

ORIGINAL

Philadelphia Gas Works

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May 28, 2004

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

DOCUMENT
FOLDER

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) Philadelphia Gas Works' ("PGW") Joint Petition for Settlement of the above-referenced case. In addition to the Petition are an original and three (3) copies of PGW's Motion for Protective Order and the accompanying proposed Order.

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

Respectfully submitted,


Gregory J. Stunder

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

JUN - 1 2004

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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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

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

JOINT PETITION FOR SETTLEMENT OF
PHILADELPHIA GAS WORKS'
2004-2005 GCR PROCEEDING

TO ADMINISTRATION LAW JUDGE CHARLES E. RAINEY, JR.:

I. INTRODUCTION

1. Philadelphia Gas Works ("PGW"), Office of the Trial Staff ("OTS"), Office of Consumer Advocate ("OCA"), Action Alliance of Senior Citizens of Greater Philadelphia, Association of Community Organizations for Reform Now ("ACORN"), and Tenants' Action Group (collectively as "Action Alliance, et. al.") (collectively "the Settling Parties")¹ hereby submit this Joint Petition for Settlement of Philadelphia Gas Works 2004-2005 GCR Proceeding as captioned above and respectfully request the following:

2. That Administrative Law Judge ("ALJ") Charles E. Rainey, Jr. recommend and the Commission approve this Settlement and all of its terms and conditions.

¹ The remaining parties to this proceeding, 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, Philadelphia District Attorney Lynne Abraham, Adrienne Glenn, and William Kitsch are not participating in this Settlement but have reviewed the Settlement and have informed the Settling Parties that they do not oppose the Settlement.

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3. That the ALJ recommend and the Commission authorize PGW to file a tariff supplement to reflect rates and terms consistent with this Settlement and applicable to the Section 1307(f) purchased gas cost rate investigation at Docket Nos. R-00049157 to be effective for services rendered on or after September 1, 2004, subject to quarterly adjustments permitted by Commission regulations, including a quarterly adjustment to be effective on September 1, 2004 to reflect actual experience and changes in forecasted natural gas prices utilizing the methodology prescribed by paragraph III 1.(b).

4. That based on the data and testimony submitted in this case, the ALJ recommend and the Commission make the Findings of Facts and Conclusions of Law proposed at Sections IV and V below.

5. That the Commission terminate its investigation at Docket No. R-00049157 and mark closed the proceedings at Docket Nos. R-00049157.

II. BACKGROUND

1. On February 1, 2004 PGW submitted required data in advance of its annual purchased gas cost ("PGC") filing pursuant to 66 Pa. C.S. § 1307 and 52 Pa. Code § 53.64.

2. On March 1, 2004, PGW submitted Supplement No. 3 to Gas Service Tariff - Pa. P.U.C. No. 2 and Supplement No. 3 to Gas Supplier Tariff - Pa. P.U.C. No. 1 to become effective for services rendered on or after September 1, 2004. This annual gas cost rate ("GCR") filing was made pursuant to 66 Pa. C.S. § 1307(f), which authorizes certain natural gas distribution companies to make annual purchased gas cost filings with the Commission to reflect increases or decreases in natural gas costs. With this filing, PGW also submitted a reconciliation of expenses previously incurred and revenues received, pursuant to 66 Pa. C.S. § 1307(f)(3), as well as a recalculation of PGW's Restructuring Surcharge. Furthermore, PGW submitted data in

support of its Tariff supplement, as well as the direct testimony of witnesses Kenneth Dybalski (GCR-1) and Douglas Moser (GCR-2).

3. As required by Commission regulations, PGW provided public notice of its proposed GCR rate in Supplement No. 3 through bill inserts and newspaper publications in PGW's service territory.

4. OTS filed a notice of appearance in the case. PICGUG, OSBA, 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 filed petitions to intervene which were unopposed and were granted by the ALJ. OCA and Action Alliance et al. filed complaints with the Commission against PGW. Additionally, Barbara Greening, Esq., Adrienne Glenn and William Kitsch filed complaints with the Commission against PGW.

5. 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.

6. Discovery, both formal and informal, was undertaken by various parties. PGW provided responses to a total of 200 interrogatories served by the OCA, the OTS and OSBA in Docket Nos. R-00049157 (GCR) and P-00042090 (CRRC).

7. On April 15, 2004, testimony was submitted by OCA (OCA St. 1), OTS (OTS St. 1 and 2), and OSBA (OSBA St. 1). The OSBA testimony was applicable only to P-00042090.

8. The Settling Parties commenced settlement discussions and were able to reach a Settlement which resolves all issues pertaining to PGW's 2004-2005 annual GCR Filing.²

III. SETTLEMENT

The undersigned parties, intending to be legally bound and for due consideration given, agree to the terms and conditions set forth below:

1. PURCHASED GAS COST RATES

(a) The Settling Parties agree to accept the underlying data and calculations submitted by PGW in its February 1, 2004 pre-filing and its March 1, 2004 annual filing. The PGC rate adopted by this Settlement is \$7.4216. This rate is predicated on PGW's gas cost projections at the time of the March 1, 2004 annual PGC filing. In accordance with 52 Pa. Code § 53.64, PGW will submit a quarterly adjustment to the PGC rate on or before September 1, 2004, to be effective on one day's notice, to account for actual experience and changes in forecasted natural gas prices and demand, which will establish the PGC rate, effective September 1, 2004.

(b) PGW shall calculate the quarterly filing updates for the 2004-2005 GCR period in accordance with the Commission's regulations at 52 Pa. Code § 53.64(i)(5).

(c) Attached as Appendix "A" hereto are the rates relating to this Settlement.

2. GAS PURCHASING PROGRAM

(a) Commencing upon the date of execution of this Settlement, the Settling Parties agree that PGW will follow the Gas Purchasing Program attached hereto as Appendix

² This settlement does not affect PGW's Petition to establish a Cash Receipts Reconciliation Clause (P-00042090).

“B”.³ The Gas Purchasing Program is intended to reduce PGW’s exposure to natural gas price volatility and to establish agreed upon standards governing PGW’s gas procurement practices.

(b) In PGW’s 2005-2006 and 2006-2007 annual GCR proceedings, none of the Settling Parties shall be permitted to challenge the reasonableness, prudence or recoverability of gas costs associated with locked-in prices established in accordance with non-discretionary purchases under Appendix “B” solely on the basis that PGW should not have locked-in the price prior to applicable deadlines.

(c) The Settling Parties agree to monitor and review the appropriateness and effectiveness of the Gas Purchasing Program set forth in Appendix “B” and will revisit Gas Purchasing Program issues pertaining to fiscal year 2006-2007 and future years in the context of PGW’s 2005-2006 annual GCR filing.

3. CAPACITY RELEASE/OFF-SYSTEM SALES CREDITS

The Settling Parties agree that credits for capacity release and gross off-system sales will be calculated using a three year rolling average beginning in the 2005-2006 GCR period. Lesser periods will be used during the preceding GCR periods until three years of data exist beginning with data from the 2002-2003 GCR period. Specifically,

- For the 2004-2005 period, an average of: 1) the actual amount for 2002-2003; and 2) the actual/estimated amount for 2003-2004 will be used to derive the estimated credit for *Capacity Release Revenues/Gross Off-System Sales*.
- For the 2005-2006 period, an average of: 1) the actual amount for 2002-2003; and 2) the actual amount for 2003-2004; and 3) the actual/estimated amount for 2004-2005 will be used to derive the estimated credit for *Capacity Release Revenues and Gross Off-System Sales*.
- For the 2006-2007 period, an average of: 1) the actual amount for 2003-2004; and 2) the actual amount for 2004-2005; and 3) the actual/estimated amount for 2005-2006 will be used

³ The Gas Purchasing Program is extremely commercially sensitive and is marked proprietary and filed under seal. Consistent with the submission of this Joint Petition, the Settling Parties are seeking a Protective Order from the ALJ which appropriately protects Appendix “B.”

to derive the estimated credit for Capacity Release Revenues and Gross Off-System Sales. The Capacity Release/Off System Sales Credit shall continue to be subject to reconciliation through the PGC/GCR process.

4. INTERRUPTIBLE REVENUE CREDIT

The Settling Parties agree that interruptible revenue credits will be calculated using a three year rolling average beginning in the 2006-2007 GCR period. Lesser periods will be used during the preceding GCR periods until three years of data exists beginning with data from the 2003-2004 GCR period. Specifically,

- For the 2004-2005 period, the actual/estimated amount for 2003-2004 will be used to derive the estimated IRC.
- For the 2005-2006 period, an average of: 1) the actual amount for 2003-2004; and 2) the actual/estimated amount for 2004-2005 will be used to derive the estimated IRC.
- For the 2006-2007 period, an average of: 1) the actual amount for 2003-2004; and 2) the actual amount for 2004-2005; and 3) the actual/estimated amount for 2005-2006 will be used to derive the estimated IRC.

The Interruptible Revenue Credit shall continue to be subject to reconciliation through the PGC process.

5. INTEREST ON PGC OVERCOLLECTION/UNDERCOLLECTION

Assessment of interest on PGC over-collections and under-collections shall be calculated at the statutory rate provided for in 66 Pa.C.S. § 1307(f)(5). Interest shall be calculated consistent with the testimony submitted in this proceeding by the Office of the Trial Staff (OTS Statement No. 1, pp.16-22). Specifically, interest is to be calculated based on its historic over/(under) collections for the 12 months ending December 31st and to be effective with next year's 1307(f) filing.

6. LNG ISSUE

PGW will provide an update as to the status of the LNG expander plant in its 2005-2006 GCR Pre-filing on February 1, 2005. The Settling Parties will schedule a collaborative meeting

and invite interested stakeholders before September 1, 2004 in order to discuss the nature and content of the LNG Expander plant update.

7. RESTRUCTURING SURCHARGE

PGW will provide a detailed explanation and data supporting the Company's restructuring costs for the 2003-2004 and 2004-2005 GCR periods in its 2005-2006 GCR Pre-filing on February 1, 2005. In addition to any other rights they might have, the Settling Parties reserve their rights to raise issues related to costs incurred during the 2003-2004 GCR period. The Settling Parties will schedule a collaborative meeting before September 1, 2004 in order to discuss the nature and content of the supporting data that PGW will submit in the February 1, 2005 Pre-filing, and will invite interested stakeholders.

8. DELAYED PAYMENT WITH AN ASSOCIATED PREMIUM TRANSACTION

In this proceeding, the OCA raised an issue about a forward sale of gas transaction that occurred during the 2003-2004 PGC/GCR Period. In addition, PGW entered into a delayed payment with an associated premium transaction to take place during the 2004-2005 PGC/GCR Period. As part of next year's 1307(f) pre-filing to be made on February 1, 2005, PGW will provide the contracts, supporting data and a detailed explanation of the exact nature of each transaction and the impact that each transaction will have had on purchased gas costs. As a result, the Settling Parties do not express a position regarding these transactions in the current PGC Proceeding.

9. ADMISSION OF EVIDENCE

The Settling Parties stipulate to the admission of the filing, testimony and exhibits identified in Appendix "C" hereto.

IV. PROPOSED FINDINGS OF FACT

As a consequence of the Settlement terms and conditions set forth in Section III above, the Settling Parties request that the ALJ and the Commission make the following findings of fact and such other findings and conclusions as may be required as appropriate:

1. PGW's gas distribution system is located in Southeastern Pennsylvania in the County and City of Philadelphia. Since this is not a gas producing area, PGW and its natural gas customers are dependent upon the interstate natural gas pipeline system to deliver natural gas into the PGW gas distribution system. (GCR-2 at 2).

2. PGW relies on the interstate pipeline for all natural gas supply, storage and transportation services, except for PGW's own on-system peak shaving facilities. In this regard, PGW owns and operates liquefied natural gas ("LNG") facilities that are used both to meet intraday, daily and seasonal supply needs as well as to meet peak day requirements. (GCR-2 at 2).

3. Texas Eastern Transmission Corporation ("Texas Eastern") and Transco comprise the two interstate natural gas pipelines that deliver gas to PGW's city gates. In addition, Dominion Transmission, Inc. ("DTI") (formerly CNG Transmission Corporation), Equitrans, Inc., and ANR Pipe Line Company provide natural gas storage services. These storage services require intermediate transportation services from Texas Eastern to deliver storage withdrawals to PGW's gas distribution system. (GCR-2 at 2).

4. PGW pursues a least cost procurement policy using a portfolio approach in both contract structure and pricing. The portfolio approach protects ratepayers from some of the risk of natural gas market volatility by utilizing a mix of first of the month index pricing, storage and winter only supply contracts as appropriate given market conditions. (GCR-2 at 3).

5. PGW also uses capacity release and off system sales when available as an additional cost saving strategy. The prices for these transactions are negotiated and, in both instances, all associated credits and margins are returned to customers through the PGC. (GCR-2 at 6).

6. The details of PGW's actual gas purchases for the 12 months ending December 31, 2003 and an estimate of gas purchases through August of 2005 are presented in the schedules attached to Item 53.64(c)(1) of PGW's February 1, 2004 Pre-filing and Tabs 3 and 4 of PGW's March 1, 2004 annual GCR filing.

7. Projected gas costs as reflected in this Settlement are based on peak-day capacity requirements at a 0 degree design day temperature. (PGW's February 1, 2004 Pre-filing, Item 53.64(c)(13)).

8. PGW is not affiliated with any pipeline or gas supply entity, nor does it have any contracts for local production and, therefore, transactions with affiliates are not an issue in this proceeding pertaining to PGW's procurement practices. (PGW's February 1, 2004 Pre-filing at Item 53.65(5)).

V. PROPOSED CONCLUSIONS OF LAW

1. Historic Reconciliation Period Standards

a. With respect to PGW's gas purchases and gas purchasing practices during the twelve-month historic reconciliation period ended December 31, 2003, it is requested that the ALJ and the Commission find that PGW has met the standards of Section 1318 of the Public Utility Code, 66 Pa.C.S. § 1318, as required by Section 1307(f)(5) of the Public Utility Code, 66 Pa.C.S. § 1307(f)(5), as to all actual purchased gas costs in the historic period. It is requested that the Commission find that, during the twelve months ended December 31, 2003:

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 11 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

intended in any way to limit or prevent OTS, OCA or any other party from reviewing, after such projected gas purchases actually have been made and gas purchasing practices actually have been implemented, whether PGW's gas purchases and gas purchasing practices complied with Section 1318. If, in an appropriate future proceeding, gas purchases and gas purchasing practices from January 1, 2004, through August 31, 2005, were to be challenged, the Commission's findings based upon this Section of the Settlement shall not bar the examination of such purchases and practices, including, but not limited to, disallowance of, or reductions to, such costs during the eight-month interim period commencing January 1, 2004 and the twelve-month application period commencing September 1, 2004, and ending on August 31, 2005.

VI. CONDITIONS OF SETTLEMENT

1. The signatories to this Settlement, intending to be legally bound and for due consideration given, agree to terms and conditions set forth herein.

2. This Settlement will go into effect upon the Commission's entry of a final order approving the Settlement, in full and without modification. If the Commission rejects the Settlement, the Agreement automatically will terminate and be null and void with the exception of paragraph 3 below, which will continue in full force and effect. The Settlement also shall automatically become null and void (except for paragraph 3, below) if the Commission, in approving the Settlement, modifies any of its terms or conditions or adds any conditions, unless it is subsequently accepted by the aggrieved signatory party, or parties, as so modified. If the Commission approves the Settlement in full and without modification, the Stipulation:

- a) shall be deemed to resolve with prejudice all issues addressed by this Settlement ;
- and

b) shall be implemented and shall be enforceable notwithstanding the pendency of a petition for reconsideration or a legal challenge to the Commission's approval, unless such implementation and enforcement of the Settlement is stayed or *enjoined by the Commission, another regulatory agency, or a Court having competent jurisdiction over the matter.*

3. This Settlement is made without admission against or prejudice to any factual or legal positions which any of the signatories hereto may assert in subsequent litigation in the event that the Commission does not issue a final Order approving this Settlement in full and without modification. If the Commission does not adopt this Settlement in accordance with the terms set forth herein, all parties reserve their full right to argue that the Commission is without the legal authority to order the implementation of all or part of the terms and conditions set forth herein and no party shall be deemed to have waived or be estopped from asserting such a position before the Commission or before any court.

4. This Settlement Petition may be executed in counterparts, all of which shall constitute one agreement binding on all signatories, and shall have the same force and effect as an original instrument, notwithstanding that the signatories may not be signatories to the same original or the same counterpart.

5. The Settling Parties will submit Statements in Support of this settlement within 10 days of submission to the Commission.

6. The Settling Parties agree to waive exceptions to the ALJ's recommended decision if the ALJ recommends that the Joint Petition for Settlement of Philadelphia Gas Works' 2004- 2005 GCR Proceeding be approved without change or modification.

7. This Settlement Agreement does not set a precedent that can be relied upon by any of the signatory parties in subsequent non-PGW proceedings before the Commission.

VII. CONCLUSION

WHEREFORE, the Settling Parties, by their respective counsel, respectfully request as follows:

1. That Administrative Law Judge Charles E. Rainey, Jr. and the Commission approve this Settlement including all terms and conditions thereof; and
2. That the Commission enter an order consistent with this Settlement, resolving and terminating the 2004-2005 GCR proceeding.

Respectfully submitted,

Philadelphia Gas Works

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APPENDIX A

<u>Gas Cost Rate</u>			
	<u>12/1/03</u>	<u>9/1/04</u>	<u>Increase (Decrease)</u>
Rate per Mcf	7.6313	7.4216	(0.2097)
Total Revenue	459,549,929	443,926,814	(15,623,115)

<u>USC - before application of CRRC</u>			
	<u>12/1/03</u>	<u>9/1/04</u>	<u>Increase (Decrease)</u>
Rate per Mcf	1.0765	1.1816	0.1051
Total Revenue	63,182,639	69,123,549	5,940,910

<u>Restructuring/Consumer Ed Surcharge</u>			
	<u>12/1/03</u>	<u>9/1/04</u>	<u>Increase (Decrease)</u>
Rate per Mcf	0.0675	0.0683	0.0008
Total Revenue	4,065,141	4,082,855	17,714

APPENDIX B

2004-2005 GCR PERIOD GAS PURCHASING PROGRAM

1. Non-discretionary component - one-third of the Company's purchase requirements

- Taken on a dollar cost averaging basis
- Mandatory minimum level of hedging
- Pro rate the hedging for purchase requirements over a 12 month period
- Will be taken without regard to anticipated price trends
- Subject to there being sufficient liquidity in the market, the Company would fix the price for one-third of its heating season requirements (11/1/04 to 3/31/05) - 48,000,000 Dth time 1/3 = 16,000,000 Dth. As of 5/10/04, the price of 9,000,000 Dth has been fixed and the price of the remaining 7,000,000 Dth will be fixed by 10/1/04.
- PGW's ability to carry out the above is subject to credit limitations and financial constraints

2. Discretionary component - one-third of the Company's purchase requirements

- The timing and the amount of the hedge positions will be at the Company's discretion based on its evaluation of price trends and other considerations
- As for the discretionary component of the hedging, it will be the objective that these transactions would be based on the Company's assessment of future prices and would not be subject to any specified mechanism or limitation beyond the 33% of purchases limit
- The Company and the parties will discuss if it is practical to establish some specific triggering benchmarks for the 2004-2005 GCR period -- the parties will schedule a collaborative meeting before September 1, 2004 in order to discuss the nature and content of the supporting data
- PGW's ability to carry out the above is subject to credit limitations and financial constraints

3. Market rates component - one-third of the Company's purchase requirements

- Purchases made at market rates, predominantly at first of the month index

2005-2006 GCR PERIOD GAS PURCHASING PROGRAM - TO BE EFFECTIVE THE MONTH FOLLOWING APPROVAL OF 2004-2005 GCR PROCEEDING SETTLEMNT

1. Non-discretionary component - one-third of the Company's purchase requirements

- Taken on a dollar cost averaging basis
- Mandatory minimum level of hedging
- Pro rate the hedging for purchase requirements over a 12 month period
- Will be taken without regard to anticipated price trends
- Subject to there being sufficient liquidity in the market, the Company would fix the price each month for 1/12 of the purchase requirements for each of the succeeding 12 months
- If hedging for any given month was not possible, then the subsequent monthly purchases would be adjusted accordingly in order to achieve the 33% level over the remaining months
- Subject to credit limitations and financial constraints

2. Discretionary component - one-third of the Company's purchase requirements

- The timing and the amount of the hedge positions will be at the Company's discretion based on its evaluation of price trends and other considerations
- As for the discretionary component of the hedging, it will be the objective that these

APPENDIX B

transactions would be based on the Company's assessment of future prices and would not be subject to any specified mechanism or limitation beyond the 33% of purchases limit

- The Company will establish some specific triggering benchmarks in collaboration with the parties -- the parties will schedule a collaborative meeting before September 1, 2004 in order to discuss the nature and content of the supporting data
- Subject to credit limitations and financial constraints

3. Market rates component - one-third of the Company's purchase requirements

- Purchases made at market rates, predominantly at first of the month index

Purchasing Program Caveat: If PGW pursues the outsourcing of its gas purchasing program (after the appropriate approvals from City stakeholders and the Pennsylvania Public Utility Commission), the parties permit modification of the above purchasing program.

APPENDIX C

Stipulated Record

1. PGW's February 1, 2004 Pre-Filing Information;
2. PGW's March 1, 2004 Annual GCR Filing;
3. GCR-1 (Dybalski);
4. GCR-2 (Moser);
5. OTS St. 1 (Weakley) (re: GCR issues only);
6. OTS St. 2 (Yocca) with Exhibit (re: GCR issues only);
7. OCA St. 1 (Lelash) with Exhibit (re: GCR issues only).

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).

VIA EMAIL AND FIRST CLASS MAIL

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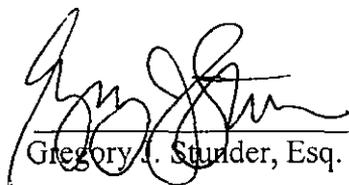
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SECRETARY'S BUREAU

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Gregory A. Stunder, Esq.

Dated: May 28, 2004

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JUN - 1 2004

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

PENNSYLVANIA PUBLIC UTILITY
COMMISSION, et al.

v.

PHILADELPHIA GAS WORKS

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

PHILADELPHIA GAS WORKS'
MOTION FOR ISSUANCE OF A PROTECTIVE ORDER

The Philadelphia Gas Works ("PGW") submits this Motion requesting the presiding officer to issue a Protective Order in the form attached hereto as Exhibit "A" to govern the above captioned proceedings. In support of its Motion, PGW states as follows:

1. On February 1, 2004, PGW submitted the pre-filing in its 2004-2005 Gas Cost Rate ("GCR") proceeding pursuant to 66 Pa. C.S. § 1307 and 52 Pa. Code § 53.64. On March 1, 2004, PGW filed the annual filing in its 2004-2005 GCR, at the above docket number.

2. 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 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.

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3. The parties have conducted settlement negotiations and have reached full resolution on all matters.¹ See Joint Petition for Complete Settlement of Philadelphia Gas Works' 2004-2005 GCR Proceeding submitted simultaneously with this Motion (hereinafter Joint Petition).

4. Attached as Appendix B to the Joint Petition is PGW's Gas Purchasing Program for 2004-2005. The information contained in this Gas Purchasing Program is proprietary information to PGW in that it includes commercially sensitive information pertaining to PGW's gas purchasing practices and strategies.

5. Section 5.423 of the Commission's regulations states that a protective order should be issued when the potential harm to the participant outweighs the interest in maintaining public information. Among the factors to be considered is whether disclosure of the information would cause unfair economic or competitive damage and whether its value to PGW's competitors is high. The Gas Purchasing Program must be considered proprietary and subject to a protective order because the information in the document which obligates the Company to enter the market at the specified times and purchase the committed volumes could artificially inflate the market and cause unfair economic damage if subject to unprotected dissemination. Public release of this information could be also seen as a pricing signal, which would drive the market against PGW's interests. Therefore, this information is extremely commercially

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.

sensitive, has a high value to PGW's competitors and disclosure would cause both unfair economic and competitive damage.

6. In order to protect the disclosure of the above proprietary information, it is necessary for the ALJ to issue a Protective Order in this proceeding.

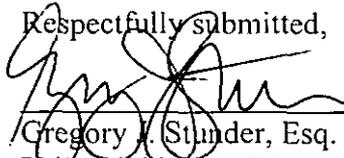
7. Attached as Exhibit "A" is a form of Protective Order which adequately addresses PGW's concerns and which reflects the typical Protective Order which have been issued by presiding ALJs in utility proceedings over the past several years. The Protective Order protects the rights of all parties.

8. The proposed Protective Order closely follows a Protective Order that ALJ Turner issued last year on May 27, 2003 to govern PGW's Gas Purchasing Program that was agreed to by the parties in last year's annual GCR proceeding for PGW at R-00038173. The same factors are present which justified the issuance of the Protective Order this time last year.

9. The parties involved in this proceeding are not opposed to the issuance of the protective order.

WHEREFORE, for all of the foregoing reasons, PGW requests Administrative Law Judge Turner to issue the attached Protective Order in this proceeding.

Respectfully submitted,



Gregory J. Stunder, Esq.
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Philadelphia, PA 19122
Counsel for Philadelphia Gas Works
(215) 684-6878

Dated: May 28, 2004

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PENNSYLVANIA PUBLIC UTILITY
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PROTECTIVE ORDER

Procedural History

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

On May 28, 2004, Philadelphia Gas Works (PGW) both filed a Joint Petition for Settlement of the disputes of its GCR filing (hereinafter Joint Petition or Settlement), and submitted its Motion For Issuance of a Protective Order (Motion). In the latter pleading, PGW requested the presiding officer to issue a Protective Order, in the form attached to its Motion as Exhibit A, to govern the proceedings.

On February 1, 2004, PGW had submitted the pre-filing in its 2004-2005 Gas Cost Rate (GCR) proceeding pursuant to 66 Pa. C.S. § 1307 and 52 Pa. Code § 53.64. In its pre-filing, PGW designated as proprietary the copies of its schematic system map, required by 53.64(c)(10). On March 1, 2004, PGW filed the annual filing in its 2004-2005 GCR, at the above docket number.

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 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.

PGW, OTS, OCA and Action Alliance, et. al. joined in the Settlement, signed the document, and filed Statements in Support. The remaining parties did not oppose the settlement, although they did not join in it.

PGW's Statements of Need for the Protective Order

The parties conducted settlement negotiations and reached full resolution on all disputed matters. As noted before, the Joint Petition for Settlement of Philadelphia Gas Works' 2004-2005 GCR Proceeding was submitted simultaneously with the Motion. Only PGW, OTS, OCA and Action Alliance, et. al. joined in the Settlement and signed the Joint Petition. The other parties do not oppose it.

Attached as Appendix B to the Joint Petition is PGW's Gas Purchasing Program for 2004-2005 (GPP). The information contained in this Gas Purchasing Program is deemed proprietary information. The need for the Protective Order was generated by the inclusion of the Gas Purchasing Program (GPP) as an attachment to the Settlement -- the inclusion of which was required to resolve the differences between the parties. PGW seeks protection for other proprietary documents because inclusion of such documents (which are not public information and which are legitimately proprietary) seems appropriate if a protective order is to be issued. Other than the GPP, during discovery, as to other documents, PGW was satisfied to rely on the good faith of the parties without an Order. It is noteworthy that PGW's request for a protective order governing its GPP is substantially identical to its request for a protective order governing

its current GPP adopted in last year's GCR settlement – a request which was granted by Administrative Law Judge Allison K. Turner.

Discussion

The Commission's regulations at 52 Pa. Code §5.423 authorize orders to protect proprietary or other confidential information. This section provides that:

§ 5.423. Orders to limit availability of proprietary information.

(a) *General rule.* A protective order to limit the disclosure of a trade secret or other confidential information on the public record shall be issued only when a participant demonstrates that the potential harm to the participant of providing the information would be substantial and that the harm to the participant if the information is disclosed without restriction outweighs the public's interest in free and open access to the administrative hearing process. A protective order to protect trade secrets or other confidential information shall apply the least restrictive means of limitation, which will provide the necessary protections from disclosure. In considering whether a protective order to limit the availability of proprietary information should issue, the Commission or the presiding officer should consider, along with other relevant factors, the following:

- (1) The extent to which the disclosure would cause unfair economic or competitive damage.
- (2) The extent to which the information is known by others and used in similar activities.
- (3) The worth or value of the information to the participant and to the participant's competitors.
- (4) The degree of difficulty and cost of developing the information.
- (5) Other statute or regulations dealing specifically with disclosure of the information.

(emphasis added). 52 Pa. Code §5.432 (a)

The ALJ has been reluctant to issue a Protective Order so late in the proceeding. The ALJ has issued general protective orders during the discovery phase of cases to facilitate the discovery process. Here, the discovery process is complete, and the Protective Order is sought to be imposed just as the Commission begins its review process. However, the regulation specifies that the Commission or an ALJ can issue such an Order. Since one of the most important of the documents to be protected is part of the Settlement filed before the Commission, and thus is part of the public folders of this case, it requires immediate protection. There good reason not to defer this decision to a later time during the review process, delay the application of protection, and also thereby require additional work at the review level. Such an Order is not intended as, and I hope will not be seen as, in derogation of the Commission's authority.

PGW argues that this regulation directs the issuance of a Protective Order in the circumstances of this case:

Section 5.423 of the Commission's regulations states that a protective order should be issued when the potential harm to the participant outweighs the interest in maintaining public information.

Motion, ¶6, at 2-3. However, I think that this statement of the rule does not sufficiently set forth the balance that the Commission sought to strike there.

ALJ Robert Meehan interprets this rule as follows:

The general rule, with respect to the issuance of protective orders, 52 Pa. Code §5.423(a), is that the party seeking the issuance of an order to limit the disclosure of a trade secret or other confidential information on the public records bears the burden of demonstrating that the potential harm of providing the information is substantial and that the harm of providing the information without restriction outweighs the public's interest in

free and open access to the administrative hearing process. Any protective order which is issued is to apply the "least restrictive means of limitation", while providing the necessary protection from disclosure.

The "least restrictive means of limitation" referred to in 52 Pa. Code §5.423(a) requires a presiding officer, first and foremost, to ensure that any protective order issued in a proceeding imposes the least restrictions on the public's interest in free and open access to the administrative hearing process

In my opinion, a party seeking the issuance of a protective order satisfies its burden of demonstrating the harm to it of disclosing certain information, without restriction, would be substantial and outweighs the public's interest in free and open access to the administrative hearing process by submitting evidence tending to show operation of one or more of the five factors enumerated. 52 Pa. Code §5.423(a)(1)-(5), or any other relevant factor. It is then the responsibility of the presiding officer to determine if the party has satisfied its burden and, if so, the form of the protective order to be issued. Further, in complying with the mandate of Section 5.423(a) to use the least restrictive means of limitation, I believe that protective orders should only be issued, e.g., with respect to a particular type of class of information or specific documents.

(Emphasis added). PUC v. West Penn Power Company, d/b/a Allegheny Power, 800005538, R-00005539, Order Denying Application For Protective Order, October 4, 2000. I agree with ALJ Meehan's formulation of this rule and of the ALJ's responsibilities in applying it. In that case, ALJ Meehan found that the applicant for the Order had not met the criteria of the rule so as to obtain a Protective Order.

Here, I conclude that PGW has met the criteria by its averments in its Motion and in later information supplied to the ALJ by email. However, I will limit the Order to the specific document identified by PGW in its Motion, as set forth following.

PGW argues that:

Among the factors to be considered is whether disclosure of the information would cause unfair economic or competitive

damage and whether its value to PGW's competitors is high. The Gas Purchasing Program must be considered proprietary and subject to a protective order because the information in the document which obligates the Company to enter the market at the specified times and purchase the committed volumes could artificially inflate the market and cause unfair economic damage if subject to unprotected dissemination. Public release of this information could be also seen as a pricing signal, which would drive the market against PGW's interests. Therefore, this information is extremely commercially sensitive, has a high value to PGW's competitors and disclosure would cause both unfair economic and competitive damage.

I agree with PGW's assertions that the GPP can properly come under a Protective Order, and in order to protect the disclosure of the above proprietary information, will grant the Motion so far as to protect the GPP.

ORDER

Upon consideration of the motion for protective order submitted by PGW, IT IS ORDERED THAT:

1. This Protective Order is granted with respect to all materials identified in Paragraph 2 hereof which are filed with the Commission, produced in discovery, or otherwise presented during this proceeding. All persons now and hereafter granted access to the information identified in this Order *shall* use and disclose such information only in accordance with this Order.
2. The Proprietary Information subject to this Order is PGW's Gas Purchasing Program for 2004-2005 (GPP).

3. Proprietary Information shall be made available to the Commission and its staff for use in this proceeding, and/or a proceeding to enforce the settlement as well as compliance review. For purposes of filing, to the extent that Proprietary Information is placed in the Commission's report folders, such information shall be handled in accordance with routine Commission procedures inasmuch as the report folders are not subject to public disclosure. To the extent that Proprietary Information is placed in the Commission's testimony or document folders, such information shall be separately bound, conspicuously marked, and accompanied by a copy of this Order. Public inspection of the Proprietary Information shall be permitted only in accordance with this Protective Order.

4. Proprietary Information shall be made available to counsel for parties of record in this proceeding. Such counsel shall use or disclose the Proprietary Information only for use in this proceeding, in a proceeding to enforce the settlements or for compliance review. A party's counsel may afford access to Proprietary Information to that party's expert(s) and witnesses. However, said expert(s) and witnesses may not be: (a) an officer, director, partner, owners other than stock, or employee who is primarily involved in the pricing, development, and/or marketing of products, goods or services at issue in this proceeding which are offered in competition with those of the producing party; or (b) an officer, director, partner, owner other than stock, or employee of any affiliate of a competitor of the producing party; provided that any expert shall not be disqualified on account of being a partner, or owner other than stock unless his/her interest in the business constitutes a significant potential for violation of the limitations of permissible use of the Proprietary Information. For purposes of this Order, partnership, or ownership interest other than stock

valued at more than \$100,000 and/or constituting more than 2% interest in the business establishes a significant potential for violation. If a party's independent expert, another member of the independent expert's firm or the independent expert's firm generally also serves as an expert for, or as a consultant or advisor to a competitor or any affiliate of a competitor or the producing party, said independent expert must: (1) advise the producing party of the competitor's or affiliate's name(s); (2) make reasonable attempts to segregate those personnel assisting the independent expert's participation in this proceeding from those personnel working on behalf of a competitor or any affiliate of a competitor of the producing party; and (3) if segregation of such personnel is impractical, the independent expert shall give to the producing party written assurances that the lack of segregation will in no way jeopardize the interests of the producing party. The producing party retains the right to challenge the adequacy of the written assurances that its interests will not be jeopardized. No other persons may have access to the Proprietary Information except as authorized by Order of the Commission or the presiding Administrative Law Judge.

5. Prior to making Proprietary Information available to an expert, as provided in Paragraph 4, above, counsel for a party of record shall deliver a copy of this order to such expert and shall receive written acknowledgment from the expert in the form attached to this Order as Appendix A. The party furnishing the Proprietary Information shall be notified promptly of the identity of all persons provided access to such Proprietary Information pursuant to this Paragraph and Paragraph 4, above.

6. PGW shall have designated documents as constituting or containing Proprietary Information by marking such documents as privileged, confidential or proprietary.
7. Any state agency which has access to and/or receives copies of the Proprietary Information will consider and treat the Proprietary Information as within the exemptions from disclosure found in the Pennsylvania Right to Know Act, 65 P. S. § 66.1(2), until such time as the information is found to be non-proprietary.
8. Any public reference to Proprietary Information by the Commission or counsel or persons afforded access thereto shall be to the title or exhibit reference in sufficient detail to permit persons with access to the Proprietary Information to fully understand the reference and not more. The Proprietary Information shall remain a part of the record, to the extent admitted, for all purposes of administrative or judicial review.
9. Part of any record in this proceeding containing Proprietary Information, including but not limited to all exhibits, responses to discovery, and settlements and including reference thereto as mentioned in Paragraph 9, above, shall be sealed for all purposes, including administrative and judicial review, unless such Proprietary Information is released from the restrictions of this Order, either through the agreement of the parties, or pursuant to an Order of the Administrative Law Judge or the Commission.
10. The Commission, including its staff or delegated agents, and the Parties affected by the terms of this Order shall retain the right to question or challenge the confidential or

proprietary nature of Proprietary Information; to question or challenge the admissibility of Proprietary Information; to refuse or object to the production of Proprietary Information on any proper ground, including but not limited to irrelevance, immateriality or undue burden; and to seek additional measures of protection of Proprietary Information beyond those provided in this Order. If a challenge is made to the designation of a document or information as proprietary, the party claiming that the information is *proprietary* retains the burden of demonstrating that the designation is necessary and appropriate.

Date: _____

Charles E. Rainey, Jr.
Administrative Law Judge

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PENNSYLVANIA PUBLIC UTILITY	:	
COMMISSION, et al.	:	
	:	Docket Nos. R-00049157
v.	:	R-00049157C0001-C0145
	:	P-00042090
PHILADELPHIA GAS WORKS	:	

To Whom It May Concern:

The undersigned is the independent expert of _____ (the retaining party) and is not, or has no knowledge or basis for believing that he/she is: (1) an officer, director, stockholder, partner, owner or employee of any competitor of Philadelphia Gas Works; or (2) an officer, director, stockholder, partner, owner or employee of any affiliate of a competitor of the producing party. [Alternatively, the undersigned should explain in detail why he/she qualifies for access to Proprietary Information under the proviso to Paragraph 4 of the Protective Order.] The undersigned has read and understands the Protective Order entered in this proceeding, which Order deals with the treatment of Proprietary Information. The undersigned agrees to be bound by, and comply with, the terms and conditions of said Order.

_____(NAME)

_____(ADDRESS)

_____(EMPLOYER)