



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

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

DOCUMENT
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Re: Pennsylvania Public Utility Commission
v.
Philadelphia Gas Works
Docket Nos. M-00021612; P-00042090;
R-00049157; P-00032061

Dear Secretary McNulty:

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

Copies are being served on all active parties of record.

Sincerely,

Richard A. Kanaskie
Prosecutor
Office of Trial Staff

JES:las

c: Parties of Record

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Investigation into Financial and : Docket No. P-00042090
Collections Issues Regarding the : R-00049157
Philadelphia Gas Works : M-00021612
: P-00032061

DOCUMENT
FOLDER

MAIN BRIEF
OF THE
OFFICE OF TRIAL STAFF

DOCKETED

JUL 16 2004

Johnnie E. Simms
Senior Prosecutor

Richard A. Kanaskie
Prosecutor

Office of Trial Staff
Pennsylvania Public
Utility Commission

P.O. Box 3265
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I. INTRODUCTION

A. Statement Of The Case And Procedural History

On June 2, 2004 the Pennsylvania Public Utility Commission (“PUC” or “Commission”) entered an Order initiating an investigation into financial and collection issues with respect to the Philadelphia Gas Works (“PGW” or “Company”). This investigation encompassed several proceedings that were open before the Commission. Included in the investigation is the Company’s 2004 gas cost rate (“GCR”) filing, a proposed uncollectibles recovery mechanism presented as a cash receipts reconciliation clause (“CRRC”), a Petition seeking approval to implement a Senior Citizens Discount (“SCD”), tariff issues that have been remanded by Commonwealth Court for hearings and a decision and a Petition seeking waiver of certain Chapter 56 regulations.

The consolidate proceeding was assigned to Administrative Law Judge Charles E. Rainey, Jr.

The disposition of the GCR filing was to conclude in accordance with the statutory deadlines imposed on proceedings of that nature. The CRRC proceeding, per Commission directive, instructed the Administrative Law Judge (“ALJ”) to certify the record to the Commission for a decision at the July 8, 2004 Public Meeting. The remaining issues, namely, the Remand, SCD and Chapter 56 Waiver Request, was to include a Recommended Decision be issued at such time that would allow the Commission to consider a decision by the Public Meeting of September 30, 2004.

On June 10, 2004, the Office of Consumer Advocate (“OCA”) filed a Motion to dispense with the preparation of a Recommended Decision at the conclusion of this investigation. On June 16, 2004, PGW filed its Answer to the Motion as well as its Petition seeking waiver of certain Chapter 56 provisions. At the same time, PGW filed a Motion to dispense with the preparation of a Recommended Decision on its waiver request asserting that it was essential the Commission rule on both the waiver request and the CRRC proceeding at the July 8, 2004 Public Meeting.

The Commission determined that an appropriate level of review of all the issues in this consolidated proceeding required the preparation of a Recommended Decision. *Motions to dispense with Recommended Decisions were denied and a full litigation schedule was developed to the extent time permitted.*

An Evidentiary Hearing was held in Philadelphia on July 6, 2004. Active participants at the hearing included PGW, OTS, OCA, OSBA, Action Alliance, et al. and the Philadelphia Public Officials. At that time OTS presented the testimony and exhibits of four expert witnesses. Included in these witnesses were three experts from the Commission’s Bureau of Consumer Services (“BCS”). These witnesses included Janice K. Hummel, David G. Mick and Daniel J. Mumford. Testimony and exhibits were also presented by Charles T. Weakley, a Fixed Utility Financial Analyst, in OTS. These documents were offered into the record by either Chief Prosecutor Simms or OTS Prosecutor Kanaskie during the

course of the evidentiary hearings and were admitted without objection.¹

Presentation of evidence and cross-examination of witnesses generated 256 pages of transcript.

The Office of Trial Staff now submits this Main Brief in support of the positions set forth in the testimony and exhibits of its expert witnesses in this proceeding.

¹ Charles T. Weakley filed OTS Statement Number 1 and OTS Exhibit Number 1 concerning the Senior Citizen Discount. David G. Mick filed OTS Statement Number 2 concerning Collection Performance. Janice K. Hummel filed Statement Number 3 and Exhibit Number 3 concerning PGW's Universal Service Programs. Daniel J. Mumford filed Statement Number 4 and Exhibit Number 4 addressing PGW's waiver of certain Chapter 56 regulations.

II. ARGUMENT

A. Senior Citizen Discount Program

I. Introduction

In an Opinion and Order entered March 31, 2003, establishing PGW's Restructuring Plan pursuant to 66 Pa. C.S.A. section 2212 (g) and (h), the Commission approved PGW's request that the existing, non-means tested Senior Citizen Discount Program ("SCD") continue for those participants enrolled as of September 1, 2003.² Concomitantly with the existing non-means tested SCD proposal, PGW proposed that the SCD Program would no longer be available for those customers reaching age 65 on or after September 1, 2003.³

On July 7, 2003, PGW filed a Petition for Rescission and Amendment ("Petition") requesting a change and/or amendment to the eligibility requirements of the SCD Program approved by the Commission in an Opinion and Order entered March 31, 2003. In the Petition, PGW sought to modify the SCD Program by proposing a means-tested SCD Program for participants reaching age 65 on or after September 1, 2003. The new proposed means-tested SCD Program would provide a discount of 20 percent and be available to customers age 65 or older on and after September 1, 2003, whose household income (regardless of size) does

² 66 Pa. C.S.A. section 2212(r) (2).

³ Pennsylvania Public Utility Commission v. Philadelphia Gas Works, Docket No. M-00021612, Opinion and Order entered March 31, 2003 at 44.

not exceed 250% of the federal poverty level (“FPL”) for a two person family (currently approximately \$30,000 per year).⁴

On January 9, 2004, PGW filed with the Commission and Administrative Law Judge Allison K. Turner a Stipulation and Settlement.⁵ On February 6, 2004, Administrative Law Judge Allison K. Turner issued a Recommended Decision regarding the SCD Program, by recommending that the Commission adopt the proposed Settlement. The proposed Stipulation and Settlement essentially adopts the primary request of the Petition, which is to allow a means-tested SCD Program for those customers who are age 65 or older on and after September 1, 2003.

In an Opinion and Order entered May 18, 2004, the Commission reiterated its initial concern “that a SCD Program of this magnitude must be properly supported by facts of record.”⁶ The Commission further reiterated that “in referring the proposal to the Office of Administrative Law Judge, we noted that our responsibility in these matters extends to all of PGW’s customers, not just those who may benefit from the proposed discount. (Opinion and Order entered October 9, 2003, at 4).”

⁴ On October 9, 2003, the Commission entered an Opinion and Order referring the Petition to the Office of Administrative Law Judge for the development of a factual record and issuance of a Recommended Decision.

⁵ PGW was joined in the Stipulation and Settlement by the Office of Small Business Advocate (“OSBA”), the Consumers Education and Protective Association, the Association of Community Organizations for Reform Now, the Tenants’ Action Group and the Action Alliance of Senior Citizens of Greater Philadelphia (collectively, “CEPA”). The Office of Consumer Advocate (“OCA”) expressed support for the proposed Settlement. The Philadelphia Industrial Consumers and Gas Users Group (“PICGUG”) did not oppose the proposed Settlement.

⁶ Petition for Rescission and Amendment of Philadelphia Gas Works, P-00032061, Order entered May 18, 2004.

Accordingly, when presented with the opportunity to approve the Recommended Decision of Administrative Law Judge Allison K. Turner, the Commission expressed a concern that there “remain important factual and policy issues that must be further developed before this Commission can reach a determination of whether the proposed Settlement is in the public interest.”⁷ The Commission was extremely concern that the proposed Settlement indicated that the PGW would collect the costs of the means-tested program from all firm customers via its Universal Service Surcharge, which the Commission correctly observed will have a significant long term impact on all PGW customers. In attempt to fully develop the SCD Program record and to address its fears regarding the significant long term impact the SCD Program will have on all PGW customers, the Commission requested that the following issues be developed on the record:

- 1) Does any utility regulated by this Commission (other than PGW) have a program to provide discounts limited to senior citizens? If so, what percentage is the discount and what are the income limitations, (i.e. percentage of FPL)?
- 2) Does any other utility in Pennsylvania have a customer assistance program for which customers above 150% of the FPL are eligible?
- 3) What does the average residential PGW customer pay a month to fund customer assistance programs?

⁷ Opinion and Order entered May 18, 2004 at 3.

4) How was the 20% discount derived?

5) While the Settlement Petition states that the yearly cost of the means-tested SCD would be between \$366,500 and \$371,316, it fails to estimate the total cost of the Program for the general body of ratepayers in later years:

What is the estimated cumulative cost for the means-tested SCD Program and the non-means tested SCD Program in each year through 2020?

What is the combined estimated cumulative cost of the means-tested SCD Program and the non-means tested SCD Program in each year through 2020?

What are the anticipated costs of the proposed audit and efficacy calculation of the means-tested SCD Program and how was this amount developed?

6) What is the estimated cost per mcf of the means-tested SCD and non-means tested SCD for each year through 2020? What is the monthly average consumption (Ccf) per residential heating and non-heating customers?

7) How did PGW determine that the new means-tested SCD would result in 1,300 applicants being enrolled each year?

8) In its Petition at Docket No. R-0004915 seeking to establish a “cash receipts reconciliation clause” (“CRRC”), PGW asserts that:

It is in a “precarious financial position.” (CRRC Petition at 2).

[H]ousehold and business income levels continue to drop [in Philadelphia], making it increasingly difficult for those customers to absorb such increases [in the commodity price of natural gas].” (Id.).

“[P]rice levels are projected to remain at close to the current levels for the foreseeable future.” (CRRC Petition at 3).

Due to these persistently high prices, an increasing number of formerly “good paying” residential and small business customers are now having difficulty paying their bills. (Id. at 8).

In its desire to further develop the issues in this matter, the Commission invited OTS to fully participate in this proceeding on remand. Pursuant to the Commission’s instructions, OTS filed a Notice of Appearance in this proceeding. In accordance with the procedural schedule in this proceeding, OTS prefiled the direct testimony of Charles T. Weakley, III for the purpose of specifically addressing a number of the issues identified above as requested by the Commission.

OTS will attempt to answer those issues that we believe were not adequately and/or incorrectly addressed by PGW in their case-in-chief. The answers to those issues will provide the basis for the Commission determining whether the Stipulation and Settlement is in the public interest. However, before proceeding to address those specifically issues, and with all due respect to the Commission’s posed issues, OTS respectfully suggests that the answers are not necessary. In that regard, OTS submits that PGW in a sterile environment without the inhibitions of politics has provided the only necessary evidence needed to recommend rejection of the proposed Stipulation and Settlement as not being in the public interest. Noteworthy, PGW witness Randall Gyory provided in a statement attached as Appendix A to the Petition for waiver of Chapter 56 Regulations in pertinent part as follows:

10. As will be evident when reviewing the proposed waivers, there are two underlying premises which guided PGW's proposals:

- A. Those who can pay, must do so. Few changes are proposed for Level 1 and 2 customers – those at or below 150% of the federal poverty standard. The real focus of these proposals is to create more effective collection tools for PGW and payment incentives for those above 150% of that poverty standard. For example, a Level 3 family of four would have a family income between \$28,284 and \$56,556. A Level 4 family would have income above that level. In PGW's opinion, *customers with incomes at these levels have the ability to pay and should be required to do so, especially in light of PGW's precarious financial situation.* (Emphasis Added).⁸

It is evident that in a sterile discussion without the cloak of politics, PGW believes and advocate that its customers who have income at and above 150 percent of the poverty level have the ability to pay and should be required to do so, especially in light of PGW's precarious financial situation. PGW witness Gyory endorses this position on cross-examination, by testifying as follows:⁹

Q.....Where are you getting a definition of ability to pay?

Gyory: A. Well, I believe that our definition of ability to pay comes to the point that ratepayers, customers who are at 150 percent or less than the federal poverty limit have the ability to enter into our customer responsibility program which is PGW's CAP program.

Q. So conversely, would agree with me then, if you're over 150 percent, you have the ability to pay, by definition?

A. That's correct?

⁸ PGW's Petition to Waive Certain Chapter 56 Regulations-Appendix A at 3-4.
⁹ Tr. 662-663.

Accordingly, based upon PGW's own sterile acknowledgement those customers over 150 percent of the federal poverty level have the ability to pay, and should pay considering PGW's precarious financial situation. In fact PGW's sterile position is consistent with the Commission's concern whether the general body of customers can afford to pay for the proposed means-tested SCD, which includes senior citizens over 150 percent of the federal poverty level. It is completely inconsistent for PGW to argue that customers over 150 percent of the federal poverty level have the ability to pay, *unless the customer is a senior citizen*.

OTS respectfully submits that a sterile assessment of PGW's opinion that "customers over 150 percent of the federal poverty level have the ability to pay, and should pay considering PGW's precarious financial situation" is more applicable than the "political correct" viewpoint that there should be a SCD Program for senior citizens above 150 percent of the federal poverty level. An adoption of PGW's SCD Program will affect non-senior households with income between 150 percent and 250 percent of the federal poverty level. In that regard, OTS witness Weakley testified as follows:¹⁰

....For example, a single senior citizen whose annual household income is \$29,000 would qualify for a 20% discount under the proposed SCD even though his or her income is 323% of the federal poverty level. A non-senior family of three, whose annual household income is also \$29,000 would not qualify for assistance program discounts (LIHEAP or CRP), even though their income is only 190% of the federal poverty level. This family would receive a

¹⁰ OTS St. No. 1 at 15.

gas bill from PGW at full tariff rates and will be paying for the SCD.

Simply put, families whether they are senior citizens or non-senior citizens should be treated the same as it relates to the payment of gas service from PGW. Make no mistake about this issue, PGW argues that senior citizens deserve to be supported by the rest of society who, soon will be part of that group and will benefit from the same assistance. The problem with PGW's argument is that unlike other senior citizens program, such as Medicare, some of PGW's customers, who pay for the SCD Program, may never qualify for the SCD. But more important, why should non-senior citizen families living slightly above 150 percent of the poverty line be placed in a position of subsidizing senior citizens who can afford to pay for their gas service? In the present environment surrounding PGW and the citizens of Philadelphia, PGW witness Gyory's testimony is relevant in that anyone above 150 percent of the federal poverty level has the ability to pay and should pay for gas service received from PGW and that should be the recommendation of the Administrative Law Judge and the Opinion and Order of the Commission.

As noted earlier, OTS will proceed to address some of the issues posed by the Commission in its Opinion and Order of May 15, 2004.

1. COMMISSION ISSUE/QUESTION 5

While The Settlement Petition States That The Cost Of The Means-Tested SCD Would Be Between \$366,500 And \$371,316, It Fails To Estimate The Total Cost Of The Program For The General Body Of Ratepayers In Later Years.

The Commission in posing its issue/question number five (5) appears to be questioning the total cost of the SCD program. Based upon its testimony, PGW claims that the total yearly cost for the means-tested program is \$365,421. OTS respectfully disagree that the yearly cost for the means-tested SCD Program is \$365,421.¹¹ What PGW failed to discuss is the fact that the \$365,421 represents the incremental discount associated with enrolling 1,309¹² senior citizens into the Program in the first year based on an average bill in 2004. PGW failed to consider that the costs of the SCD Program are cumulative over time. As OTS witness Weakley testified that “assuming reliance on PGW’s linear assumption, the incremental discount cost in year 2 will be \$730,842, which represents the \$365,421 from the continued participation from year 1 plus the \$365,421 from the 1,309 additional enrollments in year 2.”¹³ On cross-examination, PGW witness Coltro acknowledged that the \$365,421 is only associated with the current fiscal year, as the witness recognized the following:

¹¹ OTS St. No. 1 at 15.

¹² The 1309 is based upon PGW witness Coltro using the estimated population levels for the SCD Program with and without the means tested through year 2020, and taking the differences between the two scenarios and divided that number of years to come up with an average participation level per year. See Tr. 616-617.

¹³ OTS St. No. 1 at 19.

....If rates are changed, the program costs evidently will change as well. Discounts can be more or less. *This is an average. This is what we forecast to be the yearly cost for the first year.*¹⁴

Simply put by PGW's own admission, the \$365,421 is what the Company estimated the cost to be in the first year of the SCD Program.

OTS respectfully submits that from a cost standpoint, the Commission in determining the true impact of the SCD Program on the remaining ratepayers should review two alternatives, one on a reopened means-tested SCD Program and the other on the closed grandfathered SCD Program. The difference between the two alternatives is the impact measured by the additional total discount costs associated with additional enrollment.¹⁵ The best evidence of the increasing costs associated with reopening the SCD Program to include means-tested senior citizens is PGW Exhibit – CP/CC-2 which has been reproduced as OTS Exhibit No. 1, Schedule 1. A close examination of OTS Exhibit No. 1, Schedule 1, reveals for example that in the year 2005, the cost for the closed grandfathered SCD (column 5) is \$19,633,664 and the cost for a reopened means-tested SCD (column 4) is \$20,838,373, which is a difference of \$1,204,709. The figure \$1,204,709 represents the additional costs associated with reopening the SCD Program to include means-tested senior citizens. As illustrated by OTS Exhibit No. 1, Schedule 1 by simply subtracting column 5 from column 4 in each of the years produces an increase every year to the year 2020 for a total *additional*

¹⁴ Tr. 615.

¹⁵ OTS St. No. 1 at 19.

discount cost of \$60,838,979 by reopening the SCD Program to include means-tested senior citizens above 150 percent of the federal poverty level.

It is clear that an additional \$60,838,979 in additional costs is unacceptable for those non-senior citizen households whose income levels are continuing to drop in the City of Philadelphia and will only increase the number of “good paying” into the track of having difficulty in paying their bills.

2. COMMISSION ISSUE/QUESTION 6

What Is The Estimated Cost Per Mcf Of The Means-Tested SCD And Non-Means-Tested SCD For Each Year Through 2020?

Additionally, the Commission requested the monthly average consumption (Ccf) per residential heating and non-heating customers. The information sought by the Commission is set forth in OTS Exhibit No. 1, Schedule 2, which contains the total discount per Mcf for both alternatives through 2020. The monthly average consumption for heating is 81.5 Ccf and non-heating is 26.1 Ccf.¹⁶

3. COMMISSION ISSUE/QUESTION 7

How Did PGW Determine That The New Means-Tested SCD Would Result In 1,300 Applicants Being Enrolled Each Year

As previously discussed in this Main Brief, PGW relied upon a linear assumption to determine that 1,300 applicants will be enrolled each year between now and the year 2020. As PGW witness Coltro explained, she only took the

¹⁶ OTS St. No. 1 at 22 and OTS Exhibit No. 1, Schedule 2.

difference between the number of participants in the means-tested SCD and the number of participants in the grandfathered SCD and divided that by the number of years to come up with an average enrollment level per year.¹⁷ OTS respectfully submits that the linear assumption performed by PGW is misrepresentative and is meaningless for the Commission's analysis of the costs associated with the means-tested SCD. The purpose of using a levelized enrollment is to smooth out any aberrations and/or fluctuation from year to year. In the instant case, the difference between the beginning point and ending point are enormous and thus a linear enrollment is not an effective way of smoothing out any fluctuations, as you must incorporate the known fact of recognizing the "baby boom generations" becoming senior citizens in the years in questions. A simply averaging to suggest that only 1,300 will enroll in the SCD Program on average every year belies the fact that the "baby boom generations" is an enormous class of people when compared to the other years. Notably, as illustrated in OTS Cross-Examination Exhibit No. 1, in the city of Philadelphia, the baby boom generation more than double if not triple in some cases, the number of people in the preceding age groups.¹⁸ An averaging as done by PGW is inappropriate, in that the numbers associated with the baby boom generation in addition to the number of years covered by this group is simply too large to average for a determination that there will be on average an enrollment of 1,300 every year between now and the year 2020. If one was to

¹⁷ Tr. 617.

¹⁸ OTS Cross Examination Exhibit No. 1 (45 to 54 years is 186,167 compared to 60 to 64 years of 56,709).

graph the years in question using PGW's linear analysis, there would only be slight if not a straight line from 2004 to 2020; however if one was to graph the true picture reflecting the baby boom generation the graph would have a bell curve shape reflecting the enormous differences in the present generation, baby boom generation and the non-baby boom generation.

There can be no dispute that when the "baby-boomers" begin reaching age 65 in 2011, the number of participants will be significantly more than 1,300 every year until 2020. Accordingly, the 1,300 yearly enrollment senior citizens in the SCD Program to 2020 are incorrect and should be rejected.

4. COMMISSION ISSUE/QUESTION 8

In Its Petition At Docket No. R-0004915 Seeking To Establish A "Cash Receipts Reconciliation Clause ("CRRC"), PGW Assets That:

**It is in a "precarious financial position."
(CRRC Petition at 2)**

"[H]ousehold and business income levels continue to drop [in Philadelphia], making it increasingly difficult for those customers to absorb such increases [in the commodity price of natural gas]."

**"[P]rice levels are projected to remain at close to the current levels for the foreseeable future."
(CRRC Petition at 3).**

Due to these persistently high prices, an increasing number of formerly "good paying" residential and small business customers are now having difficulty paying their bills. (Id. at 8).

In its Opinion and Order entered May 18, 2004, the Commission specifically declared that “the foregoing assertions in the CRRC Petition are relevant to whether the general body of customers can afford to pay for the proposed means-tested SCD.¹⁹ PGW indicated that the Company “has no problem stipulating to these assertions quoted by the Commission, and firmly believes them to be true statement of fact.”²⁰ PGW sought to qualify its stipulation with its witness Ms. Coltro by testifying that “the Company strongly disagrees, though, with the implied notion that the means tested SCD would be beyond the ability of the general body of customers to absorb or that it will exacerbate the Company’s uncollectibles and cash receipts problems.”²¹

In support of its position, PGW argues that the estimated amount of the means-tested discount on an annual basis is slightly over \$365,000.²² The Company further takes the position that this figure (\$365,000) “is not a material amount in terms of the Company’s cash receipts and collections crisis, from which it could be facing a cash deficit of up to \$47 million.”²³ The record evidence in this proceeding simply does not support the Company’s position that the estimated amount of the means-tested discount costs on an annual basis is slightly over \$365,000, both in cross-examination and the Company’s exhibits confirms that \$365,000 is incorrect. With respect to the \$365,000 figure, the Company’s own

¹⁹ Petition for Rescission and Amendment of Philadelphia Gas Works, P-00032061 (Opinion and Order entered May 18, 2004) at 5.

²⁰ PGW St. CP-2 at 10.

²¹ Id. at 10.

²² Id. at 10.

²³ Id. at 10.

witness, Ms. Coltro acknowledge on cross-examination that the “\$365,000 is what we estimated the cost to be on *the first year of the program.*”²⁴ Moreover, under questioning from Administrative Law Judge, PGW witness Coltro acknowledged that the \$365,000 figure would be adding that cost each year.²⁵ Simply put, the \$365,000 is the incremental amount *if* adding 1309 customers to the SCD Program. The \$365,000 does not represent the total cost of the SCD Program, for example, using the Company’s own exhibit shows that by adding the means-tested senior citizens to the grandfathered SCD increases the cost in the year 2005 by \$1,204,709.²⁶ If the Company’s proposal of a means-tested SCD is approved by the Commission, the overall costs to the ratepayers between now and 2020 will be an additional \$60 million for PGW’s SCD Program as illustrated in OTS Exhibit Number 1, Schedule 1. OTS does not believe that an additional \$60 million in costs is *immaterial* over the long term to the Company’s cash receipts and ongoing collection crisis, and most important to its nearly 351,000 customers. As OTS pointed out, the 2000 US Census Data shows that 190,461 or 32 percent of the households in Philadelphia County have low incomes (incomes below 150 percent of the federal poverty guidelines).²⁷

It is simply counter-intuitive to suggest that by subsidizing customers above 150 percent, who happen to be senior citizens, with a 20 percent discount will not

²⁴ Tr. 615.

²⁵ Tr. 615.

²⁶ OTS Exhibit No. 1, Schedule 1.

²⁷ OTS St. No. 3 at 7. US Census Data, Tables P88 and P93 of Census 2000 SF 3. Tabulation prepared by Penn State CSIS Project.

push other-wise some "good paying" customers to the edge of not being able to pay over time a projected cost of \$60 million. The Company's attempt to trivialize the rate impact of its SCD proposal is non-sensical at best and should be ignored and rejected. The Company is attempting to minimize the present rate impact, while everyone associated with this proceeding know that approval of the SCD Program with a means-tested provision for senior citizens above 150 percent of the federal poverty level will forever have to be funded to its full level regardless of what the future costs shall be and it must be approve by this Commission and future Commissions into perpetuity. Moreover, if senior citizens above 150 percent of the federal poverty level in PGW service territory are receiving a 20 percent, what about the same class of residential customers in PECO's service territory, Equitable's service territory, UGI's service territory, NFG's service territory, to name a few gas utilities in the Commonwealth. OTS respectfully submits that this decision will set a precedent for all senior citizens living 150 percent above the federal poverty level. OTS is sure that all local government officials throughout the Commonwealth would also like to see their fellow senior citizens living 150 percent above the federal poverty level receiving a 20 percent discount on gas and any other utility that the customer may be using in their households. Prior to PGW's Restructuring proceeding at Docket No. M-00021612, PGW's income eligibility criterion for its Customer Assistance Program was 135 percent of the federal poverty guidelines and it was only to comply with the Commission's CAP Policy Statement that PGW revised the

income eligibility to 150 percent. Now PGW is proposing to exceed the 150 percent income eligibility guidelines for a means-tested SCD Program.

OTS respectfully submits that PGW witness Coltro probably unknowingly explained the dilemma best when answering the Commission's question as to whether any utility regulated by this Commission (other than PGW) have a program to provide discounts limited to senior citizens, and Ms. Coltro answered in part as follows:²⁸

In fact, it is likely a reflection of the fact that those utilities are either (a) not facing a large, low to middle income senior citizen customer population and/or (b) not a municipally owned, governed and managed utility where elected representatives have made policy judgments that providing such assistance to needy seniors is in the public interest and consistent with the desires of their constituent citizens/customers.

The elected representatives of the City of Philadelphia have made policy judgments as to what they believe are in the public interest for its senior citizens, but failed to recognize that the Commission must make policy judgments as to what it believes are in the public interest for all the senior citizens of this Commonwealth. In that regard, OTS respectfully submits that whatever decision the Commission makes with respect to providing a subsidy to PGW's senior citizens living above 150 percent of the federal poverty level that same decision will one day apply to all other senior citizens being served by other utilities in the Commonwealth.

²⁸ PGW St. No. CP-2 at 4.

In the final analysis, OTS respectfully submits that the proposal to extend the SCD Program to means-tested senior citizens with income above 150 percent of the federal poverty level should not be approved due in large part to PGW's precarious financial state and the financial state of its non-senior citizens households.

PROPOSED FINDINGS OF FACT
SENIOR CITIZENS DISCOUNT PROGRAM

1. On March 31, 2003, the Commission approved PGW's request that the existing, non-means tested SCD continue for those participants enrolled as of September 1, 2003. Opinion and Order at Docket No. M00021612 entered March 31, 2003.
2. On July 7, 2003, PGW filed a Petition for Rescission and Amendment requesting a change and/or amendment to eligibility requirements of the SCD Program approved by the Commission in an Opinion and Order entered March 31, 2003.
3. In the Petition, PGW sought to modify the SCD Program by proposing a means-tested SCD Program for participants reaching age 65 on or after September 1, 2003.
4. The new proposed means-tested SCD Program would provide a discount of 20 percent and be available to customers age 65 or older on and after September 1, 2003, whose household income (regardless of size) does not exceed 250 percent of the federal poverty level for a two person family (currently approximately \$30,000 per year).
5. On February 6, 2004, Administrative Law Judge issued a Recommended Decision adopting a proposed Settlement, which essentially adopted the primary

request of the Petition to allow a means-tested SCD Program for those customers who are 65 or older on and after September 1, 2003.

6. In an Opinion and Order entered May 18, 2004, the Commission reiterated its initial concern that a SCD Program of this magnitude must be properly supported by facts of record.

7. The Commission further reiterated that in their responsibility in these matters extend to all PGW's customers, not just those who may benefit from the proposed discount.

8. The Commission in its Opinion and Order requested that a number of issues/questions be addressed in the proceeding.

9. The Commission invited OTS to fully participate in the proceeding on remand.

10. In PGW's opinion, customers with incomes at these levels (above 150 percent of the poverty standard) have the ability to pay and should be required to do so, especially in light of PGW's precarious financial situation. PGW's Petition to Waive Certain Chapter 56 Regulations-Gyory Statement at Appendix A at 3-4.

11. In PGW opinion, customers who are at 150 percent or less than the federal poverty limit have the ability to enter into PGW's customer assistance responsibility program and those customers over 150 percent have the ability to pay, by definition. Tr. 662-663.

12. An adoption of PGW's SCD Program will affect non-senior households with income between 150 percent and 250 percent of the federal poverty level.

OTS St. No. 1 at 15.

13. The Settlement Petition declaration that the cost of the means-tested SCD would be between \$366,500 and \$371,316 is incorrect. OTS St. No. 1 at 15.

14. The \$365,421 represents the incremental discount costs associated with an average annual enrollment of 1,309. Tr. 616-617.

15. PGW failed to consider that the costs of SCD Program are cumulative over time. OTS St. No. 1 at 15.

16. Assuming reliance on PGW's linear assumption, the incremental discount cost in year 2 will be \$730,842, which represents the \$365,421 from the combined participation of year 1 plus the \$365,421 from the additional 1309 enrollment in year 2. OTS St. No. 1 at 19.

17. On cross-examination, PGW witness Coltro acknowledged that the \$365,421 is only associated with the current fiscal year. Tr. 615.

18. The best evidence of the increasing costs associated with reopening the SCD Program to include means-tested senior citizens is PGW Exhibit – CP/CC -2, which was reproduced as OTS Exhibit No. 1, Schedule 1.

19. OTS Exhibit No. 1, Schedule 1 reveals for example that in year 2005, the cost of the grandfathered SCD (column 5) is \$19,633,644 and the cost for a reopened means-tested SCD (column 4) is \$20,838,373, which represents a difference of \$1,204,709. The figure of \$1,204,709 represents the additional costs

associated with the reopening the SCD Program to include means-tested senior citizens. OTS Exhibit No. 1, Schedule 1.

20. As illustrated by OTS Exhibit No. 1, Schedule 1, by simply subtracting column 5 from column 4 in each of the years produces an increase every year to the year 2020 for a total additional discount cost of \$60,838,979 by reopening the SCD Program to include means-tested senior citizens above 150 percent of the federal poverty level. OTS Exhibit No. 1, Schedule 1.

21. The monthly average consumption for heating is 81.5 Ccf and non-heating is 26.1 Ccf. OTS St. No.1 at 22 and OTS Exhibit No. 1, Schedule 2.

22. PGW only took the difference between the number of participants in the means-tested SCD and the number of participants in the grandfathered SCD and divided that by the number of years to come up with an average enrollment level per year. Tr. 617.

23. A simply averaging to suggest that only 1,300 will enroll in the SCD Program on average every year belies the fact that the “baby boomers” will reach age 65 in 2011, and the number will continue to escalate to the year 2020. OTS St. No. 1 at 22.

24. In the City of Philadelphia the “baby-boomers” generation more than double if not triple in some cases, the number of people in the preceding age groups. The numbers associated with the baby boom generation in addition to the number of years covered by this group is simply too large to average for a

determination that there will be on average an enrollment of 1,300 every year between now and the year 2020. OTS Cross-Examination Exhibit No. 1.

25. As an example in the age group 45 to 54 years, the population in the City of Philadelphia is 186,167 compared to the age group 60-64 years, the population is 56,709.

26. PGW agrees that it is in a precarious financial position. PGW St. CP-2 at 10.

27. PGW agrees that household and business income levels continue to drop in Philadelphia, making it increasing difficult for those customers to absorb such increases in the commodity price of natural gas. PGW St. CP-2 at 10.

28. PGW agrees that price levels are projected to remain at close to the current levels for the foreseeable future. PGW St. CP-2 at 10.

29. PGW agrees that due to these persistently high prices, an increasing number of formerly good paying residential and small business customers are not having difficulty paying their bills. PGW St. CP-2 at 10.

30. The \$365,000 is what PGW estimated the cost to be on the first year of the program. Tr. 615.

31. PGW acknowledged that the \$365,000 figure would be adding that cost each year. Tr. 615.

PROPOSED CONCLUSIONS OF LAW

SENIOR DISCOUNT PROGRAM

1. The \$365,000 figure does not represent the total cost of the SCD Program.
2. If the Settlement Agreement is adopted, the overall cost for a means-tested SCD between now and 2020 will be an additional cost of \$60 million to PGW's remaining ratepayers.
3. The adoption of the Settlement Agreement is not in the public interest due to PGW's precarious financial position and that household and business income levels continue to drop in Philadelphia making it increasingly difficult for those customers to absorb such increases in the commodity price of natural gas.
4. The adoption of the Settlement Agreement is not in the public interest due to persistently high prices, an increasing number of formerly good paying residential and small business customers are now having difficulty paying their bills.
5. The adoption of the Settlement Agreement is not in the public interest because customers, including senior citizens, at or below 150 percent of the federal poverty standard have the ability to enter into PGW's customer responsibility program.
6. The adoption of the Settlement Agreement is not in the public interest because customers above 150 percent of the federal poverty standard have the ability to pay and should be required to do so as articulated by PGW witness Gyory.

7. PGW has not presented a compelling reason as to why the Commission should deviate from its policy of allowing a class of residents (other than special needs) who are above 150 percent of the federal poverty standard to receive customer assistance.

8. The policy of the City Council of Philadelphia is not a compelling reason to adopt the Settlement Agreement.

9. PGW has failed to meet its burden of proof as to why the Commission should adopt the Settlement Agreement. If anything the evidence presented by the Company strongly suggests that the Commission should not adopt the Settlement Agreement.

PROPOSED ORDERING PARAGRAPH
SENIOR CITIZENS DISCOUNT PROGRAM.

It is hereby ordered that the Philadelphia Gas Works on remand has failed to meet its required burden of proof to support its position that the Pennsylvania Public Utility Commission must adopt a means-tested Senior Citizens Discount Program for senior citizens above 150 percent of the federal poverty standard.

Accordingly, I recommending that the Proposed Settlement be rejected in light of the burden of proof requirements and the precarious financial state of Philadelphia Gas Company, the non-senior citizens and the effect that increasing gas costs are having of formerly good paying customers.

B. Commonwealth Court Remand

The Office of Trial Staff did not actively participate in this part of the proceeding and offers no position on the matters in dispute.

C. -- Philadelphia Gas Works' ("PGW") Collection Practices.

1. The Company's Demonstrated Improvement In Collections Are Indicative Of The Proper Management, Effectiveness And Adequacy Of Its Efforts.

PGW's collection practices are properly managed, cost effective and adequate as currently administered. The Company's collection efforts are continually evolving and the demonstrated improvement in its results signify the adequacy of the current program and reinforce the need to continue to strive to achieve its goals.

The Company appropriately recognized a decline in cash receipts and responded positively by implementing its Collection Renewal Initiative ("CRI") in November of 2003.²⁹ Furthermore, in December of 2003 the Company retained the services of Accenture Consulting, a widely recognized expert on utility collection practices, to assist in the development of its collection strategy.³⁰ The Company's revised collection efforts and its newly instituted initiatives have resulted in a significant improvement in its overall collection rate. "In spite of the fact that natural gas costs have increased significantly this year the Company,

²⁹ A detailed explanation of the strategic objectives of the Company's Collection Renewal Initiative can be found at PGW Statement CP-1 on pages 5 through 7. The program is designed to enhance cash flow through both short-term and long-term improvements to its collection rate.

³⁰ PGW Statement CP-1, p. 5.

nonetheless has improved its collection rate by 4%.”³¹ In fact, the Company has testified that “[t]he financial objective of the CRI is to collect 92 percent of fiscal years billed revenues and to continue incremental percentage improvements.”³² Remarkably, it appears that the Company’s initiative will result in reaching that goal despite the fact that the CRI has only been in effect since November of 2003.³³ The Company’s improved collection practices are also supported by the results reported in accordance with 52 Pa. Code §56.231. The delinquency data reported shows a distinct improvement in three data collection variables that are available for comparison from May 2003 to May 2004. As summarized by OTS Expert Witness Mick, the number of customers in debt declined, the total dollars in debt declined and the average arrearage also declined.³⁴ The improvement demonstrated in these collection variables “should improve PGW’s chances of collecting the dollars owed to them.”³⁵

The Company’s collection rate for the fiscal year ending August, 2003 was 86.57% of revenue billed.³⁶ In one year, the projected collection rate is equal to its ten-year historic average of approximately 92%.³⁷ Clearly the Company’s Collection Renewal Initiative has been successful and must continue. It is critical to note that included in the Company’s historic ten-year average for collections is

³¹ Id. at 11.

³² Id. at 6.

³³ PGW Statement CP-1R, p. 6. The Company discusses the fact that it appears that it will reach its historic level of collections. Whether that is sufficient to improve the financial concerns of the Company will be discussed later in the Brief.

³⁴ OTS Statement Number 2, p. 7.

³⁵ Id.

³⁶ OCA Statement FCI-1, p. 5.

³⁷ Id. See Also, PGW Statement CP-1R, p. 6.

the debacle of the Company's Billing, Collections and Customer Service system ("BCCS") introduction in July of 1999. "Start-up of the BCCS revealed a number of serious programming and employee training problems that resulted in an initial backlog of 55,000 billing exceptions and over 70,000 estimated or unbilled accounts.³⁸ The initial failure of this system also "robbed PGW of several collection capabilities and dramatically eroded customer confidence in PGW."³⁹ The Company testifies that this breakdown still affects every aspect of its relationship between its customers and its customer service representatives.⁴⁰ The Company's continued efforts to identify and correct the problems associated with the start-up of its BCCS system is commendable and demonstrates the adequacy and management of its collection practices. Furthermore, the Company continues to address deficiencies in the collections area as evidenced by the agreement reached with PGW union employees allowing "complete cross-functionality across all areas of Customer Affairs, permitting management to reassign employees between collections and customer service."⁴¹

In accordance with the Commission's Order dated June 2, 2004 directing an investigation into the Company's collection practices, the preliminary success of the recent Collections Renewal Initiative instituted by PGW demonstrates that the CRI must continue and that its collection practices are adequate, cost effective and properly managed.

³⁸ PGW Statement CP-1, p. 3.

³⁹ Id.

⁴⁰ Id.

⁴¹ Id. at 4.

PROPOSED FINDINGS OF FACT

1. PGW instituted its Collection Renewal Initiative in November, 2003 in response to declining cash receipts. PGW St. CP-1, pp. 5-7.
2. PGW retained Accenture Consulting to assist in developing its collection strategy. PGW St. CP-1, p. 5.
3. The delinquency data reported in accordance with 52 Pa. Code §56.231 shows an improvement in three data collection variables from May 2003 to May 2004. OTS St. No. 2, p. 6.
4. The number of customers in debt declined 5.0% from May 2003 to May 2004. OTS St. No. 2, pp. 6-7.
5. The total dollars in debt declined by 15.8% from May 2003 to May 2004. OTS St. No. 2, pp. 6-7.
6. The average arrearage declined by 11.3% from May 2003 to May 2004. OTS St. No. 2, pp. 6-7.
7. The Company's collection rate for the fiscal year ending August 31, 2003 was 86.57% of revenue billed. OCA ST. FCI-1, p. 5.
8. The Company's projected collection rate for fiscal year ending August 31, 2004 is 92%. PGW St. CP-1R, p. 6.
9. PGW instituted its Billing, Collections and Customer Service System in July of 1999.

PROPOSED CONCLUSIONS OF LAW

1. The Pennsylvania Public Utility Commission has jurisdiction over the parties and the subject matter of this proceeding.
2. Philadelphia Gas Works bears the burden of proving that each and every element of its request balances the interests of ratepayers and the utility.
3. Collection procedures are guided by the provisions in Chapter 56 of the Commission's regulations.
4. PGW has not satisfactorily proven that its request is in the public interest.

PROPOSED ORDERING PARAGRAPH

1. PGW's current collection practices are adequate, cost effective and are properly managed.
2. PGW's Collection Renewal Initiative is to continue consistent with sound collection practices.

D. Universal Service Costs

I. INTRODUCTION

The Commission's Opinion and Order in the instant proceeding at Docket No. P-00042090 referenced the apparent disparity between the costs of PGW's universal service programs compared to combined universal service costs of the seven largest investor-owned natural gas utilities in Pennsylvania. OTS through the presentation of the testimony of Janice K. Hummel has provided the Commission with some background analysis of the statistics compiled by *Bureau of Consumer Services* regarding PGW's universal service costs. Ms. Hummel's analysis answers a number of the issues/questions posed by the Commission in its Opinion and Order.

I. There Is An Explanation For The Disparity Between The Costs Of PGW's Universal Service Programs Compared To Combined Universal Service Costs For The Seven Largest Investor-Owned Natural Gas Utilities In Pennsylvania

In explaining the disparity between the costs of PGW's Universal Service Programs compared to the combined universal service costs for the seven largest investor-owned natural gas utilities in Pennsylvania there must be a distinction made for PGW's SCD Program. In that regard, OTS witness Hummel determined that PGW's non-means tested SCD is not a universal service program as defined by the definition of "universal service and energy conservation" as provided for in

the Natural Gas Choice and Competition Act.⁴² Additionally the eligibility criteria for SCD does not conform with the low income eligibility criteria as set forth in the Commission's Policy Statement on Customer Assistance Programs at 52 Pa. Code Section 69.262 and the definition of "Low-income customer" as presented in the Reporting Requirements for universal service and energy conservation at 52 Pa. Code Section 62.2.⁴³ Accordingly, OTS witness Hummel concluded that PGW's SCD costs should not be considered universal service costs given that SCD does not satisfy the definitions of universal service and low income customer.⁴⁴

As OTS witness Hummel testified, the major differences between universal service programs and SCD is the indisputable fact that the defining criterion for enrollment in PGW's non-means tested SCD is age, not income.⁴⁵ Conversely the defining criterion for universal service programs is income. Accordingly, OTS witness Hummel recommend that the \$20,000,000 in PGW's non-means tested SCD Program costs not be considered a legitimate universal service cost.⁴⁶ Consequently, when comparing PGW's universal service costs with other natural gas distribution companies ("NGDC"), PGW's universal service costs must exclude the costs associated with SCD.⁴⁷ So as to be clear on the subject matter, OTS witness Hummel is not commenting on whether or how the non-means tested

⁴² OTS St. No. 3 at 2-3 and 66 Pa. C.S.A. section 2202.

⁴³ OTS St. No. 3 at 3.

⁴⁴ Id. at 3.

⁴⁵ Id. at 3.

⁴⁶ OTS St. No. 3 at 5.

⁴⁷ Id. at 5-6.

SCD costs should be recovered. As a point of reference, the present PGW proposed means-tested SCD program likewise does not satisfy the definition of low income as defined in the Commission's Regulations.

Another characteristic to consider when comparing PGW with other NGDCs is whether the demographic conditions of Philadelphia are comparable to the demographic conditions of any other NGDCs' service territory. In evaluating the demographic conditions, OTS witness Hummel concluded that the demographic conditions of Philadelphia are not comparable to the demographic conditions of any other NGDC service territory.⁴⁸ In support of that conclusion, OTS witness Hummel testified as follows:

The 2000 US Census Data shows that 190,461 or 32% of the households in Philadelphia County have low income (incomes below 150% of the federal poverty guidelines). PGW's service territory covers only Philadelphia County which has the highest percentage of low income households within the Commonwealth. By comparison, the Census Data shows that 19.8% of households in Allegheny County have low incomes. Allegheny County is the only other county in the Commonwealth to include a major metropolitan city; namely, Pittsburgh. However, comparing Pittsburgh and Philadelphia may not be appropriate because the the difference in population is significant: Pittsburgh's population is 279,936 compared with Philadelphia's population is 1,436,694.⁴⁹

Based upon the above Census Data the demographic conditions of the County of Philadelphia is unlike any other geographic area in the Commonwealth of

⁴⁸ *Id.* at 7.

⁴⁹ OTS St. No. 3 at 7. US Census Data, Tables P88 and P93 of Census 2000 SF 3. Tabulation prepared by Penn State CSIS Project.

Pennsylvania, which means that the ratepayers served by PGW is unlike any other ratepayers in the Commonwealth as it relates to population and low income households.

The remaining characteristic to be examined is whether there can be a comparison between a regulated utility providing service in Philadelphia to other regulated utilities' service territories. OTS witness Hummel is of the opinion that PGW should not be compared with other Pennsylvania utilities (except PECO electric). In support of her opinion, Ms. Hummel utilized PECO as a proxy for PGW and relied upon a study entitled *Evaluation of the PECO Energy Delivery Company Universal Service Program (Evaluation)*, which "devoted an entire chapter of the Evaluation to the problems of comparing PECO to other utilities because of the differences in the demographic territory, the service territory, and established programs vs. programs that are expanding by gradually increasing enrollment."⁵⁰ The Evaluation provided the following summary of the comparison problem:

PECO is a very large urban utility in one of the world's great cities. By its nature, this makes comparisons with small or middle size utilities with different kinds of service territories problematic. For Universal Service, comparisons are best made with similar very large utilities serving the great cities of the Northeast and East North Central US. There appear to be three solutions: (1) Compare pieces of PECO universal service to other utilities, (2) Restrict comparison to New York City (Con Ed) or Baltimore (Baltimore Gas & Electric) or perhaps

⁵⁰ OTS St. No. 3 at 8.

Boston, (3) Compare PECO with itself and compare PECO practice against administrative goals.⁵¹

Based upon the above analysis of PECO, OTS witness Hummel is of the opinion that for the same reasons that PECO should not be compared to other Commonwealth Electric Distribution Companies applies equally to why PGW should not be compared to other NGDCs.⁵²

Consequently, there is ample evidence as to why there is a disparity between the costs of PGW's universal service programs compared to the combined universal service costs of the seven largest investor-owned NGCDs. Namely, the SCD costs of \$20,000,000 should be remove from PGW's universal service costs, the demographic conditions of Philadelphia are unlike any other demographic conditions in any other NGCDs service territory, and finally PGW cannot be compared as a utility with any other NGCD in the Commonwealth.

⁵¹ OTS St. No. 8-9. Peach, H. Gil, Anne West, Howard Reichmuth, Marcia Lehman, Ryan Miller, and Ayla Cnaan, *Evaluation of the PECO Energy Delivery Company Universal Service Program*. Beaverton, Oregon: H. Gil Peach & Associates, 2003 Monograph 0303-1, January 2003, p. XXIII-15.

⁵² OTS St. No. 3 at 9.

2. There Is An Explanation As To Why PGW's Customer Responsibility Program (CRP) Enrollment Is Almost Half That Of The Other NGDCS COMBINED

PGW's Customer Assistance Program is commonly referred to as CRP, and the Commission expressed a concern that the CRP Enrollment is almost half that of the other NGDCs combined. OTS witness Hummel has prepared a chart⁵³ which shows that PGW compared with the other NGDCs has a significantly higher number of low income households in its service territory.⁵⁴ The chart shows the following with respect to PGW and other NGDCs:

- 1) A weighted average for all NGDCs shows that 17 percent of households have low incomes compared with almost twice as many households (32 percent) in PGW's territory.
- 2) Half of the total numbers of customers enrolled in CAP are customers' of PGW.

While the chart clearly shows that half of the total numbers of customers enrolled in CAP are customers' of PGW, such a finding should not be surprising since PGW has more than twice as many low income customers as Columbia, the NGDC with the second highest number of low income households in its service territory.⁵⁵ A significant fact, which has contributed to PGW's large CRP enrollment when compared to other NGDCs is that PGW's CRP is an established program that was implemented in 1994, while other NGDCs are still enrolling and

⁵³ The chart shows a comparison between PGW and the other NGDCs—OTS St. No. 3 at 11.

⁵⁴ OTS St. No. 3 at 10.

⁵⁵ Id. at 10.

expanding their CAPs. Consequently, an established ten year program is expected to have more participants than an ongoing growing program.

The only question that remains is whether PGW's CRP costs per program participant is out of line with the weighted average costs of the other NGDCs. In an attempt to assist the Administrative Law Judge and the Commission, OTS witness Hummel prepared a chart⁵⁶, which provides the average CAP participant cost by NDGC. As illustrated by the chart, the average participant costs for PGW's CRP customer are \$737 compared with the weighted average CAP costs of the other NGDCs of \$625.⁵⁷ Ms. Hummel attributes the disparity in average CAP costs per CAP participant among the NGDCs to the difference in CAP credits among NGDCs.⁵⁸ By way of further explanation, the Commission defines average CAP credits as the total amount of the difference between the standard billed amount and the CAP billed amount divided by the average monthly number of CAP participants.

In the final analysis, Ms. Hummel is of the opinion and no party has disputed this fact that PGW's total CRP costs are higher than the other NGDC's CAP costs due to the number of customers enrolled in the program rather than excessive program costs per participant.⁵⁹

Finally with respect to recommendations for PGW to reduce CRP costs, it is OTS witness Hummel recommendation that PGW be directed to conduct an

⁵⁶ OTS St. No. 3 at 13.

⁵⁷ Id. at 12.

⁵⁸ Id. at 12.

⁵⁹ OTS St. No. 3 at 15.

impact evaluation completed by an independent third-party during the calendar year 2005 to assist the Commission in fulfilling its obligation under 66 Pa. C.S.A. Section 2203(8).⁶⁰ Upon completion, PGW should be directed to submit the evaluation to the Commission for review.

⁶⁰

OTS St. No. 3 at 19.

PROPOSED FINDINGS OF FACT

UNIVERSAL SERVICE COSTS

1. The non-means tested Senior Citizen Discount (“SCD”) is not a universal service program as defined in the Natural Gas Choice and Competition Act at 66 Pa. C.S.A. Section 2202. OTS St. No. 3 at 2.
2. The major difference between the universal service program as defined in the Natural Gas Choice and Competition Act and the non-means tested Senior Citizen Discount Program is that the defining criterion for enrollment in PGW’s non-means tested SCD is age, not income. OTS St. No. 3 at 5.
3. The \$20,000,000 in PGW’s non-means tested SCD program costs cannot be considered a legitimate universal service cost. OTS St. No. 3 at 5.
4. An accurate review of PGW’s universal service costs must exclude the program costs for the non-means tested SCD. OTS St. No. 3 at 5-6.
5. The demographic conditions of Philadelphia are not comparable to the demographic conditions of any other NGDC service territory. OTS St. No. 3 at 7.
6. The 2000 US Census Data shows that 190,461 or 32 percent of the households in Philadelphia County have low incomes (incomes below 150 percent of the federal poverty guidelines). OTS St. No. 3 at 7.

7. PGW's service territory covers only Philadelphia County which has the highest percentage of low income households within the Commonwealth. OTS St. No. 3 at 7.
8. PGW should not be compared to other Pennsylvania utilities (except PECO electric). OTS St. No. 3 at 8.
9. PGW compared with the other NGDCs has a significantly higher number of low income households in its service territory. OTS St. No. 3 at 10.
10. A weighted average for all NGDCs shows that 17 percent of households have low incomes compared with almost twice as many households (32 percent) in PGW's territory. OTS St. No. 3 at 10.
11. Half of the total numbers of customers enrolled in CAP are customers' of PGW. OTS St. No. 3 at 10.
12. A significant fact, which has contributed to PGW's large CRP enrollment when compared to other NGDCs is that PGW's CRP is an established program that was implemented in 1994, while other NGDCs are still enrolling and expanding their CAPs. OTS St. No. 3 at 10.
13. The average participant costs for PGW's CRP customer are \$737 compared with the weighted average CAP costs of the other NGDCs of \$625. OTS St. No. 3 at 12.
14. The disparity in average CAP costs per CAP participant among NGDCs is the difference in CAP credits among NGDCs. OTS St. No. 3 at 12.

15. The Commission defines average CAP credits as the total amount of the difference between the standard billed amount and the CAP billed amount divided by the average monthly number of CAP participants. OTS St. No. 3 at 12.
16. PGW's total CRP costs are higher than the other NGDCs CAP costs due to the number of customers enrolled in the program rather than excessive program costs per participants. OTS St. No. 3 at 15.
17. PGW should be directed to conduct an impact evaluation to be completed by an independent third-party during the calendar year 2005 to assist the Commission in fulfilling its obligation under 66 Pa. C.S.A. Section 2203(8). OTS St. No. 3 at 19.
18. Upon completion of the impact evaluation, PGW should be directed to submit the evaluation to the Commission for review. OTS St. No. 3 at 19.

PROPOSED CONCLUSION OF LAW

UNIVERSAL SERVICE COSTS

1. In determining Philadelphia Gas Works' Universal Service Costs, the non-means tested Senior Citizens Discount costs \$20,000,000 are not considered as legitimate universal service costs and must be removed.
2. The demographic conditions of Philadelphia are unlike any other demographic conditions in any other Natural Gas Utilities' service territory.
3. PGW cannot be compare as a utility with any other Natural Gas Utilities in the Commonwealth of Pennsylvania.
4. The disparity between the costs of Philadelphia Gas Works' universal service programs compared to the combined universal service costs for the seven largest investor-owned Natural Gas Utilities in Pennsylvania is justified.
5. The Philadelphia Gas Works' Customer Responsibility Program enrollment of almost half of the other Natural Gas Utilities is justified.
6. The Philadelphia Gas Works' total Customer Responsibility Program costs are higher than the other Natural Gas Utilities' CAP costs due to the number of customers enrolled in the program rather than excessive costs per participant.

PROPOSED ORDERING PARAGRAPH

UNIVERSAL SERVICE COSTS

It is hereby ordered that due to the demographic of the City Philadelphia and its citizens, the Philadelphia Gas Works' universal service costs are just and reasonable. Additionally, the Philadelphia Gas Works' is ordered to conduct impact evaluation by an independent third-party during the calendar year 2005 and to submit that evaluation to the Pennsylvania Public Utility Commission for review.

E. PGW Petition For Waiver Of Certain Commission Regulations.

1. The Company Has Not Presented Convincing Evidence That Waiving Certain Commission Regulations Sufficiently Balances The Protections Of Consumers With The Company's Financial Needs.

The Petition of Philadelphia Gas Works for Limited Waiver or Modification of PUC Chapter 56 Rules and Administrative Interpretations is not in the public interest and must be rejected.

OTS acknowledges the Company argument that the Commission "may" waive certain statutory provisions as well as portions of its own regulations when it may be necessary in effectuating its mission. However, the discretion to waive provisions does not relieve the Commission of the responsibility of protecting the public interest. As such, any solution must be directly related to the problem and the interests of all parties must remain adequately protected.

Chapter 56 of the Pa. Code establishes standards and billing practices for residential utility service. The purpose and policy of this provision is defined as follows:

[t]his chapter establishes and enforces uniform, fair and equitable residential utility service standards governing eligibility criteria, credit and deposit practices, and account billing, termination and customer complaint procedures. This chapter assures adequate provision of residential utility service, to restrict unreasonable termination of or refusal to provide that service and to provide functional alternatives to termination or refusal to provide that service. Every privilege conferred or duty required by this chapter imposes an obligation of good faith, honesty and fair dealing in its performance and enforcement. This chapter will be liberally construed to fulfill its purpose and policy and to

insure justice for all concerned.⁶¹

Guidance in reviewing any request for modification or exception of Commission regulations in this proceeding has been provided directly by the Commission in its Order dated June 2, 2004 as well as by the Commission's own regulations. The Commission's Order directs PGW to propose the duration of the waiver as well as alternative standards or procedures. Furthermore, "[i]t would be PGW's responsibility to explain...how the alternative standard or procedure adequately balances consumer rights with PGW's financial integrity."⁶² The Commission's regulations further provide that "[i]f an unreasonable hardship...to a utility results from compliance with a section in this chapter, application may be made to the Commission for modification of the section or for temporary exemption from its requirements."⁶³

The Company has failed to demonstrate that it has balanced consumer protection rights with its own financial needs and, more importantly, PGW has not shown that adherence to Chapter 56 regulations is resulting in an "unreasonable hardship". In fact, when compared to historical performance, the Company has not demonstrated that the Commission's regulations inhibit its operation in any respect.

⁶¹ 52 Pa. Code §56.1.

⁶² Commission Opinion and Order Adopted May 27, 2004 and Entered June 2, 2004 on the Investigation into Financial and Collection Issues Regarding the Philadelphia Gas Works, Docket Numbers P-00042090, R-00049157, M-00021612 and P-00032061.

⁶³ 52 Pa. Code §56.222(a).

The Company alleges that the Office of Trial Staff's Expert Witness Mumford has analyzed the Company's request under the wrong test.⁶⁴ The Company states that its difficulties are financial. The Company's financial condition is well documented and not entirely disputed by OTS. The Office of Trial Staff agrees that the Company must receive payment from all ratepayers that demonstrate the capability of paying their bill. OTS also acknowledges the demographic make-up of the Company's service territory and the associated hardships. However, this does not relieve the Commission from protecting consumer rights as provided for in its regulations. Also, any proposed solution must match the cause of the problem. OTS does not agree with the Company that waiving certain Commission regulations are the solution to its problems. Nor does OTS agree that these waivers will provide sufficient relief to warrant a relaxing of consumer protections.

The Company offers unsupported calculations showing a benefit that would result from the waiver of regulations that have not been shown to be the cause of its financial situation. Furthermore, the Company has not calculated any associated costs of initiating these revisions. As a result, the alleged savings are overstated and, in several cases, can be obtained under the current Commission regulations.

⁶⁴ PGW Exhibit CP-1R, p. 10.

2. **PGW Has Been Under Chapter 56 Guidelines Since September, 2003.**

The Company's allegation that its collection efforts are hindered by adhering to the consumer protections contained in the Commission's Chapter 56 regulations is baseless and clearly not supported by any credible evidence in this proceeding. It is necessary to evaluate the Company's performance with the understanding that they have only been under full compliance with Chapter 56 regulations since September of last year. One need only look at the Company's improved performance during this time period to conclude that any allegation of hardship is clearly not related to the application of the Commission's regulations.

3. **The Need For Waiver Of Certain Commission Regulations Is Not Supported By The Record And Must Be Denied.**

Despite its improved collection performance during the introduction of its Collections Renewal Initiative, the Company blames the briefly adhered to Commission regulations as an impediment to it obtaining collection results exceeding its ten year historical average. Taking the Company's argument in total, the point appears to be that they cannot be effective under these constraints. The Company makes this conclusion despite the brevity of its adherence and its admission that not all aspects of the regulations have been fully utilized. In some cases, the Company alleged that the Commission's regulations were too cumbersome to be effective yet, under cross-examination, admitted that they never

attempted enforcement under existing guidelines.⁶⁵ In other instances, no evidence was presented to indicate that current regulations were being utilized to their full extent.

4. **The Commission Regulations Currently Provide Adequate Provisions For The Requirement Of Security Deposits.**

52 Pa. Code §56.31 permits deposits based on credit risk while §56.41 permits utilities to require security deposits from existing customers.⁶⁶ §56.41 specifically allows the utility to require ratepayers to post a deposit for the purposes of reestablishing credit in the case of delinquent accounts,⁶⁷ as a condition to reconnecting service (terminated accounts)⁶⁸ or for ratepayer failure to comply with a settlement or payment agreement.⁶⁹ There is no evidence in the record, credible or otherwise, to indicate that these provisions are not adequate protections for both the ratepayer and the utility. It is well established that the utility bears the burden of supporting its request. In this case, no support has been offered for its premise that additional, more stringent, requirements are needed. The Company's position is that it be allowed to take measures that affect all ratepayers and sort out the impact afterward. It is not in the public interest to grant waivers for regulations that have not been shown to be ineffective or burdensome when there is no evidence to indicate that they have even been utilized as intended. Furthermore, in situations where the collection of a security deposit is

⁶⁵ PGW Exhibit CP-1, Appendix A, p. 6, Transcript, p. 664.

⁶⁶ OTS Statement Number 4, p. 8.

⁶⁷ 52 Pa. Code §56.41(1).

⁶⁸ 52 Pa. Code §56.41(2).

⁶⁹ 52 Pa. Code §56.41(3).

warranted, the Company proposes to eliminate the Commission regulation that allows deposits to be paid in installments by requiring that 100% of the deposit be paid before service is established despite the utility protection that allows for termination of service for failing to post a deposit.⁷⁰ The Company is clearly proposing a unilateral protection without sufficient support for any hardship incurred under the current regulations.

5. **PGW Cannot Determine The Legal Obligations Of Another Party.**

The Company also seeks to unilaterally determine who will be responsible for the debt of another party. The Company proposes to eliminate any judicial interpretation of obligation for debts incurred by others. Under the auspices of confronting the “name game” PGW wants the authority to be judge and jury with respect to the assumption of an obligation of a previous ratepayer. Legal obligations are best suited for judicial interpretation. Expanding the Company’s authority to permit it to determine responsibility is not in the public interest and must be rejected. Similar proposals have been presented in the past and have not been found to be appropriate.⁷¹ The Company’s proposal offers no additional features warranting its consideration. In fact, the Company acknowledges the limitations of its system to enforce this provision and concede that, based on its need to improve collections (without regard to consumer protections), “the

⁷⁰ 52 Pa. Code §56.81(2).

⁷¹ See, OTS Statement Number 4, pp. 11-12.

suggested is the best at this time.”⁷² Furthermore, the Company’s offering that any customer would have a right to file a complaint with the Commission as to why they are not responsible for the bill is disingenuous and unduly shifts the burden of proof. The Company offers the right to complain, which the customer already has, as support for its proposal. The proposal also requires the ratepayer to overcome a presumption of responsibility. In other words, the ratepayer would be presumed guilty until proven innocent.

6. **Changes In Circumstances Should Include A Showing That There Is A Change In Income Level Or Other Relevant Matters.**

The Company also proposes to eliminate circumstances that affect payment arrangements to consider only a drop in income as a legitimate reason for consideration of continued payment agreements. This recommendation is in spite of the recent Commission Order that articulates current Commission policy.⁷³ Not satisfied with this interpretation, the Company desires to narrowly define a change in circumstances as consisting of only a drop in income. Ignored in this recommendation are medical emergencies and other intervening factors that are relevant and can legitimately affect a consumer’s ability to pay.⁷⁴ The Commission has provided guidance on this matter in the *Frayne* Decision and the Company’s attempts to further narrow the considerations are unwarranted.

⁷² PGW Exhibit CP-1, Appendix A, p. 10.

⁷³ See *Mary Frayne v. PECO Energy Company*, Docket Number C-20029005, Order Adopted July 17, 2003, Order Entered September 10, 2003.

⁷⁴ OTS Statement Number 4, p. 26.

7. **The Current Commission Regulations Provide Necessary Safeguards For Consumers While Protecting The Interests Of Utilities.**

The Company also attacks the regulations guiding termination procedures and proposes a liberalization of these guidelines. The proposals appear to have limited economic value yet severe implications with respect to consumer protections. The Company proposes to allow Friday shut-offs, eliminate the 48 hour notice period during the shut-off process, extend the maximum time period for the shut-off process to 60 days and extend service restoration time up to 7 days during non-CWIP periods.⁷⁵

The Company contends that expanded banking hours and other alternatives of obtaining funds has negated the need to ban Friday shut-offs. Its position ignores other services that may be required by consumers that are not available during this time period. For example, Community Based Organizations, charities, Doctor's offices and governmental agencies may not be accessible during this time period, thus negating a necessary consumer protection.⁷⁶ Furthermore, even if the customer were to make payment arrangements with PGW customer service representatives or field service personnel, the customer would still be subject to the Company's proposed 7 day time period for reconnection. Friday shut-offs would also severely limit a consumers ability to contact the Commission's Bureau of Consumer services to solicit intervention in the matter as government offices

⁷⁵ The Company has defined the non-CWIP period as being April 1 through November 30. CWIP is industry jargon relating to Cold Weather Procedures generally regarded as occurring from December 1 to March 31. These proposals are found in PGW Exhibit CP-1, Appendix A, pp. 12-17.

⁷⁶ OTS Statement Number 4, pp. 14-15.

are not available on the weekend. Also, the Company's proposals have no safeguards to mitigate the impact of unauthorized terminations. Waiving the 48 hour notice requirement eliminates any final resolutions that could occur prior to shut-off including clarification of situations precluding termination. The Company has not presented the costs associated with expanding its availability nor has there been any attempt to quantify lost payment opportunities that serve to stave off termination during the 48 hour period. It is conceivable that there is no economic benefit whatsoever, only deterioration in consumer protections and a shift in the burden of rectifying the situation to the consumer.

The Company further alleges that it needs additional time to reconnect based on its procedures involving "dig-ups". The Company presents evidence that is inconsistent with prudent practices and does not support its request for the waiver of a Commission regulation. "PGW does not regularly install a curb valve when service is terminated at a dig-up location for the simple reason that such installations cost approximately \$2500 in time and materials to complete while terminations cost approximately \$500."⁷⁷ On the other hand, the Company testified that "[e]xperience shows that 90% of terminated customers reconnect service."⁷⁸ The Company provides data relating to level 3 and level 4 customers but not level 1 and level 2. Nevertheless, the Company neglects to quantify the costs associated with reconnecting nor do they appear willing to address any

⁷⁷ PGW Statement CP-1R, p. 28.

⁷⁸ PGW Exhibit CP-1, Appendix A, p. 5.

measures to mitigate costs when statistical evidence presents an almost certainty that an event will occur. In other words, it is imprudent to not streamline reconnection procedures when 9 out of 10 customers have been shown that they will reconnect. Yet the Company does argue that it is prudent to waive what they consider to be “inconvenient” regulations. Utility regulation must fairly balance the interests of all parties.

As succinctly stated by the Commission “Chapter 56 of our Regulations sets forth many tools that, *if utilized properly*, (Emphasis Added) can assist utilities in more effectively managing their collection activities....[r]eports from a large number of utilities reveal that properly managed programs, that are compliant with Chapter 56, are very cost-effective in managing overdue accounts and assisting payment troubled customers.”⁷⁹

The waivers requested by the Philadelphia Gas Works are unnecessary and not in the public interest and therefore must be rejected.

⁷⁹ Mary Frayne v. PECO Energy Company, 2003 Pa. PUC LEXIS 36.

PROPOSED FINDINGS OF FACT

1. PGW has been under the mandate of full compliance with the provisions of Chapter 56 since September, 2003.
2. Current Chapter 56 regulations permit utilities to require security deposits from existing customers. OTS St. No. 4, p. 8.
3. Regulations permit a utility to terminate service for failure to post a deposit. 52 Pa. Code §56.81(2).
4. Commission regulations do not ban termination during the winter months. 52 Pa. Code § 56.100.
5. PGW has never utilized the procedures for terminating service during the winter months. Transcript, p. 664.
6. The Company has not notified its customers of its intent to seek waivers of certain Commission regulations. Transcript, pp. 665-666.
7. The Company has not done any cost studies to support its economic claims associated with its request for a waiver of certain provisions of Chapter 56. Transcript, p. 661.
8. Based on previous year's experience, 90% of PGW's terminated customers reconnect. PGW Ex. CP-1, Appendix A, p. 5.

PROPOSED CONCLUSIONS OF LAW

1. The Pennsylvania Public Utility Commission has jurisdiction over the parties and subject matter of this proceeding.
2. Philadelphia Gas Works has the burden of proving the necessity of each and every waiver of the Commission's regulations that it is requesting.
3. Philadelphia Gas Works has not proven, by a preponderance of evidence, that waivers of Chapter 56 regulations are necessary to improve its collection efforts.
4. Chapter 56 of the Commission's regulations adequately protects the interests of utilities and consumers.
5. The Commission is bound to carry out its duties by protecting the public interest.

PROPOSED ORDERING PARAGRAPH

1. Philadelphia's Petition to waive certain Commission regulations is denied in its entirety as it is not in the public interest.
2. PGW must remain compliant with all provisions of Chapter 56 as provided for in this Order.
3. Nothing in this Order is to be construed to modify any prior decisions with respect to the Company's Gas Cost Recovery proceeding or its Cash Receipt Reconciliation Clause filing.

III. CONCLUSION

The Pennsylvania Public Utility Commission should adopt the recommendations of the Office of Trial Staff as presented in this Main Brief.

Respectfully submitted,



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Senior Prosecutor



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Prosecutor

Office of Trial Staff
Pa. Public Utility Commission

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Dated: July 15, 2004

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

Pennsylvania Public Utility Commission :
: v. : Docket No. M-00021612
: P-00042090
Philadelphia Gas Works : R-00049157
: P-00032061

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Main Brief** of the Office of Trial Staff, dated July 15, 2004, either personally, by first class mail, electronic mail, express mail, or by fax upon the persons listed below:

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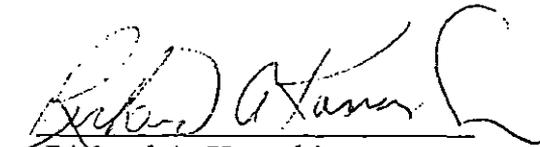
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Docket Nos. M-00021612; P-00042090;
R-00049157 and P-00032061



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July 16, 2004

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VIA HAND DELIVERY

**Re: Pennsylvania Public Utility Commission v. Philadelphia Gas Works;
Docket Nos. M-00021612; P-00042090; R-00049157; P-00032061**

Dear Secretary McNulty:

Please be advised that the Philadelphia Industrial and Commercial Gas Users Group ("PICGUG") will not be submitting a Main Brief in the above-referenced proceeding. PICGUG reserves the right, however, to file a Reply Brief in response to issues raised in other parties' Main Briefs.

As shown by the attached Certificate of Service, all parties to this proceeding are being duly served. Please date stamp the extra copy of this transmittal letter and kindly return it for our filing purposes.

Very truly yours,

MCNEES WALLACE & NURICK LLC

By *Charis Mincavage*
Charis Mincavage

Counsel to the Philadelphia Industrial and
Commercial Gas Users Group

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Enclosures

c: Administrative Law Judge Charles E. Rainey, Jr. (via fax and first class mail)
Certificate of Service

**DOCUMENT
FOLDER**

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CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a true copy of the foregoing document upon the participants listed below in accordance with the requirements of Section 1.54 (relating to service by a participant).

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