCR Proceeding.

Action Alliance et al. supports the terms and conditions of the settlement as in the public interest, for the same reasons set forth in the Statement of the Office of Consumer Advocate, dated June 10, 2004, which is incorporated herein by reference.

Very truly yours,


PHILIP A. BERTOCCI, ESQUIRE
LAURA MOSKOWITZ, ESQUIRE

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cc: Certificate of Service

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June 14, 2004, 2004

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In re Petition of Philadelphia Gas Works to Establish a Cash Receipts Reconciliation
Clause (Case No. P-00042090)

R-00049157

Dear Mr. McNulty:

Enclosed please find for filing an original and nine (9) copies of the Main Brief of Philadelphia Public Officials (also referred to as Senator Fumo, et. al.) in the above-referenced matter.

Should you have any questions, please do not hesitate to contact me at (717) 541-1194.

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	:	
v.	:	Docket No. R-00049157
Philadelphia Gas Works - 1307(f)	:	
	:	
Petition of Philadelphia Gas Works to	:	
Establish a Cash Receipts Reconciliation	:	Docket No. P-00042090 ✓
Clause	:	

**MAIN BRIEF OF
PHILADELPHIA PUBLIC OFFICIALS**

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 District Attorney, Lynne Abraham

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Dated June 14, 2004

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I. INTRODUCTION AND SUMMARY

Pursuant to 52 Pa. Code Section 5.502, Pennsylvania State Senators Vincent J. Fumo, Michael J. Stack and Anthony H. Williams, Philadelphia City Council President Anna C. Verna, and Philadelphia City Council Members James F. Kenney, Frank DiCicco, Michael A. Nutter, David Cohen, Joan L. Krajewski and Juan F. Ramos, and Philadelphia District Attorney, Lynne Abraham, in their individual capacities as utility ratepayers and in their official capacities as duly elected officials from Philadelphia (hereinafter collectively referred to as "the Philadelphia Public Officials"), hereby submit this Brief in Opposition to Philadelphia Gas Works' ("PGW's") petition in this proceeding.

Presently pending before the Pennsylvania Public Utility Commission ("Commission") is a Petition of PGW requesting that this Commission approve an extraordinary regulatory response to its "precarious" financial position. In this filing, PGW has requested approval of a Cash Receipts Reconciliation Clause ("CRRC"), which would adjust PGW's gas receipts in comparison to its billing and permit PGW to collect an additional amount in order to reach targeted cash receipts requirements.¹ PGW proposed that its uncollectible expense should be capped at the level set in its last fully litigated base rate case and that it be allowed to bill any receipts deficiency above that cap level in a surcharge "built into the distribution rates, but not listed as a separate charge on the bill".²

¹ PGW CRRC Petition at 2.

² PGW CRRC Petition at 3.

PGW maintains that in addition to providing a safety net for its cash receipts, the proposed CRRC mechanism will ensure that its credit rating will remain stable and it will allow PGW to raise additional necessary capital.³

Since the filing of PGW's CRRC request on March 1, 2004, several important events have occurred that have significantly improved the "precarious" financial position of PGW that served as the foundation for its original request:

In an April 23, 2004 report concerning a review of PGW's bond rating, Fitch Ratings⁴ noted that the City of Philadelphia appears committed to PGW, "as evidenced by a proposal to grant back its annual \$18 million payment from PGW in each of the next five years."⁵ As a result of this commitment from the City of Philadelphia, PGW acknowledged that its year end cash would improve from a negative \$5 million to \$31-\$36 million.⁶

In addition, the City of Philadelphia agreed to defer the due date for payment of an interest free \$45 million loan from 2006 to 2008.⁷

Equally significant, a Standard & Poor's⁸ rating report dated April 9, 2004 reflects that PGW successfully completed negotiations on a natural gas payment deferral arrangement, which permitted cash savings of \$10 million monthly for

³ PGW CRRC Petition at 3.

⁴ Fitch Ratings is a leading global rating agency providing the world's credit markets with accurate, timely and prospective credit opinions. Fitch Ratings is dual-headquartered in New York and London, operating offices and joint ventures in more than 50 locations and covering entities in more than 80 countries. Fitch Ratings is a wholly owned subsidiary of *Fimalac, S.A.*, an international business support services group headquartered in Paris, France.

⁵ PGW Statement CRRC-5 at TEK-2, p.1.

⁶ PGW Statement CRRC-1R at 3; See also, PGW Statement CRRC-1R at JRB-10.

⁷ PGW Statement CRRC-5 at TEK-1, p.2.

⁸ Standard & Poor's is the world's foremost providers of independent credit ratings, indices, risk evaluation, investment research, data and valuations.

the months of June, July and August, 2004, and provided PGW with greater savings than previously anticipated.⁹

Additionally, PGW's own projections concerning its FY 2004 "collection ratio" have risen from 89% in the original CRRC Petition, to somewhere between 90.46% and 93%, resulting in a projected increase in cash receipts of between \$12 and \$32 million.¹⁰

Based upon the evidence of record demonstrating 1) the significantly changed and improved cash receipts and financial circumstances of PGW; 2) PGW's failure to secure the prior approval of the Gas Commission and/or the Philadelphia City Council before petitioning this Commission for the imposition of the CRRC, in violation of local law; and, 3) the CRRC, as presented, violates the Public Utility Code and several well established precedents in utility rate making, the Philadelphia Public Officials urge this Commission to reject this extraordinary proposal for a CRRC mechanism.

II. AS A MATTER OF LAW, PGW LACKS THE AUTHORITY TO REQUEST APPROVAL OF ITS CRRC PROPOSAL WITHOUT PRIOR APPROVAL FROM THE GAS COMMISSION.

PGW management lacks the legal authority to affirmatively petition this Commission for regulatory relief on matters of significant management policy, such as the imposition of a surcharge on all Philadelphia gas customers, without the prior consultation and approval of the Philadelphia Gas Commission ("Gas Commission"). Although the Natural Gas Choice Act vests exclusive regulatory

⁹ PGW Statement CRRC-5 at TEK-1, p.2.

¹⁰ PGW Statement CRRC-1R at 2; See also, PGW Statement CRRC-1R at JRB-8.

authority with this Commission to set the rates at PGW – the authority of the City of Philadelphia (“City”), through the Gas Commission, to maintain control over the management, activities and functions of PGW are expressly reserved.¹¹

PGW is “an aggregation of assets belonging to the City of Philadelphia,” assets that are used to provide natural gas service to subscribers in the City.¹² The operation and management of PGW is delegated to the Philadelphia Facilities Management Corporation (“PFMC”) as provided for in the City Council (“Council”) Ordinance of December 29, 1972 (“Ordinance”).¹³

Pursuant to the Ordinance, the City entered a contract with the PFMC to operate and manage the City’s PGW asset.¹⁴ The Contract provides that the Gas Commission, an entity created by the Philadelphia Home Rule City Charter (“Charter”), shall oversee the operation of PGW by PFMC.¹⁵ Further, the Contract detailed that all powers not specifically granted to PFMC shall reside in the Gas Commission.¹⁶ It also does not extend affirmative powers by allowing PGW to directly petition this Commission regarding regulatory matters on behalf of the Gas Commission without prior consultation.¹⁷

Additionally, the Charter, which established the current form of government for the City, empowers the Council with the power to set the standards by which the rates and charges for natural gas service provided to Philadelphia’s citizens

¹¹ 66 Pa.C.S.A. § 2212(s).

¹² See, Testimony of Thomas E. Knudsen, Tr. at 392.

¹³ See, City Council Ordinance 455 of 1972.

¹⁴ Id.

¹⁵ Id. at §VI, 9.

¹⁶ Id.

¹⁷ See generally, City Council Ordinance.

would be fixed and regulated by the Department of Public Property.¹⁸ This executive power has been vested with the Gas Commission by way of the Contract.¹⁹ The Gas Commission, pursuant to the Contract and the Charter, has the power to make decisions involving policy matters which require PGW to seek Commission orders approving gas rates and charges for service provided by PGW, such as the senior citizen discounts.²⁰

The Natural Gas Choice Act transferred the power to set and regulate rates of PGW from the Gas Commission to the PUC; however, the act expressly reserved the authority of the City to control the management and operation of PGW, providing;

“[n]othing contained in this title shall be construed to abrogate or limit the executive or legislative powers of a city that owns a city natural gas distribution operation to legislate or otherwise determine the powers, functions, budgets, activities and mission of the city natural gas distribution operation . . . including, but not limited to the ownership, management or control thereof.”²¹

PGW neither sought nor received the approval of the Gas Commission and/or the Council prior to petitioning this Commission for the imposition of the CRRC.²² When asked if he sought approval from the City, PGW CEO Thomas E. Knudsen responded “[n]o, because I think the law is quite clear there is a separation of duties and responsibilities.”²³ As evidenced by the near unanimous opposition expressed at each public input hearing conducted in this

¹⁸ See, Philadelphia Home Rule Charter § 5-900 and 901.

¹⁹ See, Contract supra.

²⁰ See, Contract supra at §VII, 1.

²¹ 66 Pa.C.S.A. § 2212(s). The Act is currently the subject of a pending legal challenge. See, City Council of Philadelphia v. PUC, Nos. 32 & 33 EAP 2002 (Supreme Court of Pennsylvania).

²² See, Testimony of Thomas E. Knudsen, Tr. at 383

²³ Id.

case, as well as the strong opposition expressed by many of the elected officials from the City, the instant petition is the product of a management team that has acted outside of the legal authority of City Ordinances.

Based upon the above analysis, as a matter of law, PGW lacks the authority to submit regulatory requests concerning significant matters of policy to this Commission without the prior consultation and approval of the Gas Commission and/or Council. The proper mechanics for PGW to petition for regulatory approval of the CRRC would require that either the Gas Commission, using their executive powers over PGW, or the Council, exercising their legislative oversight of PFMC's management and operation of PGW, to formally approve PGW's request to petition this Commission **before** doing so. This process is analogous to other Utilities seeking the approval of their governing corporate boards before initiating significant management and/or policy changes.

PGW might argue that it has made filings with this Commission in the past which have had significant management and/or policy implications, without obtaining the prior approval of the Gas Commission and/or Council. However, failure to exercise one's rights under law in one instance can not reasonably be construed as a waiver of such rights under law for all time.

Accordingly, this Commission must reject PGW's CRRC Petition as an unauthorized exercise of significant management policy in violation of City Ordinances. Should the Commission decide to undertake a review of PGW's CRRC proposal, as outlined below, this Commission must also be aware that

PGW's proposed CRRC is contrary to numerous other important state laws and regulatory principles.

III. PGW'S PROPOSED CRRC VIOLATES SEVERAL WELL ESTABLISHED PRINCIPLES OF PUBLIC UTILITY LAW

a. As a Matter of Law, PGW's Proposed CRRC Violates 66 Pa.C.S. Section 1307(h) of the Public Utility Code as an Unverifiable Non-Gas Cost.

PGW argues that this Commission has the authority to establish a "sliding scale of rates or other method for the automatic adjustment of the rates of the public utility" for uncollectible expense which is associated with a sharp increase in the Purchased Gas Cost Rate pursuant to Section 1307(a).²⁴ At best, PGW is simply mistaken. At worst, PGW is simply wrong.

Under the Public Utility Code, 66 Pa.C.S §1307(h) defines "gas costs"²⁵ which are recoverable in a 1307(f) proceeding.²⁶ Uncollectible expenses associated with gas costs are not included therein. Moreover, unlike the fluctuating cost of gas, uncollectible expense associated with gas costs is also an expense that is largely within the control of the Company. In a recent Opinion and Order concerning PGW's Restructuring Plan, this Commission has previously recognized that under Pennsylvania law, uncollectible expense associated with gas costs may not be treated as gas costs under Section 1307(f)

²⁴ PGW CRRC Petition at 6.

²⁵ 66 Pa. C.S.A. 1307(h) defines the terms "natural gas costs" and "gas costs" to include the "direct costs paid by a natural gas distribution company for the purchase and delivery of natural gas to its system in order to supply its customers. Such costs may include costs paid under agreements to purchase natural gas from sellers; costs paid for transporting natural gas to its system; costs paid for natural gas storage service from others, including the costs of injecting and withholding natural gas from storage; all charges, fees, taxes and rates paid in connection with such purchases, pipeline gathering, storage and transportation; and costs paid for employing futures, options and other risk management tools...."

²⁶ 66 Pa.C.S §1307(h).

and 1307(h) (statutorily defining gas costs in a way which does not include gas costs associated with uncollectible expenses).²⁷ Accordingly, this Commission should reiterate that uncollectible expenses associated with natural gas costs should be recoverable through the Purchased Gas Cost Rate. The Pennsylvania Courts have also acknowledged that proceedings under Section 1307 should have "limited application and the PUC should not use it to disassemble the traditional rate-making process."²⁸ As evidenced by numerous initiatives of PGW which have resulted in significant improvements in their cash receipts since the filing of this Petition, this Commission should find that the uncollectible expense that provided the foundation for PGW's CRRC request, is largely within PGW's control.

OCA witness Richard W. Lelash criticized PGW's proposed CRRC on the grounds that a "reconciliation mechanism for cash receipts has no precedent in Pennsylvania utility regulation....[t]he measurement of uncollectible expenses is also a subjective estimate that is not subject to precise measurement."²⁹ OSBA's witness Robert D. Knecht testified that PGW's recovery mechanism is not consistent with cost causation factors.³⁰ Moreover, Mr. Knecht observed that:

"The CRRC mechanism as proposed by PGW, is an unbalanced and inequitable partial reconciliation mechanism because PGW would retain any collections achieved in excess of an arbitrary historical average level. In effect, if PGW's collections are poor, the (paying) ratepayers must pay for the shortfall, if

²⁷ Pennsylvania Pub. Util. Comm'n v. Philadelphia Gas Works, PUC Docket No. R-00021612 (Opinion and Order, March 31, 2003), at 26-28.

²⁸ Pennsylvania Industrial Energy Coalition v. Pennsylvania Pub. Util. Comm'n, 653 A.2d 1336, 1350 (Pa.Cmwlth. 1995), aff'd, 543 Pa. 307, 670 A.2d 1152.

²⁹ OCA Statement 1, at 8-9.

³⁰ OSBA Statement No. 1 at 12.

collections are strong, PGW pockets the profits. In light of the historic volatility of collection rates, this lack of balance is likely to put a serious burden on ratepayers...³¹

For all of the above reasons, this Commission should find that costs to be recovered under PGW's proposed CRRC are unverifiable, irreconcilable non-gas costs which violate Section 1307(h) of the Public Utility Code.

2. As a Matter of Law, PGW's CRRC Proposal is "Unjust and Unreasonable" in violation of 66 Pa.C.S. Section 1301.

It is well established that in reviewing any utility request for a rate increase, the Commission must apply the constitutionally based "just and reasonable" standard contained in Section 1301 of the Public Utility Code.³² Additionally, since this standard is constitutionally based, the Commission may not waive the standard pursuant to the Gas Choice Act Section 2212(c).³³ As a practical matter, this test requires a balancing of the interests of the utility against those of its customers to determine whether in impact and effect, the rate is just and reasonable.

PGW's CRRC request is unjust and unreasonable in a myriad of ways. *The record testimony of ratepayers, legislators and expert witnesses in this proceeding (other than PGW witnesses and OTS witness Weakley) is nearly unanimous in its opposition to PGW's CRRC request. A central theme in the opposition to the CRRC is that it is unfair, unjust and unreasonable to require PGW's paying customers to explicitly carry the financial burden of its non-paying*

³¹ Id at 11-12.

³² See, Federal Power Commission v. Hope Natural Gas Co., 320 U.S. 591, 602, 64 S.Ct. 281, 288 (1944); 66 Pa.C.S. §1301.

³³ 66 Pa.C.S. §2212(c).

customers.³⁴ Additionally, this Commission should find that the CRRRC is unjust, unreasonable and unfair to customers, because it transfers the risk of bad debt overruns from the Company to customers and requires no refund to customers when PGW's actual bad debt expense is less than that allowed in base rates.³⁵

The record testimony of OCA witness Lelash makes it clear that the proposed CRRRC is defective and unreasonable in its construction, because it does not accurately reflect a particular amount that would be allowed for uncollectibles. He states:

"In effect the Company's proposed surcharge would be based on estimates and not upon actual changes in uncollectibles. While the accounts receivable level is relevant to the Company's receipts and cash flow, it must be remembered that the CRRRC is to reflect variation from a benchmark level of uncollectibles. Indeed, the very benchmark uncollectible proposed by the Company is, itself, not appropriate. Mr. Bogdonavage's direct testimony at page 11 states that "PGW in its most recent fully litigated base rate case proceeding had a \$55.7 million uncollectible expense allowance incorporated in rates." However, since that fully litigated base rate case, PGW has been in for a subsequent base rate case. The last base rate proceeding authorized an increase of \$36 million in total revenues. However, that amount was associated with a "black box" settlement that did not explicitly or implicitly set any level of uncollectible expense. Rather, the amount was based on numerous cost of service elements including requirements to refund short-term debt, cover pensions and a host of other expense estimates. To say that a \$55.7 million uncollectible allowance was approved in a fully litigated base rate proceeding two rate cases ago, and then to use it as a benchmark for an automatic adjustment clause, is totally inappropriate and unreasonable."³⁶

³⁴ See, Transcripts of Public Input Hearings

³⁵ OCA St. 1, at 15-16; OSBA St. 1, at 25-26; OTS St. 1, at 5-6.

³⁶ OCA St. 1 at 19-20.

Accordingly, this Commission should conclude that PGW's CRRC request must be denied as unjust and unreasonable, in violation of 66 Pa.C.S. §1301 and deny this request.

3. As a Matter of Law, PGW's CRRC Proposal Violates the Prohibition Against "Single-Issue Ratemaking."

It is well settled that "[s]ingle issue ratemaking is ... prohibited if it impacts on a matter that is normally considered in a base rate case."³⁷ OCA witness Lelash describes PGW's CRRC proposal as a "material deviation from long established precedent of providing for recovery of uncollectible expense through base rates."³⁸ He further explains:

"...under PGW's CRRC proposal, the Company wants to carve out a single component of base rates – uncollectible expense – and make it subject to annual reconciliation. This is a clear departure from the way that base rates have historically been treated in Pennsylvania. The establishment of a CRRC constitutes "piecemeal" ratemaking which is not allowed within rate settings."³⁹

OSBA Witness Knecht also explained that such a policy is prohibited because it is "biased against ratepayers and biased in favor of a utility."⁴⁰ At the heart of this prohibition is a principle of "equity", which requires consideration of all revenues and costs in a balancing process for the formulation of just and reasonable rates. If PGW is allowed to seek rate recovery for this single financial issue in which it is underperforming, it will be permitted to avoid this

³⁷ See, Pennsylvania Industrial Energy Coalition v. Pennsylvania Pub. Util. Comm'n, 653 A.2d 1336, 1350 (Pa.Cmwlth. 1995), aff'd, 543 Pa. 307, 670 A.2d 1152.

³⁸ OCA St. 1 at 15.

³⁹ *Id.*

⁴⁰ OSBA St. 1 at 23

Commission's review of areas and matters where it might be out performing the revenue requirement established in its last base rates case.⁴¹ OSBA witness Knecht concluded:

“...a single issue reconciliation mechanism focused on cash reconciliation rates is not consistent with sound regulatory policy or utility rate design concepts. The dangerous aspects of a reconciliation mechanism are that it will eliminate PGW's incentive to improve collection effectiveness when they are needed the most, and it will create a precedent for every NGDC⁴² in Pennsylvania.”⁴³

Both OCA and OSBA witnesses have provided credible record testimony demonstrating that cash flow and uncollectible expense matters are typically considered in a base rate case. Both OCA and OSBA experts have concluded that PGW's proposed CRRC violates the traditional ratemaking prohibition on single-issue ratemaking.⁴⁴ Accordingly, this Commission should conclude that PGW has not met its burden of demonstrating that its need for a CRRC outweighs the sound and clear historic prohibition against single issue ratemaking, and reject this request.

4. As a Matter of Law, PGW's CRRC Request Violates the Prohibition against Retroactive Ratemaking

It is well established that rates are set prospectively and, in most cases, may not be adjusted to correct any benefit or disadvantage to the utility or the customers before the Commission approves a new rate.⁴⁵ The Commonwealth

⁴¹ Id.

⁴² (“NGDC” = Natural Gas Distribution Company)

⁴³ Id. at 31.

⁴⁴ OSBA St. 1, at 23, 31; OCA St. 1, at 15.

⁴⁵ See, Cheltenham & Abington Sewerage Co. v. Pennsylvania Pub. Util. Comm'n., 344 Pa. 366, 373, 25 A.2d 334, 338 (1942); see also Columbia Gas of Pa. v. Pennsylvania Pub. Util. Comm'n., 149 Pa. Cmwlth. 247, 252, 613 A.2d 74, 76 (1992) (“Ratemaking is prospective in nature, that is, once established by the Commission, base rates are final for the period in which they apply.”) (*emphasis in original*).

Court has explained that “the Commission clearly may not establish rates which are calculated to retroactively recover surpluses or refund deficits created by inaccuracies in its prior rate authorizations.”⁴⁶ Moreover, “the general principle is that customers who use power should pay for its production rather than requiring future customers to pay for past use.”⁴⁷

PGW’s proposed CRRC would allow the Company to collect an under collection realized in FY 2004, on a 3-year amortized basis, to recognize the time period over which this problem arose and, purportedly, to mitigate the effect upon customers.⁴⁸ PGW projects that this “E” factor based on fiscal year 2004 shortfalls will cost customers \$11.4 million annually over three years.⁴⁹

The record testimony of OSBA witness Knecht explains the core problem with this aspect of PGW’s CRRC proposal as an “intergenerational unfairness.”

He states:

“It is important to recognize that any reconciliation mechanism, including the PGC E-factor⁵⁰, discourages economic efficiency and results in some level of intergenerational inequity. Nevertheless, the advantages of the purchased gas cost reconciliation mechanism are deemed to outweigh the disadvantages. First, purchased gas costs are particularly volatile and are deemed to be beyond the control of the utility. Thus, regulators have concluded that the economic inefficiencies associated with retroactive rates are relatively small. Second, regulators have worked to minimize intergenerational problems, by having regular adjustments to the PGC rates (quarterly in Pennsylvania)

⁴⁶ See, Supra at 40.

⁴⁷ See Cheltenham & Abington Sewerage Co. v. Pennsylvania Pub. Util. Comm’n., 344 Pa. 366, 373, 25 A.2d 334, 338 (1942); see also Columbia Gas of Pa. v. Pennsylvania Pub. Util. Comm’n., 149 Pa. Cmwlth. 247, 252, 613 A.2d 74, 76 (1992) (“Ratemaking is prospective in nature, that is, once established by the Commission, base rates are final for the period in which they apply.”) (emphasis in original).

⁴⁸ CRRC Petition, at 13.

⁴⁹ PGW St. No. CRRC 1, at 12.

⁵⁰ The PGC E-factor is the Purchased Gas Costs adjustment measure that is used to

"These considerations do not apply to collection rates or PGW's CRRC. PGW has significant control over its collection rates. PGW's own filing indicates that it expects to achieve a significant improvement in its collections rate in FY 2004 as a result of its CRI program. As I noted earlier, the CRRC will weaken that incentive. In addition, PGC customers are aware that their gas costs will be reconciled in the future. By way of contrast, PGW's customers had no warning that they were going to be required to pay for PGW's under-collections in FY 2004 until PGW filed its application. As such, the intergenerational unfairness problems with PGW's proposal are more severe than the known and recognized PGC E-factor."⁵¹

Similarly, OCA witness Lelash testified that "...the amortization of uncollectible costs for the year ended August 31, 2004 should be eliminated because recovery of such costs would constitute retroactive ratemaking."⁵²

The analysis above is intended to demonstrate that all aspects of PGW's CRRC proposal violate well established principles of public utility law. However, if the Commission determines that it wishes to approve any aspect of the CRRC, this Commission must be aware that PGW has not demonstrated, and can not demonstrate, that the amount it wishes to amortize based on uncollectibles in fiscal year 2004 is an "extraordinary" and "non-recurring" expense warranting an exception to the prohibition against retroactive ratemaking. Accordingly, this Commission should reject PGW's current CRRC proposal on the grounds that violates this important ratemaking principle.

⁵¹ OSBA St. 1, at 30-31.

⁵² OCA St. 1 at 9.

IV. WHILE PGW HAS ACKNOWLEDGED THAT IT HAS SEVERAL AVAILABLE OPTIONS FOR INCREASING ITS CASH RECEIPTS, PGW HAS FAILED TO DEMONSTRATE WHY SUCH OPTIONS AND CHANGES IN ITS CIRCUMSTANCES SINCE THE FILING OF ITS PETITION DO NOT ADEQUATELY ADDRESS ITS CASH RECEIPTS CONCERNS.

1. Burden of Proof

Under 66 Pa.C.S. §332(a), as the “proponent” of an Order granting PGW’s request for a CRRC, PGW clearly has the “burden of proof” regarding each element of its claim. Specifically, PGW has the burden of proving that it’s FY 2004 year end cash circumstances and early FY 2004 financial prospects demonstrate an Impending crisis justifying such an extraordinary measure as the CRRC.⁵³ The Pennsylvania Supreme Court has determined that the party with the burden of proof must do more than simply establish a prima facie case. The party with the burden of proof must meet that burden with evidence which proves its cause of action with such weight as to preclude all reasonable inferences to the contrary.⁵⁴

Since the filing of PGW’s CRRC request on March 1, 2004, several important events have occurred which have significantly improved the “precarious” financial position of PGW which served as the foundation for PGW’s original CRRC request:

In an April 23, 2004 report concerning a review of PGW’s bond rating, Fitch Ratings noted that the City of Philadelphia appears committed to PGW, “as evidenced by a proposal to grant back its annual \$18 million payment from PGW

⁵³ See, Replogle v. Pennsylvania Electric Co., 54 Pa. PUC 528, 530 (1980).

⁵⁴ Burleson v. Pa. P.U.C., 501 Pa. 433, 461 A.2d 1234, (1983)

in each of the next five years.⁵⁵ As a result of this commitment from the City of Philadelphia, PGW' acknowledged that it's year end cash would improve from a \$5 million deficit to a positive \$31-\$36 million.⁵⁶

In addition, the City of Philadelphia agreed to defer the due date for payment of an interest free \$45 million loan from 2006 to 2008.⁵⁷

Equally significant, PGW successfully completed negotiations on a natural gas payment deferral arrangement, which permitted cash savings of \$10 million monthly for the months of June, July and August, 2004, and provided PGW with greater savings than had been anticipated when PGW was considering earlier arrangements which would have permitted savings of approximately \$4.9 million monthly for those same months.

PGW's own projections concerning its FY 2004 "collection ratio" have risen from 89% in the original CRRC Petition, to somewhere between 90.46% and 93%, resulting in a projected increase in cash receipts of between \$12 and \$32 million.⁵⁸

Additionally, as demonstrated below, PGW has acknowledged that it has several available options for increasing its cash receipts; including, a base rate proceeding, continued improvement in its collection efforts, receiving increased funding for greater numbers of LIHEAP eligible customers, and requesting Commission approval of modifications to some requirements to Chapter 56 of the Commission's regulations. Based upon the above-described significant

⁵⁵ PGW Statement CRRC-5 at TEK-2, p.1.

⁵⁶ PGW Statement CRRC-1R at 3; See also, PGW Statement CRRC-1R at JRB-10.

⁵⁷ PGW Statement CRRC-5 at TEK-1, p.2.

⁵⁸ PGW Statement CRRC-1R at 2; See also, PGW Statement CRRC-1R at JRB-8.

changed circumstances and the other available options for PGW to address its cash receipts concerns, this Commission should conclude that PGW has not adequately met its burden of demonstrating the necessity for adoption of its proposed CRRC or adequately explained why such available options are inadequate to address its cash receipts concerns.

2. PGW Has Failed to Demonstrate That a Base Rate Case Would Not Obviate The Need For Its Proposed CRRC

The record in this proceeding demonstrates that PGW has consistently described its CRRC proposal as a “back stop” or “fail safe” mechanism.⁵⁹ PGW’s CEO, Thomas Knudsen actually admitted that the Company has several other available options to increase its cash flow.⁶⁰ Additionally, both Mr. Knudsen and PGW’s Senior Vice President for Finance, Joseph R. Boogdonavage, agreed that the creation and submission of PGW’s CRRC proposal was not requested by any of the financial rating or reporting agencies, such as Standard & Poors.⁶¹ Further, on cross-examination from counsel for Philadelphia Public Officials, Mr. Knudsen admitted that the CRRC proposal in this proceeding was “his idea.”⁶² However, the record reflects that what reporting agencies really want is for PGW to simply “get money in the door.”⁶³

In direct response to the question: “If the Commission did not approve PGW’s CRRC proposal, aren’t there other ways in which PGW can increase its cash on hand?”, Mr. Knudsen stated:

⁵⁹ See, Rebuttal Testimony of Joseph R. Bondonavage at p.5, line 20

⁶⁰ See, Tr. at 382 to 392.

⁶¹ See, Tr. at 342 & 385.

⁶² Tr. at 384.

⁶³ Tr. at 385.

"I think Mr. Hicks you hit the nub of the conversation. If we don't get something and nothing else changes then what do I have left but a base rate increase, which I find that immoral. If I have to add, if I have to go from something between zero and 47 in this filing -- and Mr. Bogdonavage and I have put together a number -- at a minimum we would ask \$70 to \$90 million at a base rate, I think is wrong.⁶⁴"

Notwithstanding Mr. Knudsen's judgmental reference to the "immorality" of a base rate case, the record in this proceeding demonstrates that Mr. Knudsen and PGW are well aware that PGW can have its cash receipts concerns addressed directly in a base rate proceeding. It is equally clear that PGW is aware that a base rate proceeding would require PGW to explain and/or justify any rate increase request to the Commission; respond to examination and discovery from parties and might result in the Commission denying or approving substantially less of an increase than PGW might request. Arguably, PGW would have less control in a base rate proceeding over the scope of the review than they have in this proceeding. This fact is illustrated in the following on-the-record exchange between counsel for the Philadelphia Public Officials and Mr. Knudsen:

"Q. In a base rate proceeding, PGW would have to reflect its entire base rate and have those all reviewed, wouldn't they?"

"A. Correct."

"Q. In the process of reviewing its entire base rate filing the Commission would have an opportunity to look at what PGW is doing well and what PGW is not doing so well?"

⁶⁴ Tr. at 387.

"A. Absolutely.

"Q. In fact PGW's request, let's assume it were \$70 million, could in fact be reduced by the Commission significantly, couldn't it?

"A. It could.

"Q. I would not surmise it would be increased by the Commission, but what PGW requested in a base rate increase wouldn't necessarily be what resulted from a Commission proceeding, would it?

"A. No."⁶⁵

Notwithstanding the broader scope of a base rate proceeding, it is likely one of the most viable option available to PGW for addressing its long term cash receipts concerns. Accordingly, this Commission should reject PGW's CRRC request and find that it has failed to demonstrate that its financial needs should not be addressed in its next base rate increase proceeding.

3. PGW has Failed to Demonstrate Why Its' Continued Efforts to Increase Collections Do Not Adequately Address Its Cash Receipts Concerns

At the time of the filing of the CRRC Petition, PGW projected that its collections ratio (the ratio of total annual billings to total annual collections) for FY 2004 would be 89%, "only slightly better than" the 86.5% FY 2003 results, and well below the pro forma 92.4% figure which was the basis for its allowed uncollectible expense in the Company's last litigated base rate case (1991).⁶⁶ In these proceedings, PGW has testified that in 2003, each percentage point that

⁶⁵ Tr. at 389.

⁶⁶ Pennsylvania Pub. Util. Comm'n v. PGW, R-00006042, Opinion and Order (October 12, 2001)

the collections ratio was below 92.4% meant approximately \$8 million less in cash collections.⁶⁷

In its original Petition for a CRRC mechanism, PGW asserted that "The cash collections shortfalls that PGW is experiencing is robbing PGW of cash working capital that is crucial if it is to avoid a financial crisis which, in turn, would harm PGW's customers."⁶⁸ This Commission must also take note that since the filing of its Petition, PGW's own projections concerning its FY 2004 "collection ratio" have risen from 89% in the original CRRC Petition, to somewhere between 90.46% and 93%, resulting in a projected increase in cash receipts of between \$12 and \$32 million.⁶⁹

In addition, the record testimony of PGW CEO Knudsen further demonstrates that if PGW continues to manage its collection efforts in the way that it has done so in recent months, such efforts alone would obviate the need for a CRRC mechanism. The following brief on-the record exchange with Mr. Knudsen makes that clear:

"Q. Is 95, 96 percent the number at which PGW's cash position improves sufficiently so as not to require a CRRC?

"A. Two answers. An absolute, yes. I think if we were able to get another \$35 million out of cash collections we would be up in the 95, 96 range. It would obviate the need for CRRC."⁷⁰

Accordingly, in light of all of the above-mentioned changed circumstances and the particular significant improvements in PGW's

⁶⁷ PGW St. CRRC-1, at 5.

⁶⁸ PGW CRRC Petition at 2.

⁶⁹ PGW Statement CRRC-1R at 2; See also, PGW Statement CRRC-1R at JRB-8.

⁷⁰ Tr. at 390-391.

collections percentage for FY 2004, which served as the factual foundation for this filing, this Commission should conclude that PGW has failed to demonstrate that its CRRC proposal is necessary.

4. The Response of the City of Philadelphia to the Suggestion of this Commission Granting the \$18 Million Loan Payment to PGW for Five Years Supports the Conclusion that PGW's CRRC Proposal Should Be Rejected.

In the April 12, 2002 Opinion and Order of this Commission in the Petition of Philadelphia Gas Works for Extraordinary Rate Relief Pursuant to 66 Pa.C.S. §1308(e), this Commission offered the following suggestion to PGW:

"An additional way for PGW to improve its liquidity and financial picture would be for the City to restructure the terms of the \$45 million City loan while granting back all or some of the \$18 million annual City payment as projected revenues for at least the next three years. The record indicates that this could provide PGW with additional capital of up to 45 million at the end of three years....While we have no authority to condition approval of extraordinary rate relief on these measures, we strongly urge the City and PGW to seriously consider these opportunities."⁷¹

The record in this proceeding reveals that the City has now committed to grant back the \$18 million payment for FY 2004 and for the years FY 2005 through FY 2008. In the Rebuttal Testimony, PGW's chief financial officer, Joseph Bogdonavage testified that the City has committed to grant back the \$18 million City payment for FY 2004, and this commitment is reflected on Exhibits JRB-10.⁷² CEO Knudsen confirms the City's "professed willingness" to grant

⁷¹ *Petition of Philadelphia Gas Works for Extraordinary Rate Relief Pursuant to 66 Pa.C.S. §1308(e)*, PUC Docket No. R-00017034F0002, Opinion and Order, April 12, 2002, at 28.

⁷² PGW St. CRRC-1R, at 3.

back the \$18 million City payment at the end of FY 2004.⁷³ Additional evidence that such a grant back is certain is contained in the statements of Fitch. Fitch states that the City appears "committed to PGW's success, as evidenced by a planned repayment date extension of its \$45 million loan given in 2000 and a proposal to grant back its annual \$18 million payment from PGW in each of the next five years..."⁷⁴

This Commission should conclude that the City of Philadelphia's grant back of its annual \$18 million dollar payment from PGW, together with all of the other significant changes in circumstances since the filing of this Petition, obviates the need for a CRRC.

V. OTS' ALTERNATIVE PROPOSAL SHOULD ALSO BE REJECTED BY THE COMMISSION

OTS witness Charles T. Weakley, III presented an alternative to PGW's CRRC.⁷⁵ In essence, OTS proposes to adjust the allowance for uncollectible expense upward or downward with each change in the 1307(f) rate Mr. Weakly sought to remove the volatility of gas prices as a contributor to the potential cash flow problem.⁷⁶

In his rebuttal testimony, OSBA witness Knecht provided a detailed evaluation of OTS' proposal.⁷⁷ Mr. Knecht noted that while OTS' proposal has fewer serious problems than the PGW proposal. For example: 1) It does not constitute retroactive ratemaking, since OTS rejects PGW's proposal to include

⁷³ PGW St. CRRC-5.

⁷⁴ Fitch Statement (April 23, 2004), PGW St. No. CRRC 5, Exhibit TEK-2.

⁷⁵ See, OTS St. No. 1 at 10-21.

⁷⁶ Id. at 10.

⁷⁷ See, OSBA St. No. 2.

uncollectible or under-collections costs for FY 2004 in the charge; 2) It is balanced, in that it can, at least theoretically, be a charge or a credit; 3) It does not eliminate PGW's incentive to collect its bills; and, 4) It focuses only on gas costs.)⁷⁸

Even though the OTS's proposal appears to have fewer problems than the CRRC proposal of PGW, OSBA witness Knecht expressed significant concerns regarding the effect of OTS' proposal and identified "several basic flaws."⁷⁹ Knecht stated:

"Weakley proposes to apply the surcharge on a volumetric basis to all firm sales and firm transportation customers. In essence, Mr. Weakley proposes to burden PGW's already high distribution rates with another \$0.3614 per Mcf.⁸⁰

"...Mr. Weakley proposes to apply the charge to firm transportation customers. While I doubt PGW has many firm transportation customers, it is simply wrong to charge transportation customers for the uncollectible costs associated with gas supply service. Since transportation customers do not cause PGW to incur gas supply costs, it is neither efficient nor equitable to charge them for those costs. Second, and more importantly, Mr. Weakley fails to recognize that the responsibility for uncollectible costs varies significantly between classes.

"By his own admission (page 9), Mr. Weakley indicates that his proposal is not consistent with the principle of avoiding single-issue ratemaking. Mr. Weakley's only apparent justification for violating this rule is that Standard & Poors has recently lowered PGW's bond rating, and that OTS is empowered by statute to violate the single issue ratemaking rule if it deems doing so to be in the public interest....

⁷⁸ Id. at 6-7.

⁷⁹ Id. at 7.

⁸⁰ In fact, the rate impact on regular service customers will be greater than the \$0.3614 per Mcf proposed by Mr. Weakley. For the reasons detailed in his direct testimony, CRP and SCD customers would either not pay or pay only a fraction of that charge. The unpaid amount would be shifted to the PGW's USC [Universal Service Charge]. The multiplier effect implies that the actual cost of the OTS surcharge to regular customers will be about \$0.43 per Mcf.

"Under Mr. Weakley's interpretation of the public interest, utilities would be allowed to file partial base rate cases, seeking increases in rates for only those cost categories in which costs have increased. I do not agree that allowing utilities to follow such strategies is in the public interest."⁸¹

OTS' proposal to shift the financial burden of their surcharge proposal to firm transportation customers and engage in single issue ratemaking is not justified by the law or evidence of record in this proceeding. Moreover, OTS witness Weakley acknowledges that the "practical effect of the mechanism he proposes would be an increase in rates to PGW customers."⁸²

For all of the reasons outlined above, this Commission should deny OTS' proposed surcharge in this proceeding.

VI. IF PGW DESIRES RELIEF FROM THE REQUIREMENTS OF CHAPTER 56 OF THE COMMISSION'S REGULATIONS IT SHOULD IMMEDIATELY SEEK THE APPROVAL OF THE GAS COMMISSION AND/OR COUNCIL AND FILE FOR SUCH RELIEF.

As discussed above, the Philadelphia Public Officials believe that the financial condition of PGW has improved since the filing of the instant Petition, and continues to improve, sufficiently obviating the need for a CRRC. Nevertheless, should the Commission deny PGW's CRRC request, it is ALSO important for the Commission to promote, encourage and explore **all** legally viable options which might create an opportunity for PGW to further, and more permanently, improve its cash receipts. One such viable option was presented on May 27, 2004, in the Motion of Commission Chairman Terrance Fitzpatrick.

⁸¹ OSBA St. No. 2. at 10-12.

⁸² Tr. at 437.

In addition to initiating an investigation regarding PGW's financial and collection problems, Chairman Fitzpatrick wrote:

"In the public debate over the CRRC, some have argued that PGW's collection efforts have been impeded by protections contained in the Commission's regulations. If PGW files a petition within thirty (30) days of entry of this Order seeking a waiver of any regulations, the Commission will consolidate that petition with this investigation.⁸³ If PGW does not file such a petition, the Commission will conclude that our regulations do not impede PGW's collection efforts.⁸⁴

The Philadelphia Public Officials concur in the recommendation of Commission Chairman Terrance Fitzpatrick. If PGW believes that its collection efforts have been impeded by protections contained in the Commission's regulations, and desires to seek a waiver of any Commission regulations, such a request would invariably be a matter of significant management and policy implications and require the prior approval of the Gas Commission and/or Council. We urge PGW to immediately seek the approval of the Gas Commission and/or Council and to file such a Petition with the Commission to have such petition consolidated with the newly formulated Investigation Into Financial And Collection Issues Regarding The Philadelphia Gas Works at Docket Nos. P-00042090; R-00049157; M-00021612 and P-00032061. This process will permit the creation of a factual record which will permit the

⁸³ At this place in the Chairman's Motion , Footnote #2 provides as follows: "In the event PGW files a waiver petition, it should propose the duration of the waiver, as well as an alternative standard or procedure that would apply in place of those contained in the regulations. It would be PGW's responsibility to explain in such a petition how the alternative standard or procedure adequately balances consumer protection rights with PGW's financial integrity."

⁸⁴ See, Motion of Chairman Terrance J. Fitzpatrick, May 27, 2004, Docket Nos. P-00042090, R-00049157, M-00021612 & P-00032061 at p. 3

Commission to address any and all Commission regulations which may impede PGW's collection efforts.

We specifically urge PGW to raise concerns regarding the following issues:

- (1) requiring deposits for customers who have been terminated for non-payment;
- (2) payment of the full balance for delinquent Level 4 customers (at or above 350% of federal poverty guidelines);
- (3) narrowly defining exceptions for only one delinquent payment agreement;
- (4) shortening payment agreement timelines for level 4 customers; (at or above 350% of federal poverty guidelines);
- (5) streamlining termination processes based on the financial means of customers;
- (6) allowing winter termination for delinquent customers who refuse payment agreements;
- (7) permitting one day terminations if PGW's collection office is open and manpower exists to reconnect the customer the following day; and,
- (8) permitting PGW to utilize automatic-meter-reading technology for developing customer bills.⁸⁵

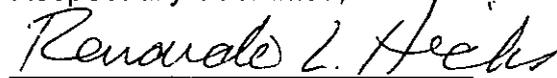
⁸⁵ Not all of the Philadelphia Public Officials, consisting of Pennsylvania State Senators Vincent J. Fumo, Michael J. Stack and Anthony H. Williams, Philadelphia City Council President Anna C. Verna, and Philadelphia City Council Members James F. Kenney, Frank DiCicco, Michael A. Nutter, David Cohen, Joan L. Krajewski and Juan F. Ramos, and Philadelphia District Attorney, Lynne Abraham, support all of the items presented herein for consideration; however, we present this finite list of issues as a reasonable foundation for a Petition which could be addressed in the same time frame as the investigation initiated by Chairman Fitzpatrick's Motion.

VII. CONCLUSION

Based upon the substantial evidence of record demonstrating 1) the significantly changed and improved cash receipts and financial circumstances of PGW; 2) PGW's failure to secure the prior approval of the Gas Commission and/or the Council before petitioning this Commission for the imposition of the CRRC; and, 3) the CRRC, as presented, violates the Public Utility Code and well established precedents in utility rate making, the Philadelphia Public Officials urges this Commission to reject this extraordinary proposal for a CRRC mechanism.

This Commission should also conclude that OTS' proposal to shift the financial burden of their surcharge proposal to firm transportation customers and engage in single issue ratemaking is not justified by the law or evidence of record in this proceeding and must be rejected.

Respectfully Submitted,



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Juan F. Ramos, and Philadelphia
District Attorney, Lynne Abraham

Dated: June 14, 2004

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	:	
v.	:	Docket No. R-00049157
Philadelphia Gas Works - 1307(f)	:	
	:	
Petition of Philadelphia Gas Works to	:	
Establish a Cash Receipts Reconciliation	:	Docket No. P-00042090
Clause	:	

CERTIFICATE OF SERVICE

I, Renardo L. Hicks, hereby certify that I have this day served a copy of the Main Brief of Pennsylvania State Senator Vincent J. Fumo, *et al* (A/K/A Philadelphia Public Officials), via overnight mail, postage prepaid, upon the participants listed below in accordance with the requirements of 52 Pa. Code Section 1.54 (related to service by a participant) and 1.55 (related to service upon attorneys).

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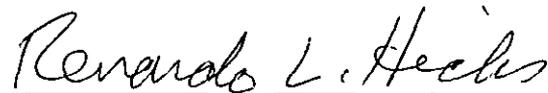
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June 14, 2004

ORIGINAL

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17105-3265

DOCUMENT
FOLDER

Re: Pennsylvania Public Utility Commission

v.

Philadelphia Gas Works
Docket No. R-00049157

Petition of Philadelphia Gas Works to Establish
a Cash Receipts Reconciliation Clause
Docket No. P-00042090

Dear Secretary McNulty:

Enclosed for filing please find an original and nine (9) copies of the
Main Brief of the Office of Trial Staff (OTS) in the above-captioned proceeding.

Copies are being served on all active parties of record.

Sincerely,

Johnnie E. Simms
Senior Prosecutor
Office of Trial Staff

SECRETARY'S BUREAU

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Enclosure

c: Parties of Record
Office of Special Assistants

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

Pennsylvania Public Utility Commission :

v. :

R-00049157

Philadelphia Gas Works :

Petition of Philadelphia Gas Works to :
Establish a Cash Receipts Reconciliation :
Clause :

P-00042090

DOCKETED
JUN 16 2004

**DOCUMENT
FOLDER**

MAIN BRIEF
OF THE
OFFICE OF TRIAL STAFF

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Date: June 14, 2004

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I. STATEMENT OF THE CASE

On March 1, 2004, Philadelphia Gas Works (“PGW” or “Company”) submitted its annual Purchased Gas Cost (“PGC”) in accordance with Section 1307(f) of the Public Utility Code, 66 Pa. C.S. Section 1307(f), and the regulations of the Public Utility Commission (“Commission”) at 52 Pa. Code Section 53.64 et seq. Additionally, PGW sought to establish its 2004-05 proposed Restructuring and Universal Service Surcharge. Concomitantly with the filing of its PGC, PGW filed a Petition to establish a Cash Receipts Reconciliation Clause (“CRRC”) at P-00042090. By way of further background, in its CRRC Petition PGW is seeking to establish a mechanism to reconcile on a timely basis the actual uncollectible expense to the allowance for the uncollectible expense that the Company is allowed to recover through base rates.

The PGC Filing and the CRRC Petition were assigned to the Commission’s Bureau of Administrative Law Judges.¹ On March 15, 2004, a prehearing conference was held before Administrative Law Judge Charles E. Rainey, Jr. in the above-captioned proceeding. Along with discussing other matters including the procedural schedule, Administrative Law Judge Rainey informed the parties that after considering the Motion for Consolidation and the opposing parties’

¹ Along with its March 1 PGC Filing, PGW filed a motion to consolidate the two proceedings.

Answers, he would be granting the motion to consolidate and codified the granting of the motion in the Prehearing Order dated March 17, 2004.²

In accordance with Prehearing Order, the Office of Trial Staff (“OTS”) filed the direct testimony of its witnesses, Charles T. Weakley, III and Gary Yocca on or about April 13, 2004. Further Mr. Weakley filed surrebuttal testimony on May 7, 2004. Evidentiary hearings in the proceeding were held in Philadelphia on May 11, 2004. On May 28, 2004, the parties submitted a Joint Petition for Settlement in PGW’s 2004-2005 Purchased Gas Cost Rate Filing to Administrative Law Judge Charles E. Rainey, Jr.

Accordingly, the only question for consideration by the Pennsylvania Public Utility Commission, given the financial status of PGW, is whether PGW will be allowed to implement a surcharge to address the impact of rising gas costs has on PGW’s uncollectibles on a timely basis.

² See Tr. 9.

II. SUMMARY OF ARGUMENT

PGW is a municipally-owned gas utility serving approximately 500,000 residential customers and approximately 19,000 industrial and commercial users. By way of background, the ratemaking methodology applicable to PGW prior to July 1, 2000, when the Commission assumed jurisdiction over PGW under the “The Natural Gas Choice and Competition Act (“Gas Choice Act”)³ is the “cash flow” methodology. The “cash flow” rate methodology was adopted by Section 2212(e) of the Gas Choice Act. Section 2212(e) requires the Commission, when determining PGW’s revenue requirement and approving overall rates and charges,” to “follow the same ratemaking methodology and requirements that were applicable to [PGW] prior to the assumption of jurisdiction” by the Commission over PGW until all “approved bonds have been retired, redeemed, advance refunded or otherwise defeased.” Accordingly, since none of PGW “approved bonds have been retired, redeemed, advance refunded or otherwise defeased”, the Commission continues to be required to apply the “cash flow” methodology.

In addition to being required to rely on the “cash flow” methodology for ratemaking purposes, the Commission is also required to satisfy PGW’s bond ordinance covenants and make an allowance to permit the transfer or payment to the City of an annual payment.⁴

³ The Natural Gas Choice and Competition Act (“Gas Choice Act”) is Section 3 of the Act of June 22, 1999 (P.L. 122, No. 1999-21), 66 Pa. C.S. Sections 2201-12.

⁴ 66 Pa. C.S. Section 2212(f).

As previously noted by way of a Petition, PGW is proposing to establish a Cash Receipts Reconciliation Clause (“CRRC”) in order to reconcile its projected and actual cash receipts with billed revenues.⁵ According to PGW, the CRRC is being proposed to recognize the effects that high natural gas costs have had on its uncollectible accounts expense. With the increases in natural gas costs, PGW apparently has seen increases in the amount and percentage of non-payment by customers.

In an attempt to compensate for the increases in the amount and percentage of non-payment by customers, PGW proposes that its CRRC be initially authorized for two years and be established as a non-bypassable surcharge to be charged to all firm transportation and sales customers as part of the distribution rate. OTS respectfully submits that the technical flaws in the proposed CRRC mechanism are so numerous as to make the any adoption of PGW’s proposed mechanism unacceptable.

Notwithstanding the technical flaws of PGW’s proposed CRRC mechanism, the concept must be considered in light of the statutory mandates of the annual payment to the city, the required bond coverage and the cash margins available at the close of the fiscal year along with the Standard and Poor’s pronouncement of April 9, 2004 regarding the near term cash margins of PGW. Accordingly, while rejecting PGW’s mechanism, but considering the concept, OTS has proposed a mechanism that will require any change in 1307 rates be

⁵ OTS Statement No. 1 at page 1.

grossed-up or down for uncollectible accounts expense similar to what was once done for gross receipts tax.⁶ The amount of the adjustment would be based on the application of the most recent Commission approved write-off ratio. OTS's mechanism will eliminate all estimates, the need for an E-factor, the need for an annual reconciliation, revenue projections and cash flow audits, the retro-active aspects of PGW's proposal, the disincentive to improve collection efforts and the one-sided characteristics of PGW's proposal.

It must be noted that OTS is not proposing an alternative mechanism because of an overwhelming desire to do so, but rather a short-term mechanism as proposed by OTS may be enough to overcome the worries of the credit rating agencies, and allow the Commission and the other parties the time that is required to adequately address the problems of PGW on a long term basis.

⁶ As such, the OTS mechanism will be a separate surcharge and not be included in PGW's 1307(f) rate.

**III. THE COMMISSION MUST ADDRESS THE NEAR
TERM CASH MARGIN NEEDS OF PGW
IN ADOPTING THE MECHANISM
PROPOSED BY OTS**

1. Introduction

On April 9, 2004, Standard & Poor's lowered PGW's Senior Bond Rating to BBB-, which placed PGW in the indisputable position of being rated slightly above junk bonds among the big lenders.⁷ Most significant, the Standard & Poor's Report as presented in PGW Exhibit TEK-1 succinctly pronounced *inter alia* as follows:

Ratings will be lowered further if PGW's financial profile weakens over the *near term* and collection rates and *cash margins* do not improve materially. Additionally, any of the following events could have negative ratings implications: if access to short-term borrowing is restricted, if suppliers place additional liquidity demands on PGW, or if certain support from the city is not forthcoming. The lowered ratings are predicated on the city providing annual payment forgiveness to PGW for at least the next four years, and on the city allowing PGW to defer its \$45 million loan payable until 2008. (Emphasis Added).

Upon reviewing the April 9, 2004 Standard & Poor's pronouncement regarding PGW financial profile, OTS was placed in the inevitable position of either disregarding the pronouncement or scrutinizing the pronouncement in a manner that would be in the public interest.⁸ Like other parties upon reviewing the March 1, 2004 filing, OTS was skeptical about the need for a CRRC mechanism,

⁷ PGW Exhibit TEK-1.

⁸ The Office of Trial Staff shall be responsible for and shall assist in the development of, challenge of and representation on the record of all matters in the public interest 66 Pa. C.S.A. Section 306 (b)(1).

however after reviewing the responses to interrogatories and with the April 9, 2004 pronouncement, OTS began to realize that something other than improve collection efforts and the filing of a general base rate case had to be put forth in this instant proceeding.

In that regard, with the prospect of Standard & Poor's lowering PGW's credit rating, if in the *near term* the Company's collection rates and *cash margins* did not materially improve, OTS reached the conclusion that there were only two alternatives available for the Commission's consideration:

1. An adoption of PGW's CRRC proposal; *or*
2. A rejection of PGW'S CRRC proposal.

After finding numerous flaws in PGW's CRRC proposal and considering the Standard & Poor's April 9, 2004 pronouncement, it has become obvious that PGW's customers would be paying higher costs for a long time to compensate for the lowering of PGW's credit rating if another proposal was not presented for the Commission's consideration in this proceeding. Accordingly, the Office of Trial Staff has presented an alternative proposal for the purposes of providing a short-term solution to improve immediately and materially PGW's near term cash margins. OTS respectfully submits that a failure not to improve immediately and materially PGW's near term cash margins may result in placing the customers in the inevitable position of paying higher increasing costs for a longer period of time than the two years recommended by OTS.

2. PGW's CRRC Proposal is Deficient and Should Not Be Adopted.

As previously noted, PGW has proposed a Cash Receipt Reconciliation Clause ("CRRC") to recognize the effects that high natural gas costs have had on uncollectible accounts expense. It appears that due to increases in natural gas costs, PGW has seen increases in the amount and percentage of non-payment by customers.⁹

In this proceeding, PGW is proposing that its CRRC be initially authorized for two years and be established as a non-bypassable surcharge to be charged to all firm transportation and sales customers as part of the distribution rate. OTS respectfully submits that the CRRC mechanism as proposed is seriously flawed and should be rejected. As will be discussed later, OTS will be proposing an alternative mechanism, however at this point OTS will present for the Commission's consideration the flaws of the Company's mechanism.

In that regard, what PGW is actually proposing with its CRRC proposal is a "make whole" mechanism rather than a "true-up" mechanism, which is inappropriate. PGW's "make whole" proposal is created because if collection levels result in an estimated uncollectible expense less than the base rate allowance, CRRC will be set at zero, and excess will not be refunded back to customers.¹⁰ A "make whole" mechanism approval by the Commission as proposed by PGW is no more than a Commission guarantee that PGW will

⁹ OTS St. No. 1 at page 2.

¹⁰ OTS St. No. 1 at page 5.

received all of its billed revenues, which leaves little or no incentive for PGW to improve its collection efforts, which according to some of the parties is the heart of PGW's cash flow problems.¹¹

Another flaw in PGW's proposal is its desire to collect an undercollection realized in the twelve months ended August 31, 2004 on a 3-year amortized basis, which creates an annual E-factor claim for \$11.4 million.¹² PGW proposal to amortize the E-factor claim over 3 years creates a historic shortfall, which is no more than *retroactive ratemaking*, which cannot be allowed by the Commission.¹³

Aside from the fact that PGW's proposal will create increased regulatory oversight, there are two flaws in the calculation of the surcharge. Namely, the cash receipts percentage and amount of uncollectible accounts expense being recovered in base rates. With respect to the cash receipts percentage, CRRC calculation as shown on PGW Exhibit JRB-6, utilizes a cash receipts percentage of 89.00%; the correct cash receipts percentage that should have been utilized is 91.40%.¹⁴ In examining the amount of uncollectible accounts expense being recovered in base rates, PGW proposes to use the allowance in its last fully litigated base rate case; however there was a subsequent base rate case that was settled by the active parties and approved by the Commission. Accordingly, there

¹¹ OTS St. No. 1 at pages 5-6.

¹² PGW Exhibit JRB-6.

¹³ OTS acknowledges that PGW's proposal violates the single ratemaking doctrine. However, due to the unique ratemaking methodology of PGW and the financial position of PGW, OTS respectfully submits that the Commission should make an exception of this doctrine solely for PGW.

¹⁴ PGW Exhibit JRB-2.

is no way to actually determine the level of uncollectible accounts expense currently in base rates.

While the concept of recognizing the differential in accounting for uncollectible accounts expense and increasing gas costs is worthy of examination, the CRRC mechanism as proposed by PGW is so technically flawed as not to be worthy of adoption by the Commission. Accordingly, as will be discussed below OTS has proposed a direct approach mechanism for addressing the impact of rising gas costs and the temporary need to have PGW's uncollectibles up-to-date on a timely basis.

3. OTS's Alternative Proposal

In an attempt to provide the Company with an opportunity to materially improve its cash margins in the near term, OTS has proposed an alternative to PGW's CRRC.¹⁵ OTS's proposal is to adjust the allowance for uncollectible accounts expense upward or downward with each change in the 1307(f) rate.¹⁶

The process of adjusting the allowance for uncollectible accounts expense upward or downward in the 1307(f) rate is simplistic, yet effective in removing the volatility of gas prices as a contributor to PGW's cash flow problems. There can be no dispute by any party in this proceeding that a potential problem may have been created for a cash flow company, such as, PGW if a typical customer's bills are increased as a result of increased gas prices, and the typical customer is either

¹⁵ OTS proposed that this surcharge be initially authorized for two years or until PGW files its next base rate case. OTS St. No. 1 at page 13.

¹⁶ OTS St. No. 1 at page 10.

unable or unwilling to compensate the company for that increase in gas prices. One of PGW's problem appears to be created from an uncollectible accounts expense perspective, in that PGW's revenues are equal to those used to develop its base rates and the experienced write-off percentage are unchanged, but the gas costs have increased revenues above the base rate levels, thereby contributing to PGW's under compensation for uncollectible accounts expense, which is negatively effecting its cash flow.¹⁷ Of course one remedy for addressing the "under compensation for uncollectible accounts expense" is for PGW to file a base rate case, which OTS believes such an increase will only exasperate the difficulty in customers paying their bills.

As previously noted it is OTS's proposal to change rates *up or down* for uncollectible accounts expense, a similar procedure was adopted by the Commission for *gross receipts tax*.¹⁸ The amount of the adjustment would be based on the application of the most recent Commission approved write-off ratio. OTS witness Weakley provided a very good example as to how the OTS proposal will operate as follows:

Assume in the last base rate case the Commission approved a write off ration of 8%. Assume that PGW is proposing a quarterly adjustment of \$1 to its 1307(f) rate. Instead of increasing rates by only \$1, PGW would increase rates by \$1.08. The same would be true if rates would decrease by \$1, the overall rate would be reduced by \$1.08.¹⁹

¹⁷ Another problem appears to be its collection activity.

¹⁸ OTS St. No. 1 at page 11.

¹⁹ OTS St. No. 1 at page 11.

The above description of OTS's mechanism provides a simple, yet novel approach for the Commission's consideration in addressing PGW's gas costs regardless of whether the costs are increasing or decreasing and the recognition of PGW's uncollectibles in a timely fashion. OTS strongly submits that this approach is *only* appropriate due to PGW's mandated ratemaking methodology of being a *cash flow* utility and its inability to maintain a good credit rating. Thus the utility's ending cash balance at the end of the fiscal year is critical for its rating with the credit rating agencies.

4. OTS's Proposed Calculated Allowance

By using OTS's alternative mechanism for addressing PGW's uncollectibles on a timely basis, the calculation begins with the current quarterly 1307(f) rate less the base fuel rate from the last base rate proceeding multiplied by the historic write-off ratio.²⁰ Using PGW's most recent 1307(f) quarterly filing on March 1, 2004 as a proxy, the allowance would be as follows²¹:

PGW's 1307(f) rate	\$7.9254
Less: base rate fuel	\$5.5643
Gas costs not in base rates	\$2.3611
Times write-off ratio	0.07616
OTS rate / Mcf	\$0.1798

²⁰ OTS St. No. 1 at page 13.

²¹ OTS St. No. 1SR at page 4.

The results of OTS's calculation will produce an overall annual revenue increase of \$10,747,219.²² The additional revenue is calculated by multiplying the OTS rate times the firm sales volumes. ($\$0.1798 \times 59,773,185$).²³

By way of further explanation, the \$10,747,219 amount is the result of adjusting the uncollectible expense allowance upward using the current purchase gas cost rate, which is not included in base rates and the approved historic write-off ratio of 7.6160%. Simply put, contrary to popular belief, a historic write-off ratio of 7.6160% and an uncollectible account expense recovery are *already* included in base rates that PGW's customers are currently paying; however what is presently not included in base rates is the application of the historic write-off ratio of 7.6160% to the most current purchase gas cost.

The obvious cure to PGW's case flow problem is for PGW to file a base rate case, either a general case or emergency case, but the question that must be answered is whether that is an acceptable forum under the circumstances. OTS is of the opinion that there is insufficient time for PGW to file a base rate case and for the Commission to approve rates before PGW makes its next bond issue this fall. It would appear that without additional sources of revenue, the costs of issuing and the interest rates paid on the bonds will be higher thereby increasing costs to all customers for a longer period of time, which includes the same customers that other parties are seeking to avoid paying the OTS proposed

²² OTS St. No. 1SR at page 5.

²³ OTS proposed that the surcharge be established to be charged to all firm sales customers as part of the distribution rate. OTS St. No. 1 at page 14.

mechanism, which is only for a period of two years.²⁴ Others will argue that PGW's collection initiative that began on or about April 2004 will improve its near term cash margins, however that is suspect when one considers that 60% to 70% of PGW's payment agreements are "broken historically".²⁵ Yet, others will argue that certain Commission regulations should be suspended or waived for PGW, however those waivers and/or suspensions will not improve PGW's near term cash margins.

The issues before the Commission is whether the determination on July 8, 2004 will address the short-term needs of PGW and will the determination address the long-term needs of PGW. The ideal determination is that PGW needs short-term and long-term solutions to its continuing cash flow problems. In that regard, OTS has provided the Commission with a workable solution to both the short-term and long-term solutions to PGW's cash flow problems. As previously noted, PGW needs and what Standard & Poor's is looking for in a near term is a solution to the cash margins of PGW, which is OTS's alternative proposal. OTS believes that the adoption of its mechanism provides the necessary technical solution to improve PGW's near term cash margins²⁶, and provides the Commission an opportunity over a period of two years to evaluate all of the perimeters of the long-term solutions to PGW continuing cash flow problems, including *inter alia*, waivers of Commission Regulations and PGW's collection efforts, and any others

²⁴ OTS St. No. 1SR at pages 4-5.

²⁵ See Tr. 379.

²⁶ OTS surcharge is only authorized for two years or until PGW files the next base rate case.

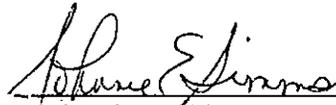
recommendations that the parties may present for consideration.²⁷ In fact, OTS proposed in its recommendation that the Commission formed a collaborative for the purpose of analyzing and reviewing for the Commission's consideration the long-term solutions to PGW's cash flow problems. Simply put, the "bandage" or "quick fixes" approach has proven to be unsuccessful.

²⁷ PGW shall file annual data detailing its collections efforts at the same time as its 1307(f) filing.

IV. CONCLUSION

The Office of Trial Staff respectfully request that the Pennsylvania Public Utility Commission adopt its Alternative Mechanism which addresses the impact of rising gas costs has on PGW's uncollectibles on a timely basis.

Respectfully submitted,


Johnnie E. Simms
Senior Prosecutor

Dated: June 14, 2004

**APPENDIX A
PROPOSED
FINDING OF FACTS**

1. PGW is a municipally-owned gas utility serving approximately 500,000 residential customers and approximately 19,000 industrial and commercial users.
2. The ratemaking methodology applicable to PGW is the cash flow methodology.
3. The Pennsylvania Public Utility Commission is required to satisfy PGW's bond ordinance covenants.
4. The Pennsylvania Public Utility Commission is required to make an allowance to permit the transfer or payment to the City of Philadelphia of an annual payment.
5. On March 1, 2004, PGW filed a Petition to establish a Cash Receipts Reconciliation Clause ("CRRC").
6. The CRRC Petition is seeking to establish a mechanism to reconcile on a timely basis the actual uncollectible expense to the allowance for the uncollectible expense that the Company is allowed to recover through base rates.
7. Due to increases in natural gas cost, PGW has seen increases in the amount and percentage of non-payment by customers.
8. On April 9, 2004, Standard & Poor's lowered PGW's Senior Bond Rating to BBB-, which placed PGW in the position of being rated slightly above junk bonds status.

9. PGW must materially improve its near term collection efforts and cash margin in order to avoid being lowered to junk bonds status.
10. A failure not to improve immediately and materially PGW's collection efforts and cash margins may result in placing its customers in the position of paying higher increasing costs.
11. Historically 60% to 70% of PGW's payment agreements are not honored.
12. PGW's proposed CRRC mechanism is technically flawed.
13. OTS's proposal is to adjust the allowance for uncollectible accounts expense upward or downward with each change in the 1307(f) rate.
14. OTS proposed that the surcharge be established to be charged to all firm sales customers as part of the distribution rate.
15. OTS surcharge is only authorized for two years or until PGW files the next base rate case.
16. PGW shall file annual data detailing its collections efforts at the same time as its 1307(f) filing.

**APPENDIX B
PROPOSED
ORDERING PARAGRAPHS**

THEREFORE,

IT IS ORDERED:

1. That Philadelphia Gas Works is authorized to institute a surcharge for no more than two years as developed by the Office of Trial Staff for purpose of adjusting the allowance for uncollectible accounts expense upward or downward with the change in the 1307(f) rate utilizing the Commission approved write-off ratio.
2. The surcharge is to be charged to all firm sales customers as part of the distribution rate.
3. That Philadelphia Gas Works shall file annual data detailing its collections efforts at the same time as its 1307(f) filing.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission :
v. : Docket No. R-00049157
Philadelphia Gas Works - 1307(f) :

Petition of Philadelphia Gas Works to :
Establish a Cash Receipts Reconciliation : Docket No. P-00042090
Clause :

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Main Brief**
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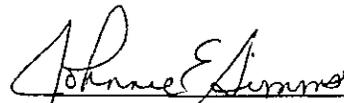
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Senior Prosecutor
Office of Trial Staff

Dated: June 14, 2004
Docket Nos. R-00049157; P-00042090