

1424 Chestnut Street, Philadelphia, PA 19102-2505
Phone: 215.981.3700, Fax: 215.981.0434
Web Address: www.clsphila.org

JUL - 1 2004

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

July 1, 2004

DOCUMENT
FOLDER

Filed by Federal Express

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building, 2nd Floor, 7 North
400 North Street
Harrisburg, PA 17120

Re: Petition of Philadelphia Gas Works for Waiver of Public Utility Commission
Customer Service Rules, Docket Nos. P-00042090, R-00049157, M - 00021612,
P-00032061

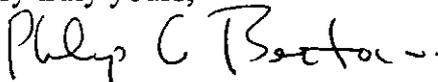
Dear Secretary McNulty:

Community Legal Services, Inc. represents Action Alliance of Senior Citizens of Greater Philadelphia, the Association of Community Organizations for Reform Now (ACORN), and the Tenants' Action Group (TAG) (collectively "Action Alliance et al.") in the above-captioned matter.

Enclosed please find for filing an original and three (3) copies of Action Alliance et al.'s Answer to Petition of Philadelphia Ga Works for Limited Waiver or Modification of PUC Chapter 56 Rules and Administrative Interpretations.

As evidenced by the attached Certificate of Service, all active parties to the proceeding are being served with copies of this Answer by e-mail and/or by First Class U.S. Mail.

Very truly yours,



PHILIP A. BERTOCCI

Attorney for Action Alliance et al.

cc: Certificate of Service
Administrative Law Judge Charles E. Rainey, Jr.

Enclosures

65

ORIGINAL
BEFORE THE

RECEIVED

JUL - 1 2004

PENNSYLVANIA PUBLIC UTILITY COMMISSION

**PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU**

**Re: Petition of Philadelphia Gas Works : Docket Nos. P-00042090
for Waiver of Public Utility : R-00049157
Commission Customer Service Rules : M - 00021612
P-00032061**

DOCKETED
AUG 25 2004

**ANSWER OF ACTION ALLIANCE et al. TO
PETITION OF PHILADELPHIA GAS WORKS FOR LIMITED
WAIVER OR MODIFICATION OF PUC CHAPTER 56 RULES AND
ADMINISTRATIVE INTERPRETATIONS**

Three Philadelphia-based consumer advocacy organizations, Action Alliance of Senior Citizens of Greater Philadelphia ("Action Alliance"), the Association of Community Organizations for Reform Now ("ACORN") and the Tenants' Action Group ("TAG") (hereinafter collectively "Action Alliance et al."), through counsel Community Legal Services, Inc., hereby submit this Answer in opposition to the Petition of Philadelphia Gas Works for Limited Waiver or Modification of PUC Chapter 56 Rules and Administrative Interpretations as follows:

1. Admitted in part; denied in part. It is admitted that PGW sought and received an extraordinary rate increase in 2002, and that its gas cost rate has increased since then. It is denied that PGW's uncollectible expense has "reached new highs" as a direct result of the increase in wholesale natural gas prices. To the contrary, the level of uncollected

**DOCUMENT
FOLDER**

billings arises from a multitude of factors, including the historical collection inefficiencies existing at PGW, the melt down of PGW's billing system in mid-1999 and the slow pace of recovery, and the on-going failure to develop and implement a state of the art collection plan. It is further denied that the record in the CRRC petition supports PGW's statements regarding the need for a CRRC.

2. Action Alliance et al. are, after reasonable investigation, without sufficient knowledge or information to form a belief as to the truth of the averment that a base rate proceeding would raise rates by \$70-90 million, because PGW has not provided information in this proceeding to assess this claim.

3. Admitted. PGW's CRRC Petition purported to explain PGW's need to implement a CRRC as such. It is denied that PGW's financial condition is precarious in the manner described by PGW. To the contrary, PGW will have more year end FY2004 cash than in many years. It is further denied that massive waivers of Chapter 56 are an appropriate response to the fact that PGW has been slow in improving its collections operation, and slow in implementing the collection tools available to it under Chapter 56.

4. Admitted. PGW did project in its CRRC petition that the proposed CRRC charge would permit recovery of \$47 million based on an assumed 89% collections rate for FY

2004; by way of further answer, just a few months later, PGW was and is now projecting a collections rate at or close to historical 92% levels.

5. Admitted in part, denied in part. It is admitted that PGW undertook a Collections Initiative to try to increase collections. It is denied that the Collections Initiative “publici[zed] the Company’s need and commitment to collect every possible dollar.” To the contrary, PGW only began publicizing new collection tactics in June 2004, such as reporting customers with delinquent balances to credit reporting agencies. It is denied that PGW made “every effort” to reverse the trend of “high gas costs and low collections percentages.” To the contrary, PGW’s neglect of its collections problems has been long known, and PGW’s collections initiative was begun too late to even begin to have effect until the current time.

6. Admitted in part, denied in part. It is denied that the CRRC is “needed to assure the financial community that PGW” will be able to collect at its historical level going forward; to the contrary, the financial community had never specifically suggested that the Company seek permission to institute a CRRC nor has it stated that the CRRC would provide assurance. It is admitted that PGW views the CRRC as a “hedge or a backstop” to shift the risk of underperforming collections to customers.

7. Admitted. The rating agencies' statements speak for themselves, and should be read in their totality, not in excerpts selected by PGW.

8. Denied. To the contrary, the rating agency public statements did not indicate that PGW would have to find additional means of improving its financial situation if the Company was able to increase its collections rate within the existing framework of Chapter 56 regulations.

9. Admitted. By way of further answer, there is no reason to believe that a down grade to junk bond status is imminent.

10. Admitted in part. Action Alliance et al. are, after reasonable investigation, without sufficient knowledge or information to form a belief as to the truth of the averment that Accenture endorses the waivers that have been proposed in this Petition.

11. Admitted in part, denied in part. It is admitted that the rating agencies have expressed concern about PGW's financial condition. It is denied that a downgrade is likely in the near future or in February 2005 if PGW continues to collect at or near historical levels.

12. Denied. PGW has not taken "extraordinary" steps to increase collection rates within the current PUC rules and parameters. To the contrary, PGW has not, to date, fully utilized the options available under current Chapter 56 regulations and administrative interpretations, including commencing the termination process when a customer fails to pay just one payment agreement installment, requiring deposits from late payers, as authorized under Chapter 56 Sections 56.41-56.42, and commencing termination procedures pursuant to the procedures for winter termination in appropriate cases

13. Action Alliance et al. are, after reasonable investigation, without sufficient knowledge or information to form a belief as to the truth of the averment that PGW's collections level will drop off in the summer months. By way of further answer, it is denied that PGW or any utility is entitled to be "assured" of attaining a certain collections rate; to the contrary, the PUC's rate setting procedures allow utilities to obtain rates sufficient to allow them the opportunity under Chapter 56 to attain a certain collections rate.

14. Denied in part, admitted in part. It is denied that the rating agencies require "a set of tools" which will permit PGW to increase its cash working capital and collections; to the contrary, none of the rating agency reports instructed PGW to put in place such a "set of tools." It is admitted that a sound collections practice would involve payment-troubled

customers making payment agreements and PGW taking reasonable steps to enforce those payment agreements, including utilization of current winter termination procedures where necessary and appropriate. It is denied that the requested waivers are necessary for PGW to materially improve its collections rate.

15. Action Alliance et al. are, after reasonable investigation, without sufficient knowledge or information to form a belief as to the truth of the averments regarding how much time PGW would need to implement the requested revisions to customer billing and collection rules. It is denied that shortage of time requires granting the requested waivers; to the contrary, PGW can improve its collections procedures by using the tools presently available under Chapter 56.

16. Admitted in part, denied in part. It is admitted that PGW is currently on track to return cash receipts to the 92% range established in the last litigated base rate case. It is denied that the CRRC is required to assure the financial community, as the rating agencies did not instruct PGW to institute a CRRC and did not threaten a downgrade if PGW did not obtain the CRRC. It is further denied that, if the Commission does not approve the CRRC, then the Commission must approve revisions and modification to existing customer billing and collections rules in order to increase PGW's working capital and collections; to the contrary, PGW's collections rate is currently likely to be at or

about historical levels, and there is the possibility of further improvement within the existing Chapter 56 framework. It is further denied that the package of revisions and modifications would produce an additional \$30 million that would otherwise be unavailable to the Company, because PGW has not produced anything approaching adequate support for such a claim, and because it is based on false assumptions, including but not limited to: that current BCS Guidelines do not permit PGW to collect substantial amounts up-front from Level 3 and Level 4 customers who have been terminated for non-payment; that current BCS Guidelines do not permit PGW to demand substantial deposits from Level 3 and Level 4 customers terminated for non-payment as a condition of service restoration, etc. It is further denied that the financial gains PGW may realize through implementation of the requested revisions and modifications will not add “new burdens to remaining customers.” To the contrary, PGW’s proposal threatens significant harm to many customers currently in good standing, who may in the future suffer temporary financial difficulties impacting their ability to pay their gas bills in full and on time.

17. Denied. To the contrary, continued improvement of the Collections Initiative within the framework of Chapter 56, as seems likely now that PGW has begun to devote resources to collections, would demonstrate to the rating agencies that PGW has taken permanent steps to avoid a recurrence of the FY 2004 year end cash crisis briefly anticipated in early 2004. The choice is not between increasing rates on a permanent

basis and adopting the CRRC and/or Chapter 56 waivers as PGW alleges; to the contrary, the choice is between holding PGW accountable for its inadequate collections and providing an incentive to continue to improve those collections, and adopting Chapter 56 waivers which will harm customers, without encouraging PGW to maintain collections in a framework which protects customer interests at the Chapter 56 level and quality.

18. Denied. It is denied that PGW's collections history, both under its prior Tariff and under Chapter 56, demonstrates that there can be no adequate collections program without the requested waivers. To the contrary, the BCS Income Guidelines, with their emphasis on developing a reasonable and affordable payment arrangement which takes into account multiple factors, including the customer's income level, represents a much more effective scheme for collections than PGW's prior rigid payment arrangements which were often unaffordable and bound to be broken. The credit and collections scheme represented by Chapter 56 is a web of interdependent parts, which together effectively balance the interests of customers against those of utility. As set forth above, PGW has not utilized all the collections tools provided by Chapter 56, and should not be granted a waiver from this framework before it has even altered its systems in order to use effectively all available tools.

19. Denied. It is denied that PGW's current financial situation requires extraordinary

measures; to the contrary, there is no cash crisis of the type described by PGW. It is denied that the size and scope of PGW's payment troubled customer problems means that adequate collections can not be achieved without revision of Chapter 56 rules; to the contrary, PGW should be required to demonstrate that it is using the tools provided by Chapter 56 (and the results are inadequate) before a waiver may even be considered. It is denied that the waiver proposals requested are "modest"; to the contrary, PGW has proposed a massive abrogation of Chapter 56 principles and policies which will cause substantial harm to customers.

20. Admitted. By way of further answer, Action Alliance et al. believe, as even PGW admits, that the explanations of the derivation of value are inadequate to support the waiver requests.

21. Admitted in part; denied in part. It is admitted that PGW has compiled a list of nine modifications. It is denied that these modifications will increase collections and cash flow in the time frame within which PGW claims a crisis to exist – i.e. at the end of August, into early September 2004; to the contrary, the modifications, if granted, are not likely to be in place until the cold weather months, and if implemented at that time, will cause incalculable hardship, even death, to some Philadelphia residents. By way of further answer, PGW has provided no systematic cost benefit analysis which takes into

account such factors as lost margins, resulting from the inability of Philadelphia residents to gain access to utility service at all, or caused by over-reliance on costly service termination as a collection technique as opposed to inexpensive techniques that do not involve loss of billings. It is denied that waiver of Chapter 56 provisions is the only means by which PGW and the PUC can maintain and increase rating agency confidence in PGW's financial stability.

It is further denied that these waivers may be granted, while simultaneously providing reasonable and adequate consumer protections. To the contrary, PGW claims to the contrary, the waivers individually and collectively represent a lowering of the quality and level of consumer protection and universal service.

22. Denied. It is denied that PGW's financial integrity depends on the granting of the requested waivers as the only way to improve PGW's collections results. By way of further answer, PGW admits that its so-called "specific quantifications" should not be the basis for a determination that the waivers are necessary to strike a proper balance between the interests of customers in reasonable and affordable service, and the financial integrity of the utility. It is denied that the Commission can set policy, without attempting to precisely weight the costs and benefits of the waivers against alternative means of achieving a higher level of collections performance at PGW.

23. No response to PGW's specific waiver requests is required. By way of further answer, these waivers are not necessary because PGW can improve its collections above historical levels within the existing framework of Chapter 56 rules and administrative interpretations. Further, the requested waivers are inappropriate should not be granted because they are not in the public interest:

- they will unduly harm customers by authorizing the delay and denial of access to a monopoly service which is a basic necessity of life, by requiring often unaffordable upfront payments of full balances and related charges from Level Three and Four customers in order to restore service (Waiver A), and by requiring an often unaffordable flat turn-on deposit for all new/restored customers (Waiver C);
- they impose unwarranted liability on "innocent" occupants and applicants, by requiring an unaffordable flat turn-on deposit regardless of credit risk (Waiver C), and by automatically holding new applicants who previously resided at an address responsible for any outstanding arrearage at that address regardless of legal responsibility for the service provided (Waiver D);
- they drive payment troubled customers under payment agreements who want to pay their bills into unnecessary terminations by denying reasonable adjustments to those agreements, or affordable reinstatement of those agreements (Waiver E);
- they authorize a host of modifications which would lead to service terminations without any or sufficient personal contact between the customer and the utility, to service

terminations at times particularly harmful to customers (including in cold weather), and to delays in service restoration after termination even when the customer had met the utility's financial requirements for restoration of service (Waivers B, H, G, F, and I).

24. The averment is a conclusion of law as to which no response is required.

25. The averment is a conclusion of law as to which no response is required.

26. To the extent that the averment contains a conclusion of law, no response is required.

To the extent that the averment contains a conclusion of fact, the allegation that the benefit to PGW outweighs any "pure and exact compliance with Chapter 56's collections rules," is denied. No waiver requested by PGW is necessary in order to protect the financial integrity of PGW.

27. The averment is a conclusion of law to which no response is required.

28. To the extent that the averment is a request for relief, the request is opposed. To the extent that PGW claims that waivers and modifications "must" be in place either for PGW or for the rating agencies, the averment is specifically denied as set forth in this Answer.

29. Admitted.

WHEREFORE, Action Alliance et al. respectfully request that the Commission deny the Petition of Philadelphia Gas Works for Limited Waiver or Modification of PUC Chapter 56 Rules and Administrative Interpretations.

Respectfully submitted,



PHILIP A. BERTOCCI, ESQUIRE
LAURA MOSKOWITZ, ESQUIRE

Attorneys for Action Alliance of Senior
Citizens, ACORN and Tenants' Action Group

COMMUNITY LEGAL SERVICES, INC.
1424 Chestnut Street, 4th Floor
Philadelphia, PA 19102
(215) 981-3702

July 1, 2004

RECEIVED

JUL - 1 2004

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

RECEIVED

CERTIFICATE OF SERVICE

JUL - 1 2004

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

I hereby certify that I have this day served a copy of the foregoing document upon the following parties at the addresses and in the manner described below:

BY E-MAIL ON JULY 1, 2004 AND FIRST CLASS U.S. MAIL ON JULY 2, 2004

Daniel Clearfield, Esquire
Mark Stewart, Esquire
Wolf, Block, Schorr & Solis-Cohen, LLP
212 Locust Street, Suite 300
Harrisburg, PA 17101
dclearfield@wolfblock.com

Gregory J. Stunder, Esquire
Philadelphia Gas Works
800 W. Montgomery Avenue
Philadelphia, PA 19122
greg.stunder@pgworks.com

Johnnie E. Simms, Esquire
Pennsylvania Public Utility Commission
Office of Trial Staff
Commonwealth Keystone Bldg., 2 West
P.O. Box 3265
Harrisburg, PA 17120
josimms@state.pa.us

Steven C. Gray, Esquire
Office of Small Business Advocate
Commerce Building, Suite 1102
300 North 2nd Street
Harrisburg, PA 17101
sgray@state.pa.us

Stephen Keene, Esquire
Office of Consumer Advocate
Forum Place Building, 5th Floor
555 Walnut Street
Harrisburg, PA 17101-1921
skeene@paoca.org

David M. Kleppinger, Esquire
Charis Mincavage, Esquire
McNees, Wallace & Nurick
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
cmincavage@mwn.com

Christopher B. Craig, Esquire
Senate Democratic Appropriations
Committee
Room 545, Main Capitol Building
Harrisburg, PA 17120
ccraig@fumo.com

Renardo L. Hicks, Esquire
Anderson, Gulotta & Hicks, PC
1110 N. Mountain Road
Harrisburg, PA 17112
rhicks@aghweb.com

Philip L. Hinerman, Esquire
Fox Rothschild, LLP
2000 Market Street, 10th Floor
Philadelphia, PA 19103-3291
phinerman@foxrothschild.com

BY FIRST CLASS U.S. MAIL, POSTAGE PREPAID ON JULY 2, 2004

William Kitsch
1233 Stanwood Street
Philadelphia, PA 19111

Barbara Greening, Esquire
1904 Green Street
Philadelphia, PA 19130

Adrienne Glenn
6342 Ardleigh Street
Philadelphia, PA 19138-1002



PHILIP A. BERTOCCI

212 Locust Street, Suite 300, Harrisburg, Pennsylvania 17101
Tel: (717) 237-7160 ■ Fax: (717) 237-7161 ■ www.WolfBlock.com

Daniel Clearfield
Direct Dial: (717) 237-7173
Direct Fax: (717) 237-7161
E-mail: dclearfield@wolfblock.com

July 1, 2004

RECEIVED

JUL 06 2004

VIA HAND DELIVERY AND E-MAIL

Tanya McCloskey, Esq.
Steve Keene, Esq.
James Mullins, Esq.
Office of Consumer Advocate
5th Fl., Forum Place Bldg.
555 Walnut Street
Harrisburg, PA 17101-1921

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**DOCUMENT
FOLDER**

Re: Investigation into Financial and Collection Issues
Regarding the Philadelphia Gas Works
Docket Nos. P-00042090, R-00049157, M-00021612 &
P-00032061

Dear Tanya :

On behalf of Philadelphia Gas Works, enclosed please find its Interrogatories addressed to Office of Consumer Advocate, Set I with regard to the above referenced matter.

Very truly yours,



Daniel Clearfield

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

DC/lww
Enclosures

cc: Parties of Record w/enc.
James McNulty (Cert. of Service only)

DSH:41682.1/PH1211-220875

JUL 06 2004

CERTIFICATE OF SERVICE

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

I hereby certify that I have on 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 FIRST CLASS MAIL AND E-MAIL

Tanya McCloskey, Esq.
James Mullins, Esq.
Steve Keene, Esq. (Hand Delivery)
Office of Consumer Advocate
5th Floor, Forum Place Bldg.
555 Walnut Street
Harrisburg, PA 17101-1921
E-mail: TmcCloskey@paoca.org
Skeene@paoca.org

Johnnie Simms, Esq.
Richard A. Kanaskie, Esq.
Office of Trial Staff
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265
E-mail: josimms@state.pa.us

Steven Gray, Esq.
Office of Small Business Advocate
Commerce Building, Suite 1102
300 North 2nd Street
Harrisburg, PA 17101
E-mail: sgray@state.pa.us

Richard Lelash
18 Seventy Acre Road
Redding, CT 06896
E-mail: lelash@sprintmail.com

William Kitsch
1233 Stanwood Street
Philadelphia, PA 19111

Greg Stunder, Esquire
Philadelphia Gas Works
800 W. Montgomery Avenue
Philadelphia, PA 19122
E-mail: greg.stunder@pgworks.com

Charis Mincavage, Esquire
McNEES, WALLACE, NURICK
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
E-mail: Cmincavage@mwn.com

Philip Bertocci, Esq.
Edward A. McCool, Esq.
Community Legal Services
1424 Chestnut Street
Philadelphia, PA 19102
Fax: (215) 981-0434
E-mail: pbertocci@clsphila.org

Robert D. Knecht
Industrial Economics Incorporated
2067 Massachusetts Avenue
Cambridge, MA 02140
E-mail: rdk@indecon.com

Christopher Craig, Esq.
Senator Fumo's Office
Main Capital
Room B48
Harrisburg, PA 17120
E-Mail: ccraig@fumo.com

Renardo L. Hicks, Esq.
Anderson Gulotta & Hicks, PC
1110 N. Mountain Rd.
Harrisburg, PA 17112
Email: rhicks@aghweb.com

Barbara Greening, Esq.
1904 Green Street
Philadelphia, PA 19130

Adrienne Glenn
6342 Ardleigh Street
Philadelphia, PA 19138-1002

Edward Morrison
767 Cinnaminson Street
Philadelphia, PA 19128

Ward Smith, Esquire
Exelon Business Services Company
2301 Market Street, S23-1
Philadelphia, PA 19103
ward.smith@exeloncorp.com

Philip L. Hinerman, Esq.
A. Wesley Bridges, Esq.
Fox Rothschild LLP
2000 Market Street, 10th Fl.
Philadelphia, PA 19103-3291
E-mail: phinerman@foxrothschild.com
abridges@foxrothschild.com

James P. Leonard, Esq.
Cooper Leonard & Schaffer, LLC
1525 Locust St., 13th Fl.
Philadelphia, PA 19102
E-mail: cooperleonardsch@aol.com

Barbara R. Alexander (via Federal Express)
83 Wedgewood Drive
Winthrop, ME 04364
E-mail: barbalex@ctel.net

Roger D. Colton (via Federal Express)
Fisher Sheehan & Colton
34 Warwick Rd.
Belmont, MA 02478-2841
roger@FSCOnline.com

Dated: July 1, 2004


Daniel Clearfield, Esq.

212 Locust Street, Suite 300, Harrisburg, Pennsylvania 17101
Tel: (717) 237-7160 ■ Fax: (717) 237-7161 ■ www.WolfBlock.com

Daniel Clearfield
Direct Dial: (717) 237-7173
Direct Fax: (717) 237-7161
E-mail: dclearfield@wolfblock.com

RECEIVED

JUL 06 2004

July 1, 2004

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

VIA E-MAIL AND FEDERAL EXPRESS

Philip Bertocci, Esq.
Community Legal Services, Inc.
1424 Chestnut Street
Philadelphia, PA 19102-2505

**DOCUMENT
FOLDER**

Re: Investigation into Financial and Collection Issues
Regarding the Philadelphia Gas Works
Docket Nos. P-00042090, R-00049157, M-00021612 &
P-00032061

Dear Phil:

On behalf of Philadelphia Gas Works, enclosed please find its Interrogatories addressed to Action Alliance of Senior Citizens of Southeastern Pennsylvania, et al., Set I, with regard to the above referenced matter.

Very truly yours,


Daniel Clearfield

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

DC/lww
Enclosures

cc: Parties of Record w/enc.
James McNulty (Cert. of Service only)

DSH:41686.1/PHI211-220875

RECEIVED

JUL 06 2004

CERTIFICATE OF SERVICE

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

I hereby certify that I have on 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 FIRST CLASS MAIL AND E-MAIL

Tanya McCloskey, Esq.
James Mullins, Esq.
Steve Keene, Esq. (via hand delivery)
Office of Consumer Advocate
5th Floor, Forum Place Bldg.
555 Walnut Street
Harrisburg, PA 17101-1921
E-mail: TmcCloskey@paoca.org
Skeene@paoca.org

Johnnie Simms, Esq.
Richard A. Kanaskie, Esq.
Office of Trial Staff
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265
E-mail: josimms@state.pa.us

Steven Gray, Esq.
Office of Small Business Advocate
Commerce Building, Suite 1102
300 North 2nd Street
Harrisburg, PA 17101
E-mail: sgray@state.pa.us

Richard Lelash
18 Seventy Acre Road
Redding, CT 06896
E-mail: lelash@sprintmail.com

William Kitsch
1233 Stanwood Street
Philadelphia, PA 19111

Greg Stunder, Esquire
Philadelphia Gas Works
800 W. Montgomery Avenue
Philadelphia, PA 19122
E-mail: greg.stunder@pgworks.com

Charis Mincavage, Esquire
McNEES, WALLACE, NURICK
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
E-mail: Cmincavage@mwn.com

Philip Bertocci, Esq. (Via Federal Express)
Edward A. McCool, Esq.
Community Legal Services
1424 Chestnut Street
Philadelphia, PA 19102
Fax: (215) 981-0434
E-mail: pbertocci@clsphila.org

Robert D. Knecht
Industrial Economics Incorporated
2067 Massachusetts Avenue
Cambridge, MA 02140
E-mail: rdk@indecon.com

Christopher Craig, Esq.
Senator Fumo's Office
Main Capital
Room B48
Harrisburg, PA 17120
E-Mail: ccraig@fumo.com

Renardo L. Hicks, Esq.
Anderson Gulotta & Hicks, PC
1110 N. Mountain Rd.
Harrisburg, PA 17112
Email: rhicks@aghweb.com

Barbara Greening, Esq.
1904 Green Street
Philadelphia, PA 19130

Adrienne Glenn
6342 Ardleigh Street
Philadelphia, PA 19138-1002

Edward Morrison
767 Cinnaminson Street
Philadelphia, PA 19128

Ward Smith, Esquire
Exelon Business Services Company
2301 Market Street, S23-1
Philadelphia, PA 19103
ward.smith@exeloncorp.com

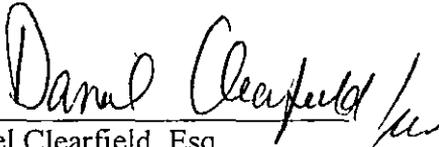
Philip L. Hinerman, Esq.
A. Wesley Bridges, Esq.
Fox Rothschild LLP
2000 Market Street, 10th Fl.
Philadelphia, PA 19103-3291
E-mail: phinerman@foxrothschild.com
abridges@foxrothschild.com

James P. Leonard, Esq.
Cooper Leonard & Schaffer, LLC
1525 Locust St., 13th Fl.
Philadelphia, PA 19102
E-mail: cooperleonardsch@aol.com

Barbara R. Alexander (via federal express)
83 Wedgewood Drive
Winthrop, ME 04364
E-mail: barbalex@ctel.net

Roger D. Colton (via federal express)
Fisher Sheehan & Colton
34 Warwick Rd.
Belmont, MA 02478-2841
roger@FSCOnline.com

Dated: July 1, 2004


Daniel Clearfield, Esq.



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

IN REPLY PLEASE
REFER TO OUR FILE

July 2, 2004

DOCUMENT
FOLDER
ORIGINAL

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

Re: Investigation into Financial and Collections Issues
Regarding the Philadelphia Gas Works
Docket Nos. P-00042090; R-00049157; M-00021612; P-00032061

Dear Secretary McNulty:

Enclosed for filing please find an original and three (3) copies of the **Office of Trial Staff Answer to Philadelphia Gas Works' Petition for Limited Waiver or Modification of PUC Chapter 56 Rules and Administrative Interpretations**, in the above-captioned proceeding.

Copies are being served on all active parties of record.

Sincerely,

Richard A. Kanaskie
Prosecutor
Office of Trial Staff

RAK:las

c: Parties of Record
Hon. Charles E. Rainey, Jr.

RECEIVED

JUL - 2 2004

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

43

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RECEIVED
2004 JUL -2 AM 11:00
SECRETARY'S OFFICE

INVESTIGATION INTO FINANCIAL : Docket Nos. P-00042090
AND COLLECTIONS ISSUES : R-00049157
REGARDING THE PHILADELPHIA : M-00021612
GAS WORKS : P-00032061

DOCKETED
AUG 25 2004

**OFFICE OF TRIAL STAFF ANSWER TO PHILADELPHIA GAS
WORKS' PETITION FOR LIMITED WAIVER OR MODIFICATION OF
PUC CHAPTER 56 RULES AND ADMINISTRATIVE
INTERPRETATIONS**

The Office of Trial Staff ("OTS") of the Pennsylvania Public Utility Commission ("Commission"), by and through its Chief Prosecutor Johnnie E. Simms and Prosecutor Richard A. Kanaskie, and pursuant to 52 Pa. Code §5.61 entitled "Answers to Complaints, Petitions and Motions," hereby timely submits the following Answer To Petition Of Philadelphia Gas Works ("PGW" or "Company") For Limited Waiver Or Modification Of PUC Chapter 56 Rules And Administrative Interpretations.

OTS files this Answer requesting the Commission **deny** the Petition for the reasons enumerated herein.

1. Admitted.
2. Admitted.
3. Admitted. This quote accurately portrays the language of the referenced Petition. 2003.

**DOCUMENT
FOLDER**

4. Admitted. This information was included in its Petition at Docket Number P-00042909.

5. Admitted. This information accurately reflects the original content of the referenced documents.

6. Admitted.

7. Admitted.

8. Admitted. This information accurately reflects the original content of the referenced documents. By way of further explanation, OTS cannot comment on the "clear signal" referenced in this averment.

9. Admitted. This information accurately reflects the original content of the referenced documents.

10. Admitted. This information accurately reflects the original content of the referenced documents.

11. Admitted.

12. Admitted in part. It is admitted that the Company has taken preliminary steps to improve its collection practices.

13. OTS is without sufficient knowledge or information to form a belief as to the truth or accuracy of the averments contained in this paragraph.

14. Admitted in part/Denied in part. It is denied that a winter moratorium exists.

15. Admitted in part/Denied in part. This averment is admitted to the extent that PGW collects a huge percent of its total revenue in the winter months. The

balance of the averment is denied to the extent it indicates that waiver of the regulations will facilitate improvement.

16. Admitted in part/Denied in part. It is admitted that the CRRC will assist the Company in maintaining historic levels of uncollectibles. It is denied that the Company's mechanism is the most appropriate means to accomplish this. By way of further explanation, OTS has provided testimony including a more appropriate mechanism.

17. Admitted in part/Denied in part. It is admitted that the CRRC will serve to improve cash collections. It is denied that the request for revised collection rules is warranted.

18. No response required.

19. Denied. No modification of the existing rules is required for the Company to increase its collection levels.

20. No response required.

21. Admitted in part/Denied in part. It is denied that the modifications will still provide reasonable and adequate consumer protections.

22. No response required.

23. This averment represents a Prayer For Relief to which no response is required. The specific explanations in this averment are denied as the requests are unwarranted. Evidence to support this denial has been filed by OTS.

24. Admitted.

25. Admitted.

26. Admitted in part/Denied in part. It is admitted that the Commission has the authority to grant the Company's Petition and that the cost/benefit determination is within its expertise. It is denied that continued adherence to the Commission's Chapter 56 collection rules would not be prudent as the Company has not clearly and convincingly demonstrated that the requested waivers are necessary to effectuate the desired result.

27. *Admitted to the extent of the Commission's authority. It is denied that the relief requested should be granted.*

28. No response required. The Commission has already addressed this averment.

29. No response required.

WHEREFORE, for the reasons stated herein, the Office of Trial Staff respectfully requests that the Pennsylvania Public Utility Commission **deny** Philadelphia Gas Work's Petition for Limited Waiver or Modification of PUC Chapter 56 Rules and Administrative Interpretations as waivers to these established regulations are not in the public interest.

Respectfully submitted,



Johnnie E. Simms
Chief Prosecutor

Richard A. Kanaskie
Prosecutor

Office of Trial Staff
Pennsylvania Public Utility Commission
Post Office Box 3265
Harrisburg, Pennsylvania 17105-3265

DATED: July 2, 2004

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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 **Answer to Philadelphia Gas Works' Petition for Limited Waiver or Modification of PUC Chapter 56 Rules and Administrative Interpretations** of the Office of Trial Staff, dated July 2, 2004, either personally, by first class mail, electronic mail, express mail, or by fax upon the persons listed below:

Daniel Clearfield, Esquire
Mark S. Stewart, Esquire
Wolf Block Schorr & Solis-Cohen LLP
212 Locust Street – Suite 300
Harrisburg, PA 17101

Gregory J. Stunder, Esquire
Philadelphia Gas Works
800 West Montgomery Avenue
Philadelphia, PA 19122

Stephen J. Keene, Esquire
Office of Consumer Advocate
555 Walnut Street
Forum Place - 5th Floor
Harrisburg, PA 17101-1923

RECEIVED
JUL - 2 2004
PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Steven C. Gray, Esquire
Small Business Advocate
Suite 1102, Commerce Bldg.
300 North Second Street
Harrisburg, PA 17101

David M. Kleppinger, Esquire
Charis Mincavage, Esquire
McNees Wallace & Nurick, LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166

Philip A. Bertocci, Esquire
Community Legal Services, Inc.
1424 Chestnut Street, 4th Floor
Philadelphia, PA 19102-2505

Wendy Beetlestone, Esquire
School District of Philadelphia
Office of General Counsel
2130 Arch Street, 5th Floor
Philadelphia, PA 19103

William Kitsch
1233 Stanwood Street
Philadelphia, PA 19111

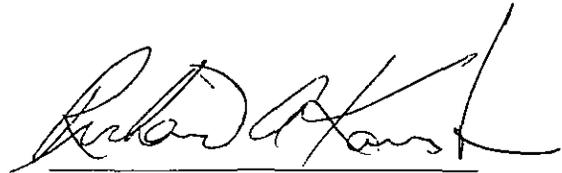
Renardo L. Hicks, Esquire
Anderson, Gulotta & Hicks, PC
1110 North Mountain Road
Harrisburg, PA 17112

Philip L. Hinerman, Esquire
Fox Rothschild, LLP
2000 Market Street, 10th Floor
Philadelphia, PA 19103-3291

Barbara Greening, Esquire
1904 Green Street
Philadelphia, PA 19130

Adrienne Glenn
6342 Ardleigh Street
Philadelphia, PA 19138-1002

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

A handwritten signature in black ink, appearing to read "Richard A. Kanaskie", written over a horizontal line.

Richard A. Kanaskie
Prosecutor
Office of Trial Staff

Dated: July 2, 2004
Docket Nos. M-00021612; P-00042090;
R-00049157 and P-00032061

212 Locust Street, Suite 300, Harrisburg, Pennsylvania 17101
Tel: (717) 237-7160 Fax: (717) 237-7161 www.WolfBlock.com

Daniel Clearfield
Direct Dial: (717) 237-7173
E-mail: dclearfield@wolfblock.com

ORIGINAL

July 2, 2004

James McNulty, Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg., 2nd
Floor, 400 North Street P.O. Box 3265
Harrisburg, PA 17105-3265

DOCUMENT
FOLDER

RECEIVED
2004 JUL -2 PM 3:52
SECRETARY'S BUREAU

Re: Investigation into Financial and Collection Issues
Regarding the Philadelphia Gas Works
Docket Nos. P-00042090, R-00049157, M-00021612 &
P-00032061

Dear Secretary McNulty:

Enclosed are the original and three copies of Philadelphia Gas Works' Motion to Strike in the above-referenced matter. As evidenced by the attached Certificate of Service, all parties of record have been served in the manner indicated.

If you have any questions, please contact me at your convenience.

Sincerely,

Daniel Clearfield
Daniel Clearfield

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

DC/jls
Enclosures

cc: Certificate of Service (w/enc)

DSH:41697.1/PHI211-220875

53

ORIGINAL

SECRETARY OF REVENUE

2004 JUL -2 PM 3:52

RECEIVED

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Re: Investigation into Financial Collections Issues Regarding the Philadelphia Gas Works

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

DOCKETED SEP 22 2004

MOTION OF PHILADELPHIA GAS WORKS TO STRIKE PORTIONS OF DIRECT TESTIMONY PRESENTED BY ROGER D. COLTON

Philadelphia Gas Works ("PGW") hereby submits this Motion to Strike portions of the direct testimony, as well as related appendices, presented by Roger D. Colton on behalf of the Office of Consumer Advocate ("OCA") on June 28, 2004 in the above captioned matter. The testimony presented on page 36, lines 12-20, and the related appendices H and I, contain impermissible conclusions of law and opinions as to ultimate issues of the case, for which Mr. Colton as a witness is neither qualified to make, nor permitted to express an opinion. In support of its Motion, PGW states as follows:

- 1. On June 16, 2004, PGW filed a request relating to the waiver of certain 52 Pa. Code Chapter 56 requirements.
2. On June 28, 2004, the OCA provided testimony by Mr. Roger Colton regarding credit and collection issues. As to one PGW waiver requests, Mr. Colton states in his testimony that:

This PGW request violates a host of legal tenets regarding regulatory law, family law, contract law, and consumer credit law. It impermissibly allows the denial of service for a collateral matter. It impermissibly allows PGW to impute an implied-in-fact contract when faced with an express contract with contrary terms. It impermissibly allows PGW to ignore spousal responsibility laws. It impermissibly allows PGW to communicate the existence of a consumer's debt to a third party. The request should be denied. I have attached an analysis of the lawfulness of holding a person responsible for their roommate's utility bill as Appendix H. I have attached an analysis of the lawfulness of holding one spouse liable for the utility bills of the other spouse as Appendix I.

Direct Testimony, 36, lines 11-20 (emphasis added). There can be no question that Mr. Colton's statements are nothing more than impermissible conclusions of law and legal arguments and not factual evidence or allowable witness opinion.

DOCUMENT FOLDER

3. Mr. Colton's testimony and appendices amount to no more than a legal brief and should not be allowed as witness testimony. His statements directly declare what he claims: the law to be and that PGW's proposal is in violation. The appendices read as legal hornbooks. However, it is the role of the Public Utility Commission ("PUC") to determine the lawfulness of issues arising in this proceeding. Furthermore, it is the responsibility of the counsel of the OCA to develop and assert legal opinions and offer legal conclusions. Mr. Colton's attempt to adjudicate the legality of PGW's request, or to proffer his legal opinion of what the PUC's decision must be, usurps the role of the Commission, and exceeds the permissible bounds as to what a witness may testify.

4. Mr. Colton's testimony and claimed expertise regarding the legality of PGW's waiver requests based upon his own observations of contract law and the "family necessities" doctrine¹ subvert the Commission's adjudicatory role. The legal issues that he raises are not hyper-technical and do not require the testimony of an expert witness to assist the PUC in understanding the intricacies involved. Accordingly, Mr. Colton's conclusions of law provide no benefit to the Commission as the trier of fact. The legal arguments and conclusions are completely out of place for witness testimony. Mr. Colton's legal analyses would find a more suitable home in a brief instead of masquerading as qualified expert knowledge or evidence.

5. Finally, these portions of Mr. Colton's testimony and the identified appendices constitute nothing more than Mr. Colton's opinion on the ultimate issue before the Commission. They are merely a series of legal conclusions supported by appendices that are nothing more than Mr. Colton's own legal arguments. This material serves no legitimate purpose in Mr. Colton's direct testimony.

¹ Mr. Colton's, Appendix I does not contain a single citation to Pennsylvania law. This may be explained by the fact that the "family necessities doctrine" is not recognized in Pennsylvania.

WHEREFORE, for all the foregoing reasons, PGW requests that the Honorable Administrative Law Judge grant this Motion and strike the portion of Mr. Colton's testimony and the appendices identified above from the record.

Respectfully submitted,



Daniel Clearfield, Esquire
Mark S. Stewart, Esquire
WOLF, BLOCK, SCHORR and SOLIS-
COHEN LLP
212 Locust Street, Suite 300
Harrisburg, PA 17101
(717) 237-7160

Of Counsel:

Greg Stunder, Esquire
Philadelphia Gas Works
800 W. Montgomery Avenue
Philadelphia, PA 19122

Dated: July 2, 2004

CERTIFICATE OF SERVICE

ORIGINAL

I hereby certify that I have on 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 FIRST CLASS MAIL AND E-MAIL

Tanya McCloskey, Esq.
James Mullins, Esq.
Steve Keene, Esq. (via hand delivery)
Office of Consumer Advocate
5th Floor, Forum Place Bldg.
555 Walnut Street
Harrisburg, PA 17101-1921
E-mail: TmcCloskey@paoca.org
Skeene@paoca.org

Johnnie Simms, Esq.
Richard A. Kanaskie, Esq.
Office of Trial Staff
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265
E-mail: josimms@state.pa.us

Steven Gray, Esq.
Office of Small Business Advocate
Commerce Building, Suite 1102
300 North 2nd Street
Harrisburg, PA 17101
E-mail: sgray@state.pa.us

Richard Lelash
18 Seventy Acre Road
Redding, CT 06896
E-mail: lelash@sprintmail.com

William Kitsch
1233 Stanwood Street
Philadelphia, PA 19111

Greg Stunder, Esquire
Philadelphia Gas Works
800 W. Montgomery Avenue
Philadelphia, PA 19122
E-mail: greg.stunder@pgworks.com

Charis Mincavage, Esquire
McNEES, WALLACE, NURICK
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
E-mail: Cmincavage@mwn.com

Philip Bertocci, Esq. (Via Federal Express)
Edward A. McCool, Esq.
Community Legal Services
1424 Chestnut Street
Philadelphia, PA 19102
Fax: (215) 981-0434
E-mail: pbertocci@clsphila.org

Robert D. Knecht
Industrial Economics Incorporated
2067 Massachusetts Avenue
Cambridge, MA 02140
E-mail: rdk@indecon.com

Christopher Craig, Esq.
Senator Fumo's Office
Main Capital
Room B48
Harrisburg, PA 17120
E-Mail: ccraig@fumo.com

RECEIVED
2004 JUL -2 PM 3:52
SECRETARY'S BUREAU

Renardo L. Hicks, Esq.
Anderson Gulotta & Hicks, PC
1110 N. Mountain Rd.
Harrisburg, PA 17112
Email: rhicks@aghweb.com

Barbara Greening, Esq.
1904 Green Street
Philadelphia, PA 19130

Adrienne Glenn
6342 Ardleigh Street
Philadelphia, PA 19138-1002

Edward Morrison
767 Cinnaminson Street
Philadelphia, PA 19128

Ward Smith, Esquire
Exelon Business Services Company
2301 Market Street, S23-1
Philadelphia, PA 19103
ward.smith@exeloncorp.com

Philip L. Hinerman, Esq.
A. Wesley Bridges, Esq.
Fox Rothschild LLP
2000 Market Street, 10th Fl.
Philadelphia, PA 19103-3291
E-mail: phinerman@foxrothschild.com
abridges@foxrothschild.com

James P. Leonard, Esq.
Cooper Leonard & Schaffer, LLC
1525 Locust St., 13th Fl.
Philadelphia, PA 19102
E-mail: cooperleonardsch@aol.com

Barbara R. Alexander (via federal express)
83 Wedgewood Drive
Winthrop, ME 04364
E-mail: barbalex@ctel.net

Roger D. Colton (via federal express)
Fisher Sheehan & Colton
34 Warwick Rd.
Belmont, MA 02478-2841
roger@FSCOnline.com

Dated: July 2, 2004



Daniel Clearfield, Esq.



OFFICE OF CONSUMER ADVOCATE

555 Walnut Street, 5th Floor, Forum Place
Harrisburg, Pennsylvania 17101-1923
(717) 783-5048
800-684-6560 (in PA only)

IRWINA. POPOWSKY
Consumer Advocate

FAX (717) 783-7152
consumer@paoca.org

July 2, 2004

ORIGINAL

James J. McNulty, Secretary
PA Public Utility Commission
400 North Street
Keystone Building
Harrisburg, PA 17105-3265

DOCUMENT
FOLDER

RE: Investigation into Financial and Collections
Issues Regarding the Philadelphia Gas Works
Docket Nos. P-00042090; R-00049157
M-00021612; P-00032061

Dear Secretary McNulty:

Enclosed for filing please find an original and three (3) copies of the Office of Consumer Advocate's Answer to the Petition of Philadelphia Gas Works for Limited Waiver or Modification of PUC Chapter 56 Rules and Administrative Interpretations, in the above-referenced proceeding.

Copies have been served upon all parties of record as shown on the attached Certificate of Service.

Sincerely,

Stephen J. Keene
Senior Assistant Consumer Advocate

Enclosures

- cc: Terrance J. Fitzpatrick, Chairman
- Robert K. Bloom, Vice Chairman
- Glen R. Thomas, Commissioner
- Kim Pizzingrilli, Commissioner
- Wendell F. Holland, Commissioner
- Cheryl W. Davis, Director, Office of Special Assistants
- Bohdan R. Pankiw, Chief Law Bureau
- Mitchell Miller, Bureau of Consumer Services
- All parties of record

80091.doc

RECEIVED
2004 JUL -2 AM 11:35
SECRETARY'S BUREAU

42

ORIGINAL

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

SECRETARY'S BUREAU

2004 JUL -2 AM 11:35

RECEIVED

Re: Petition of Philadelphia Gas Works	:	Docket Nos.	P-00042090
for Waiver of Public Utility Commission	:		R-00049157
Customer Service Rules	:		M-00021612
			P-00032061

**ANSWER OF THE OFFICE OF CONSUMER ADVOCATE TO THE
PETITION OF PHILADELPHIA GAS WORKS FOR LIMITED WAIVER
OR MODIFICATION OF PUC CHAPTER 56 RULES AND
ADMINISTRATIVE INTERPRETATIONS**

DOCKETED
AUG 25 2004

I. INTRODUCTION

On June 17, 2004, Philadelphia Gas Works ("Philadelphia Gas Works" or "the Company") filed a Petition for Limited Waiver or Modification of Public Utility Commission ("Commission") Chapter 56 Rules and Administrative Interpretations ("Chapter 56 Waiver Petition"). In its Petition, PGW seeks to waive or modify several important provisions of the Commission's Chapter 56 regulations and administrative interpretations of those regulations. 52 Pa. Code § 56.1 *et seq.* ("Chapter 56"). These requests include modifications and waivers of credit and deposit standards, and termination and collection procedures for residential customers. The Company has also filed a Motion for Concurrent Disposition with the Petition for Cash Receipts Reconciliations Clause.

The Company filed its Chapter 56 Waiver Petition in response to the Commission's June 2, 2004 Order into PGW's financial and collections practices. *Investigation into Financial and Collections Issues Regarding the Philadelphia Gas Works*, Docket Nos. P-00042090, R-

**DOCUMENT
FOLDER**

00049157, M-00021612, and P-00032061 (Opinion and Order entered June 2, 2004)(“*June 2 Order*”). The *June 2 Order* provided that if the Company was going to seek any Chapter 56 waivers or modifications in light of its recent collection problems, that it would have to file a petition with the Commission within 30 days. *June 2 Order* at 4-5. The Commission also stated that “[i]n the event PGW files a waiver petition, it should propose the duration of the waiver, as well as an alternative standard or procedure that would apply in place of those contained in the regulations.” *Id.* at 5 n.2. The June 2 Order further provided that PGW should “explain in such a petition how the alternative standard or procedure adequately balances consumer protection rights with PGW’s financial integrity.” *Id.* at 5 n.2.

Through its Chapter 56 Waiver Petition, PGW seeks to modify or waive Chapter 56 provisions that contain many important consumer protections. These Chapter 56 protections have evolved over the years and provide basic, fundamental protections to consumers to ensure that the health and safety of the public are not placed in jeopardy and that utilities are dealing fairly with consumers. Therefore, PGW should be held to a strict standard of proof before waivers of such important safeguards are granted.

PGW claims that the waivers it seeks are necessary in order for it to increase its collections rate. PGW characterizes its financial position as “dire” and claims that if it cannot “immediately” put in place its proposed Cash Receipts Reconciliation Charge (“CRRC”) *and* the Chapter 56 waivers to improve its collections and cash receipts, bond rating agencies will reduce PGW’s bond rating to junk bond status. Chapter 56 Waiver Petition at 1. PGW claims that record high natural gas prices and consecutive colder than normal winters have harmed the Company’s financial recovery that was expected as a result of recent Commission-approved rate

increases, and increased its need for cash working capital requirements and also reduced the Company's collections rate. Chapter 56 Waiver Petition at 2.

PGW states that it has taken steps to increase its collections rate by filing a Petition to Establish a Cash Receipts Reconciliation Clause ("CRRC Petition") where it would charge paying customers a surcharge.¹ Chapter 56 Waiver Petition at 2. The OCA has filed Main and Reply Briefs in the CRRC Petition proceeding strongly opposing implementation of the CRRC.

Additionally, PGW states that it has instituted a "Collections Initiative" with concentrated collections efforts by PGW employees. Chapter 56 Waiver Petition at 3. In addition to PGW's efforts, the City of Philadelphia has announced a grant-back of the \$18 million City payment for up to five years. *Id.* This will provide PGW with a \$90 million injection of cash over a five-year period. In spite of the improved collections and assistance from the City, PGW still claims that this is not enough to improve the Company's cash position and that Chapter 56 waivers are still necessary to maintain its financial integrity.

The OCA submits that PGW's request for Chapter 56 waivers is premature and that the Collections Initiative and other avenues to improve collections should be pursued before seeking waivers of important consumer safeguards that provide key public health and safety protections. Moreover, the OCA submits that PGW has failed to provide any information in its Chapter 56 Waiver Petition that allows the Commission to credibly determine how the waiver request balances consumer protection rights with PGW's financial integrity.

¹ *Petition of Philadelphia Gas Works to Establish a Cash Receipts Reconciliation Clause*, Docket No. P-00042090. This proceeding has been consolidated into the instant investigation proceeding and is currently pending before the Commission.

In general, the OCA opposes PGW's Chapter 56 Waiver Petition as unnecessary and unsupported. While there may be certain waivers of Chapter 56 provisions that may be appropriate for PGW, or other solutions to PGW's collection concerns that would obviate the need for Chapter 56 waivers, the OCA submits that due to the expedited procedural schedule that was adopted in this proceeding, there has been inadequate time afforded to the parties to fully evaluate PGW's requests and to propose comprehensive alternatives to PGW's proposed Chapter 56 waivers. In spite of the extremely short period of time the parties had in which to conduct an investigation into these issues, the OCA has been able to identify several alternatives that PGW could incorporate into its collections practices that could improve PGW's collections and its cash flow. These alternatives include the use of Electronic Funds Transfers for making monthly payments on payment arrangements for customers with incomes at or above 250% of the federal poverty level, and implementation of mandatory budget billing for all residential customers. The OCA submits that these alternatives, along with the changes made as a result of the on-going Collections Initiative, will provide PGW with additional tools in order to continue to improve its collections rate. Further improvement of the Company's collections, along with the assistance pledged by the City of Philadelphia, will help get PGW back on the road to financial fitness.

As for the specific waivers of Chapter 56 proposed by the Company, the OCA submits that these requests are, for the most part, unsupported, overly broad and should be rejected, modified or made subject to appropriate conditions in order to adequately protect consumers. The OCA submits that a majority of PGW's requests for waivers weigh heavily in favor of PGW's financial considerations and do not adequately balance the consumer protection rights of PGW customers as required by the *June 2 Order* or consider the public health and safety.

Furthermore, PGW has failed to provide adequate support for the waiver requests in the form of empirical data to support each Chapter 56 waiver request. Instead, PGW bases the estimated cost savings and corresponding loss of protection to customers on untested assumptions, conjecture, and speculation.

For the reasons stated below, the OCA submits that the majority of PGW's Chapter 56 Waiver Petition should not be granted, and that instead, all reasonable alternatives should first be explored.

II. STANDARD

Section 56.222 of 52 Pa.Code addresses modifications to Chapter 56 provisions:

- (a) If *unreasonable hardship* to a person or 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.

* * * * *

- (b) A person or utility that files an application under this section *shall* provide notice to persons who may be affected by the modification or temporary exemption. Notice may be made by a bill insert or in another reasonable manner.

52 Pa.Code § 56.222(a) and (b)(emphasis added). Moreover, in the June 2 Order the Commission specifically stated that PGW has the responsibility to provide an “alternative standard or procedure” and to “explain ... how the alternative standard or procedure adequately balances consumer protection rights with PGW’s financial integrity.” *June 2 Order* at 5 n.2 (citing 52 Pa. Code §§ 5.43 and 56.222).

III. ANSWER

A. Introduction.

PGW is requesting waivers of provisions of Chapter 56 that contain important consumer protections to guard against “unreasonable termination of or refusal to provide that service.” *See* 52 Pa. Code § 56.1 (Statement of Purpose and Policy).² The modifications and waivers of Chapter 56 proposed by PGW, particularly those pertaining to termination of service, would leave consumers without heat during the winter heating season and could have life-threatening ramifications. According to the Bureau of Consumer Services’ 2003 Cold Weather Survey Results for Natural Gas Companies, 4,567 households in PGW’s service territory were without service during the 2003 winter heating season. In addition, 918 PGW customers were using potentially unsafe heating sources, including kerosene heaters, kitchen stoves, and oil-filled space heaters. The OCA submits that PGW’s proposed Chapter 56 waivers could lead to a significant increase in these numbers.

The OCA is particularly concerned with the impact several of these requests will have on Level 3 customers, who fall within 151% to 300% of the Federal Poverty Level (“FPL”). Level 3 customers do not qualify for PGW’s universal service programs or other public assistance programs. Many of these customers, particularly those with incomes at the lower end of this wide range, are considered to be the “working poor” and live from paycheck to paycheck. A family illness or a missed work day may have detrimental effects on these customers’ abilities to

² Section 1501 of the Public Utility Code provides that “[e]very public utility shall furnish and maintain adequate, efficient, safe and reasonable service and facilities ... Such service also shall be reasonably continuous and without unreasonable interruption and delay. Such service and facilities shall be in conformity with the regulations and order of the commission.” 66 Pa. C.S. § 1501.

sustain themselves. PGW requests modifications to several Chapter 56 provisions for Level 3 customers, for example, the winter shutoff rules and the payment arrangements for restoration of service, that may leave many of these Level 3 customers without heat during the winter heating season. It should be noted that the annual income of a single person living at 150% of the federal poverty level is less than \$14,000 per year, while the income of a four-person household at 150% of federal poverty level is just over \$28,000 per year.

According to a 2003 PathwaysPA report pertaining to Pennsylvania, “a growing number of working parents are finding that they are struggling to stretch their wages to meet the rising cost of basic necessities for their families.” *The Self-Sufficiency Standard for Pennsylvania, Summary Report, PathWaysPA, Executive Summary* (“PathWaysPA Report”).³ The PathWaysPA Report further states that “although many of these families are not poor according to the official poverty measure, their incomes are inadequate to meet their basic needs.” *PathWaysPA Report, Executive Summary*.

For example, in order to be self-sufficient in Philadelphia County, a three member family, including a single parent with an infant and a preschooler, must earn a monthly gross salary of \$3,230. *PathWaysPA Report* at 8. This would place a three-member family above 200% of the FPL. Although a three-member family making less than that amount in Philadelphia County is not considered to be self-sufficient, these families may still fall within Level 3 and be subjected to the loss of consumer protections proposed by PGW.

PGW’s waiver requests, premised upon the assumption that these customers can afford to pay their utility bills and simply do not pay them, are seriously misplaced. Many of these

³ See www.pathwayspa.org

customers struggle to make ends meet but often find that there is too little income to pay consistently and no public assistance available to them. Chapter 56 is designed to assist those customers by rehabilitating their payment patterns and preventing collection mechanisms from further exacerbating their problems.

Additionally, Chapter 56 helps to ensure that the public health and safety is not placed into jeopardy, particularly when factors beyond a household's control – such as family illness or emergency – result in payment problems. Another troubling aspect of PGW's request is its attempt to block access to regulated public utility service through onerous deposit requirements and identification requirements.

The OCA has submitted the testimony of Roger D. Colton in this proceeding. OCA witness Colton details the nature of the protections provided by Chapter 56 and the potential harm to consumers that could arise as a result of the elimination or modification of these protections. More importantly, OCA witness Colton sets forth two common-sense alternatives to Chapter 56 for the Commission's consideration.⁴ These alternatives pertain to modern innovations in collections that PGW should incorporate into its collections practices that would lead to an improved collections rate. The two recommendations are (1) an increased use of Electronic Funds Transfer ("EFT") payments for customers on payment arrangements with incomes at or above 250% of the federal poverty level, and (2) implementation of mandatory

⁴ Roger Colton is a principal in the firm of Fisher Sheehan & Colton, Public Finance and General Economics. In that capacity, he provides technical assistance to a variety of public utilities, state agencies and consumer organizations on rate and customer service issues involving telephone, water/sewer, natural gas and electric utilities. He works primarily on low-income energy issues. This work involves not only rate and customer service work, but involves the design and implementation of low-income energy assistance programs as well. A verified true and correct copy of the Direct Testimony of Roger Colton (OCA St. FCI-1) is attached hereto as Attachment A.

budget billing for all PGW residential customers. Mr. Colton has also recommended that PGW consider a credit scoring pilot program similar to the programs currently utilized by other Pennsylvania utilities. The OCA submits that the Commission should consider alternatives such as these before it grants PGW's request for waiver or modifications of Chapter 56. Such innovations in utility collection practices could provide PGW with additional tools – to go along with its Collection Initiative – that could lead to improved collections and help stabilize PGW's financial condition.

The OCA submits that the Commission must carefully consider PGW's waiver requests in light of all of these facts. The Commission's Chapter 56 rules and regulations have been developed over decades to protect against unreasonable termination of service and should not be modified as requested by PGW without a thorough evaluation of each request. In addition, the Commission should consider other alternatives – such as those proposed by OCA witness Colton – before granting sweeping waivers to Chapter 56. As the Commission stated in a Chapter 56 rulemaking order, the Commission has the responsibility “to ensure that the quality of utility service remains high while not unreasonably restricting the effort of the utility companies to collect amounts due to them.” *Standards and Billing Practices for Residential Utility Service*, Docket No. L-960114, Pa. Bulletin, Vol. 28, No. 29 at 3379 (Order entered July 18, 1998).

In addition, the Natural Gas Choice and Competition Act, 66 Pa.C.S. §2201 *et.seq.*, brought PGW under the jurisdiction of the Commission and its rules and regulations in order to extend these important consumer protections contained within the Commission's jurisdiction to PGW's customers. The intent of such legislation was not to bring Chapter 56 regulations down to PGW standards, but to bring PGW up to standards that the Commission has deemed

appropriate and that other utilities in the Commonwealth have been following for many years. The intent of the Act was not to allow PGW to weaken important consumer protections that impact the health and safety of PGW's customers. To the contrary, the Act specifically contains important consumer safeguards to ensure that there was no diminution of service as a result of the Act:

Customer service and consumer protections and policies for retail gas customers shall, at a minimum, be maintained at the same level of quality under retail competition as in existence on the effective date of this chapter.

66 Pa.C.S. §2206(a). The Act also provided that protections for low-income customers not be reduced:

The commission shall, at a minimum, continue the level and nature of the consumers protections, policies and services within its jurisdiction that are in existence as of the effective date of this chapter to assist low-income retail gas customers to afford natural gas services.

66 Pa.C.S. § 2203(7). PGW admits in its Chapter 56 Waiver Petition that its proposed modifications and waivers would alter rules that had been in place at PGW itself for many years – even prior to the Company coming under the jurisdiction of the Commission. Chapter 56 Waiver Petition at 16. The OCA submits that PGW's proposal would weaken important consumer protections and safeguards that PGW has provided for many years. This is inconsistent with the intent of the Act, and should be rejected.

Furthermore, the OCA is concerned about the compounding effect of piling one Chapter 56-waiver upon another. As OCA witness Colton observed:

Each of the specific waiver requests submitted by PGW has an impact unto itself. The Company seeks to constrain the availability

of payment plans (Request #1, #5). The Company seeks to broaden its ability to terminate service (Request #2, #4, #6). The Company seeks to increase the financial consequences of nonpayment (Request #3). The Company seeks to reduce notice requirements. (Request #7, #8). Each of these waiver requests individually has specifically identifiable consequences, many of which I discuss below. What tends to get lost in the discussion, however, is the synergistic impacts that the package of requests as a whole will have on PGW customers. The compounding effect of the package of waiver requests is to strip PGW customers of much of their ability to be protected against the loss of essential home heating services. One of the stated purposes of Chapter 56 is to protect against unreasonable termination of service. (52 Pa. Code §56.1).

It is important to note, for example, how BCS emphasized the inter-relatedness of proposals in its Draft Report in the previous docket on the control of uncollectible accounts. In setting out its recommendations, BCS noted that “these groups reflect the Bureau’s perspective that the recommendations are interdependent, and as such, no single recommendation is meant to stand alone ... Since the recommendations are interdependent and as a whole provide a balanced approach, failure to implement one recommendation may affect the impact of effectiveness of other recommendations.” (BCS Final Report, at 6).

OCA St. FCI-1 at 17-18. The OCA submits that granting such sweeping waivers as those requested by PGW will have a compounding effect and cause severe detriment to many consumers.

For the reasons set forth below, PGW’s request for waivers of certain Chapter 56 provisions does not meet the standard for waiver of Chapter 56 regulations or the requirements of the *June 2 Order*. PGW’s Petition does not adequately explain how the proposed modifications to Chapter 56 balance consumer protection rights. In fact, PGW’s Petition weighs heavily in favor of PGW’s desire to increase its collections rate and essentially ignores any impact on consumers.

B. PGW's Financial Condition.

The OCA would also note that recent proceedings demonstrate that PGW's financial position is not as bleak as it suggests, and a waiver of Chapter 56 provisions to the extent requested by PGW is unnecessary. In fact, since PGW has been brought under the jurisdiction of the Commission Chapter 56 regulations on September 1, 2003, its collections rate has been increasing. As the OCA explained in its Briefs submitted in the CRRC proceeding, PGW's ongoing collection initiative is having a positive impact on PGW's collections rate. PGW's collections rate for the 12 months ending March 2004 was approximately 90.5%, up from the originally projected collections rate of 89.5%. If this improvement continues, PGW is projecting a collections rate of 93% at the end of the current fiscal year on August 31, 2004. Each percentage change in the collections rate results in an \$8 million dollar increase in the Company's cash reserves. PGW St. CRRC-1R at 2; PGW St. CRRC-1 at 5.

Over the past several years, PGW has been given rate increases and other forms of rate relief from this Commission and the Philadelphia Gas Commission to alleviate cash flow problems that may very well relate to internal collection practices. PGW is currently taking the necessary steps to increase its collections rate. PGW cannot now blame its cash flow problems on Chapter 56. These collection problems date back to well before PGW ever came under the jurisdiction of the Commission. PGW is still in the process of training customer service representatives to implement the collection standards contained in Chapter 56. PGW's request for wholesale waivers of Chapter 56 provisions that contain important consumer protections will undo many months of training, require additional financial resources for retraining, and will cause customer confusion. Again, the intent of the General Assembly in requiring the

Commission to assume jurisdiction over PGW, was not to have PGW working under a set of rules that provide less consumer protection.

C. Further Innovations In Collections Recommended By OCA.

1. Introduction.

In his direct testimony in this proceeding, OCA witness Colton identified several innovations in collections that PGW should adopt before pursuing significant Chapter 56 Waivers. OCA St. FCI-1 at 7-15. The first involves an increased use of Electronic Funds Transfer (“EFT”) payments for customers with incomes at or above 250% of the federal poverty level (“FPL”). The second involves mandatory budget billing. The OCA also recommended a credit scoring pilot program rather than a mandatory deposit from all new applicants. The OCA submits that implementation of these reasonable alternatives to the grant of Chapter 56 waivers, would yield immediate improvement in PGW’s collections results. *Id.* at 15.

2. Electronic Funds Transfer (“EFT”).

OCA witness Colton’s first recommendation is the increased use of e-commerce in its payment arrangements for customers with incomes at or above 250% of FPL. EFT systems are widely used in today’s economy. OCA witness Colton testified about how PGW could incorporate the use of EFT into its payment arrangement practices:

An EFT payment agreement for PGW arrears would likely be arranged as an Automated Clearinghouse (“ACH”) debit transaction. In such a transaction, PGW’s financial institution would originate the transaction by sending a request for funds to the customer’s financial institution. The customer’s financial institution then transfers the funds in order to settle the transaction. ACH transactions generally settle the next day after they are originated. Settlement means that the funds are actually transferred and made available to the requesting institution.

OCA St. FCI-1 at 10-11.

PGW would need prior authorization from the customer to make the monthly payment request. This could be accomplished by making the payment arrangement contingent upon a grant of prior authorization to PGW to make the monthly call on the customer's account. OCA St. FCI-1 at 10. That way, PGW would not need to gain customer approval on a monthly basis.

Id.

OCA witness Colton's proposal would require all customers that want to enter into a payment arrangement that are above 250% of FPL to also enter into an EFT agreement with PGW, with certain narrow exceptions:

Through a payment agreement, the PGW customer is agreeing to make monthly payments toward an arrears in any event. The e-commerce aspect of the agreement merely reduces costs as well as the possibility that the customer will breach the agreement.

* * * * *

I propose that PGW make EFT agreements a precondition of payment plans for customers with incomes at or above 250% of the Federal Poverty Level, with narrow hardship exceptions akin to those promulgated by the Minnesota and California tax agencies. Agreements that would impose undue hardship, agreements with customers lacking checking accounts, and agreements for arrears that are below designated threshold limits (to be determined by PGW), could be exempt.

OCA St. FCI-1 at 11.⁵

⁵ OCA witness Colton recommends that the use of EFT be limited to those customers at or above 250% of FPL. A fundamental assumption for an EFT requirement to work is that customers have bank accounts from which payments may be drawn. There is sufficient data to suggest that customers below 250% of FPL are likely not to have bank accounts at all, or if they do, many do not maintain sufficient funds in them to ensure that an EFT payment can be made. OCA St. FCI-1 at 11.

The OCA submits that requiring the use of EFT payments as a condition of entering into a payment arrangement for those customers whose income is at or above 250% of FPL would enhance PGW's collections and improve its financial condition.

3. Mandatory Budget Billing.

The second innovation in collections that OCA witness Colton proposes is that PGW place all residential customers on levelized budget billing plans. OCA St. FCI-1 at 12-13. OCA witness Colton testified about the justification for this recommendation:

It is clear that the primary reason for nonpayment of natural gas bills is the high burden which winter natural gas heating bills place on customers. While this is primarily true for low-income customers, it is true across-the-board as well. I reach this conclusion based on a study of nearly four years of payment data for both fuel assistance recipients and non-fuel assistance recipients in the State of Iowa. I have attached a copy of that study as Appendix C. I find that levelizing bills, and eliminating the peaks in winter natural gas bills, will not only improve payment patterns, but will help the Company by generating a prepayment of some portion of the winter bills before they become due.

Based on this analysis, I conclude that PGW should not be held to an historic billing structure under which customers are billed after-the-fact based on current usage. Instead, PGW should be allowed automatically to place residential customers on levelized budget billing plans. Customers could, upon a demonstration of creditworthiness, be allowed to opt out of the levelized budget billing.

OCA St. FCI-1 at 12-13.

The OCA submits that the use of mandatory budget billing would lead to improvement in the Company's cash flow by generating pre-payments of winter revenue. OCA St. 1 at 14. Prior to such conversion, however, consumer notice and education would be necessary. *Id.* at 15.

4. Credit Scoring Pilot Program.

Another recommendation made by OCA witness Colton was that PGW should be allowed to implement a credit scoring pilot program similar to what other Pennsylvania utilities have been doing. The Commission has previously approved credit scoring pilot programs for several Pennsylvania utilities.⁶ This requires a partial waiver of the Chapter 56 Credit Standards found at Section 56.32. OCA witness Colton explained how these pilot programs operate:

The need for PGW is not to collect deposits from every customer. The need for PGW is to identify those customers that represent a risk of the permanent loss of revenue due to nonpayment. A number of Pennsylvania utilities have implemented a credit scoring pilot project involving the Energy Risk Assessment Model (ERAM) to accomplish precisely that. Pursuant to these pilots, credit scoring will apply to applicants for service who are not exempt from providing security deposits due to a favorable prior utility payment history. In addition, an applicant that is certified as low-income will not be required to post a deposit. If an applicant is unable to pay a security deposit, and indicates an inability-to-pay, the applicant will be referred to the appropriate agency to determine whether he or she is eligible for the company's Customer Assistance Program (CAP). Other protections are also included in these pilot programs.

OCA St. FCI-1 at 34.

PGW claims that it lacks the software necessary to implement credit scoring. Chapter 56 Waiver Petition at 21. The OCA submits that PGW should be required to direct its resources to

⁶ See, e.g., *Petition of Columbia Gas of Pa., Inc. and PPL Electric Utilities Corp for Limited Waiver of 52 Pa. Code §56.32(2)*, Docket Nos. P-00001807 and P-00001808 (Orders entered February 8, 2001 and March 8, 2001); *Petition of The Peoples Natural Gas Co. d/b/a Dominion Peoples for Limited Waiver of Regulations at 52 Pa. Code §56.32(2)*, Docket No. P-00021972 (Order entered September 13, 2002); *Joint Petition of Equitable Gas Co. and the Office of Consumer Advocate for Limited Waiver of Regulations at 52 Pa. Code §56.32(2) to Permit an Experimental Program to Determine Residential Customer Security Deposits Based Upon Credit Scoring*, Docket No. P-00011915 (Order entered November 15, 2001).

credit scoring in order to enhance the efficiency of its credit and collections activities. OCA St. FCI-1 at 34-35.

5. Conclusion.

The OCA submits that PGW's request for Chapter 56 waivers is premature. Reasonable alternatives exist to the grant of Chapter 56 waivers sought by PGW. The alternatives recommended above can yield immediate results for PGW's collection efforts. In addition, the OCA submits that PGW's Collections Initiative appears to be generating positive results. The Company should be required to allow that Collections Initiative to continue so that its impacts on collections can be evaluated. Pursuing collections within Chapter 56 requirements should be the highest priority for the Company and can produce improved collections as the Collections Initiative has already demonstrated.

D. Specific Chapter 56 Waiver Requests

PGW requests the following waivers of Chapter 56. The OCA submits that a majority of these requests are overly broad and unsupported. The following is OCA's response to each specific request for waiver or modification to Chapter 56.

1. **52 Pa. Code § 56.191**

PGW proposes to modify the payment arrangement procedures for restoration of service contained in Section 56.191 for Level 3 and Level 4 customers. Section 56.191 provides that a utility must reconnect service by the end of the first full working day after full payment of outstanding charges and a reasonable reconnection fee is received; however, these amounts can be amortized over a reasonable period of time. 52 Pa. Code § 56.191. PGW requests that Level 3 and Level 4 customers be required to pay the full amount of the outstanding balance and

restoration fee without a payment arrangement before service can be restored. Chapter 56 Waiver Petition at 19-20. PGW estimates that this will result in a \$4.2 million savings. *Id.* at 19.

In support of this request, PGW claims that 91% of the payment arrangements entered into during 2003 were broken within 12 months. Chapter 56 Waiver Petition at 19, Appendix A (Gyory) at 4. PGW states that this modification will protect PGW when customers “stop paying their bills during the winter period but continue to receive gas for which they subsequently make few or no payments.” *Id.* PGW claims that customers’ rights are sufficiently protected because Level 1 and Level 2 customers, who are below 150% of the FPL, will not be affected by this modification. *Id.*

The OCA submits that the Company’s proposed modification to this Chapter 56 provision does not adequately weigh the impact on consumers, particularly Level 3 customers. Many Level 3 customers at the lower end of the income range for this level are working poor and live from paycheck to paycheck. They do not earn an income that is sufficiently high enough to allow them to meet their living expenses without occasional disruption. However, they earn too much to qualify for PGW’s universal service programs or other social programs. OCA St. FCI-1 at 22-24. Many Level 3 customers that have been terminated may not be able to provide payment in full of their arrearage to have their service restored, but could make monthly payments toward their arrearage.

OCA witness Colton testified about why many Level 3 customers may have trouble meeting their living expenses on a regular basis:

The National Priorities Project documented its the minimum monthly costs for a four-person household in each state in 1999. This research found that a four person household in Pennsylvania

(two adults with two children) would need, on an after-tax basis, \$34,069 a year (1999\$) to maintain a subsistence budget.

* * * * *

The 2001 poverty level for a four-person household was \$17,650. The Pennsylvania cost of living (on an after-tax basis) is thus nearly 200% of the Poverty Level. It is important to note that this budget I have identified is merely a subsistence budget. It may not meet a household's entire range of basic needs. According to the National Priorities Project, the household purchases day care that is 30% cheaper than the statewide average. The household spends half of what the average family spends on transportation. There is no savings for repairs of a car, the home, or any appliances. There is no money for a college education or a vacation. There is certainly no savings for retirement.

OCA St. FCI-1 at 22-23.

The working poor, in particular would not have sufficient savings to make a lump sum payment to have service restored. Research demonstrates that the overwhelming number of persons without bank accounts are those in the lower income ranges. OCA St. FCI-1 at 24. OCA witness Colton testified that four out of five "unbanked" consumers have incomes below \$25,000. Moreover, lower-income households that do have bank accounts frequently have insufficient savings to make a substantial lump sum payment to a utility in order to restore service. *Id.*

The OCA submits that even customers with higher incomes can be faced with emergencies, such as unexpected medical expenses, that can cause payment troubles and impact the ability of the household to make a lump sum payment.

The OCA submits that without the ability to enter into a payment arrangement, these customers may be left without heat during the winter heating season. The provisions of Section 56.191 protect important consumer right to reasonable, safe and adequate service. *See* 66 Pa.C.S.

§ 1501.

The OCA also submits that PGW's rationale in support of such a waiver is baseless. PGW has provided no supporting evidence that many of these customers are using the Chapter 56 regulations to manipulate the system and avoid paying for gas. Likewise, PGW's estimated savings value is unsupported and based on faulty assumptions. For instance, in calculating the estimated savings from this waiver, PGW assumes that 90% of customers terminated will reconnect service. Chapter 56 Waiver Petition, Appendix A (Gyory) at 5. This is based upon historic averages. PGW further assumes that each of these customers will pay the full delinquent amount in order to have service restored. The OCA submits that such assumptions are not sustainable. PGW may have historically restored service to 90% of shutoff accounts when restoration was permitted upon a customer entering into a payment arrangement. However, under PGW's proposed rules, service can only be restored when the entire arrearage is paid off in a lump sum. The OCA submits that once such a rule is put in place, PGW's restoration rate could fall far below 90% as customers have difficulty making the lump sum payment necessary to restore service. This will lead to many customers who have been terminated entering the winter heating season without service. The OCA submits that the Company's proposed waiver is overbroad, unsupported and presents a substantial public health and safety issue. For that reason, PGW's request for waiver of Section 56.191 for Level 3 and Level 4 customers should be denied.

2. 52 Pa. Code § 56.100

PGW proposes to waive the Chapter 56 provisions pertaining to winter terminations for Level 3 and Level 4 customers. Chapter 56 Waiver Petition at 20. Section 56.100 generally

prohibits termination of heat-related services from December 1 through March 31. However, the prohibition on winter terminations is not absolute. If a utility seeks to terminate service during the winter where a reasonable payment arrangement cannot be reached, it may request permission from the Commission to terminate a customer on a case-by-case basis. 52 Pa. Code § 56.100(2).

PGW claims that the Commission's winter shutoff rules are cumbersome. Chapter 56 Waiver Petition at 20. PGW claims that as of April 1, 2004, 133,000 customers – a quarter of all residential customers – were in arrears, although PGW does not state how many of these customers are Level 3 and Level 4 customers. *Id.* PGW estimates that the value of such waiver is \$1 million. *Id.*

The consumer protections contained in the Commission's winter shutoff rules prevent life-threatening results. If these provisions are waived for Level 3 and Level 4 customers, it could result in a large increase in the number of persons living without a safe and adequate heat source during the winter, thus presenting a significant public health and safety concern.

The OCA submits that some Level 3 customers have incomes that are insufficiently stable to allow them to meet their living expenses without occasional disruption. OCA St. FCI-1 at 24-25. Again, this is a waiver request that significantly impacts the working poor. PGW's proposal inaccurately assumes that customers in Levels 3 are able to pay their utility bills but are using the winter moratorium regulations "as a shield to avoid paying bills." Chapter 56 Waiver Petition at 20. Beyond those words, PGW provides no support for this accusation. Notably, to OCA's knowledge, PGW has not sought a Petition to terminate a customer during the winter heating season so it has little or no experience with the Commission's regulations.

An additional concern is that some innocent people could find themselves without heat in

the winter. In a past rulemaking proceeding regarding whether Section 56.100 should be included in the Commission's regulations, the Commission stated, "We are especially concerned, however, that absent such a regulation a small minority of terminations may take place improperly, and may lead to life-threatening circumstances." *Standards and Billing Practices for Residential Electric, Gas, Steam Heat, Sewer, and Water Service*, Docket No. L-820073, Pa. Bulletin, Vol 13, No. 15 at 1252 (Order entered April 9, 1983). Therefore, Section 56.100 provides an important protection against wrongful termination of service during the winter.

PGW also concludes that customers who cannot make the necessary payment to reinstate service, can simply rely on state and local social services. This statement ignores PGW's public service obligation. PGW, as a regulated public utility, has been given an exclusive franchise to serve within its service territory and is under an obligation to provide safe and adequate service and to avoid unreasonable discontinuance of service. 66 Pa.C.S. §§1101, 1501; 52 Pa.Code §56.1. Moreover, as noted above, many customers in the Level 3 income range may not qualify for these social services because of income restrictions. These households would end up having heating service terminated in the winter, with no ability to pay the necessary charges to have service restored, and no access to any energy assistance.

The OCA submits that PGW has not demonstrated that its proposed elimination of the winter shutoff rules for Level 3 and 4 customers "adequately balances consumer protection rights with PGW's financial integrity." *June 2 Order* at 5 n.2. Additionally, PGW has utterly failed to show that this waiver request is consistent with the Commission's obligation to protect the health and safety of the public. Therefore, this request should be denied.

3. 52 Pa. Code § 56.32

PGW requests a waiver of the Chapter 56 Credit Standards. Section 56.32 allows an applicant to receive public utility service without posting a deposit by showing a prior utility payment history, by owning property or leasing property for at least one year, or by otherwise demonstrating that he or she is not a poor credit risk. 52 Pa. Code § 56.32. If an applicant does not establish credit under section 56.32, the customer may furnish a third party guarantor to avoid a deposit. 52 Pa. Code § 56.33. The regulations clearly provide that a utility “shall” provide service if the applicant meets one of these criteria. The regulations also provide customers with the option to pay deposits with three installments. 52 Pa. Code § 56.37.

PGW proposes to set a flat deposit fee for *all* new customers, regardless of whether they pose a credit risk or not. Chapter 56 Waiver Petition at 21. PGW proposes to set the deposit for new applicants at twice the average monthly bill for customers – \$250 for heating customers and \$100 for non-heating customers. If an existing heating customer seeks to restore service after termination, a deposit of \$500 would be required. PGW Petition, Appendix B. For non-heating customers seeking restoration of service after termination a deposit of \$200 would be required. *Id.* This waiver will not apply to customers who are part of the CRP program. *Id.* PGW estimates a value of \$7.6 million. PGW Petition at 21.

OCA witness Colton testified that a blanket deposit rule such as what PGW has proposed here will not be effective in preventing late payments. OCA St. FCI-1 at 31. The only purpose for a security deposit is to protect against revenue loss, not to prevent late payments. *Id.* Mr. Colton’s research indicates that late payment is not predictor of the potential loss of revenue through disconnection and bad debt. *Id.*

Furthermore, the OCA submits that PGW’s proposed deposit requirement imposes a

significant barrier to public utility service. Lower income households may not be able to come up with the initial security deposit. OCA St. FCI-1 at 33. This is particularly true if the Commission grants PGW's request to require the *entire* deposit to be paid up front rather than in installments. *Id.*

Once again, PGW provides little empirical evidence to support its claimed cost savings of \$7.6 million. These deposits would impact PGW's collections rate *only* where a customer is terminated and the deposit is retained in full by the Company. Otherwise, once a customer establishes credit with the utility, the deposit is returned to the customer. *See* 52 Pa. Code § 56.53. In calculating the estimated value of this waiver, PGW assumes that half of its customers will never recover their deposit. This is based upon PGW's historic average number of customers who pay late, not on any analysis of how many customers who must make a deposit with a utility, ultimately establish credit and have the deposit refunded. As OCA witness Colton noted, "late payment, standing alone, does not represent an adequate predictor of the loss of revenue due to bad debt." OCA St. FCI-1 at 31. Therefore, PGW's claim that it will realize an additional \$7.6 million in collections per year is unsupported.

PGW also proposes that "[c]ustomers that pay on time for one year will have their deposits applied to their account." Chapter 56 Waiver Petition, Appendix A (Gyory) at 9. The OCA submits that this is in violation of Section 56.53(4) which requires deposits to be refunded in cash. 52 Pa.Code §56.53(4). PGW has not sought a waiver of this provision of Chapter 56. Pursuant to Chapter 56, deposits are refundable with interest to customers when a customer has

paid bills for service for 12-consecutive months in a timely manner.⁷ See 52 Pa. Code §§ 56.53(4), 56.57. Therefore, Chapter 56 does not allow PGW to apply a customer deposit to his or her account after one year, unless the customer is terminated or has service discontinued and has an outstanding balance. 52 Pa.Code § 56.53(4).

As the Commission is aware, a number of utilities in Pennsylvania have requested partial waivers of Section 56.32 in order to implement a credit scoring program which evaluates a utility customer's creditworthiness. This process, utilizing Equifax's Energy Risk Assessment Model ("ERAM"), helps to more clearly identify those customers who pose a risk for loss of revenue to the Company. Rather than a broad-based deposit requirement that presents a barrier to service to all customers, credit scoring is a tool that more appropriately addresses this problem. PGW claims that this process would be costly and burdensome due to the volume of customers who are potential credit risks. Chapter 56 Waiver Petition at 21.

Despite PGW's statement, that a credit scoring device is "costly and burdensome" given the volume of PGW customers who are a potential credit risk, PGW has provided no evidence of this. Chapter 56 Waiver Petition at 21. Furthermore, PGW claims that its software systems cannot accommodate credit scoring. *Id.* As the OCA recommended above, PGW should be required to direct additional resources to upgrading its software so that it can do credit scoring. OCA St. FCI-1 at 34-35. If PGW can upgrade its software systems in order to positively identify new customers, it should be able to adapt its systems to do a routine task such as credit scoring, just like other Pennsylvania utilities are able to do. Instead of pursuing collections practices that

⁷ According to section 56.53, deposits are also refunded when a customer establishes that he or she is not an unsatisfactory credit risk; however, it is assumed that PGW's request for waiver of 56.32 extends to this provision. See 52 Pa. Code § 56.53(2)

other utilities have successfully utilized, PGW proposes to require deposits from all new customers – many of whom have good credit and pay their utility bills timely.

Finally, PGW wishes to eliminate the payment period over which deposits can be collected. Section 56.38 provides that an applicant may pay a required deposit in three installments. 52 Pa. Code § 56.38. The OCA submits that PGW’s request for full upfront payment is unreasonable and should be rejected. For example, PGW is requesting a \$500 deposit from a heating customer that has previously been terminated. It is unlikely that such a customer – who had trouble paying his utility bill in the first place – is going to be able to come up with a \$500 lump sum deposit to have service restored. PGW’s request fails to balance the consumer’s interest and fails to protect the public health and safety.

4. 52 Pa. Code § 56.35

PGW is also requesting a waiver of Section 56.35. 52 Pa. Code § 56.35. Section 56.35 prohibits a utility from requiring an applicant to pay for residential service previously furnished to a person of another name, unless the applicant is legally responsible for that person. *Id.* PGW proposes that it be able to require an applicant to present positive identification to determine whether the applicant was a previous resident at the location where service is requested and, if so, require the applicant to pay any outstanding residential account accrued on the residence within the last four years or for the time the applicant was a resident. Chapter 56 Waiver Petition at 21, Appendix A (Gyory) at 9-11. PGW claims that modification of Section 56.35 would prevent customers from accumulating large balances, then after termination, requesting restoration in another person’s name, a practice it refers to as the “name game”. Chapter 56 Waiver Petition at 22.

PGW bases its request on a false assumption that *all* customers requesting the furnishing of service are playing games. In fact, PGW has provided no evidence that the “name game” is occurring in a substantial number of cases, nor does it designate how the requested modification will impact its financial condition.

OCA witness Colton testified about why this request should be rejected:

This PGW request violates a host of legal tenets regarding regulatory law, family law, contract law, and consumer credit law. It impermissibly allows the denial of service for a collateral matter. It impermissibly allows PGW to impute an implied-in-fact contract when faced with an express contract with contrary terms. It impermissibly allows PGW to ignore spousal responsibility laws. It impermissibly allows PGW to communicate the existence of a consumer’s debt to a third party. The request should be denied. I have attached an analysis of the lawfulness of holding a person responsible for their roommate’s utility bill as Appendix H. I have attached an analysis of the lawfulness of holding one spouse liable for the utility bills of the other spouse as Appendix I.

OCA St. FCI-1 at 36.

The OCA submits that PGW cannot hold someone liable for the debts of another.

Therefore, this request should be denied.

5. 52 Pa. Code § 56.97

PGW proposes to waive the Chapter 56 provision requiring reasonable payment agreements to avoid termination. Under PGW’s proposal, customers would be limited to only one payment arrangement with specified minimum payment amounts. Chapter 56 Waiver Petition, Appendix A (Gyory) at 11-12. PGW claims that this modification is consistent with the Commission’s holding in *Mary Frayne v. PECO Energy Co.*, Docket No. C-20029005, (Opinion and Order entered Dec. 23, 2003). The OCA disagrees that this proposal is consistent with

Frayne or in the public interest.

OCA witness Colton testified that PGW's proposal commits the classic error of assuming a perfect correlation between the "ability to pay" of a customer with the "income" of a customer. OCA St. FCI-1 at 37. The OCA submits that a person's reported level of income is not necessarily the sole indicator of one's ability to pay. This is especially true when it comes to the working poor. As OCA witness Colton testified:

Taking into account the "ability to pay" of the working poor should involve *more* than simply taking into account income level. The *stability* of income is one additional aspect of the ability to pay of the working poor. The negotiation of a payment plan for utility arrears should take into account the potential instability of income amongst the working poor as one aspect of ability to pay. Income for the working poor, in particular, can be erratic and unpredictable. A working poor customer may not *know* in April what his or her income is going to be in July or August, let alone in the following December or January. Periods of unstable wages may make payments that were reasonable in April unreasonable at a later date.

This income attribute of working poor households has been recognized in a variety of contexts. The instability of income has been found to be a barrier to effective budget counseling. The evaluation of one asset-building program, for example, reported that "staff and participants thought the budgeting worksheet ... became obsolete almost immediately because participants' incomes were very unstable." One major barrier to savings and asset accumulation by working poor households involves their "irregular incomes." One barrier to the long-term accumulation of assets has been found to be the "recurring crises," such as unemployment, which force working poor households to deplete their savings. Individuals have been found to view saving and systematic budget planning as not worthwhile because of the inability to predict income and labor-market conditions.

I found that working poor families tend to find themselves in lower quality hourly wage jobs, often marked by considerable income fluctuations due to the number of hours they are called upon to

work. The Urban Institute quantified the types of occupations that characterize the working poor. Even aside from the level of wages, the presence of hourly wages and unpredictable hours mark occupations that are the province of the working poor.

I finally reported that families in the bottom quartile of income are significantly less likely to have access to paid sick leave, paid vacation leave, or flexible work schedules than families with higher incomes. More than three fourths (76 percent) of workers in the bottom quartile of family income lack regular sick leave; more than half (58 percent) do not have consistent vacation leave. Families in the bottom income quartile are more likely than other workers to lack *both* sick leave *and* vacation leave.

The lack of paid leave time may directly affect the ability of a working poor customer to maintain payments on a payment arrangement. A person working 35 hours a week on hourly wages may lose three days of work simply due to a sick child missing school and requiring care. If no leave time exists for that employee, the sick child translates into permanently lost wages. Personal illness, too, results in permanently lost wages, whether illness keeps a worker away from his or her job for a day, for two days, or for a week.

One of my primary recommendations in the NFFN report was to avoid the one-strike-you're-out payment plan structures now being requested by PGW.

OCA St. FCI-1 at 38-40 [footnotes omitted]. Additionally, PGW's proposal fails to account for any unanticipated circumstances that can arise, such as a health care crisis requiring significant medical expenditures or the need to bring on an additional member into the household, such as care for an elderly family member.

The Commission has recognized that some lower income people may experience income instability or additional unanticipated and necessary expenses, and that a payment arrangement should be modified where a person experiences such a change in circumstances. *Frayne v. PECO Energy Co.*, Docket No. C-20029005 (Opinion and Order entered December 23, 2003).

As OCA witness Colton testified, working poor customers who face changed circumstances should have the opportunity to make that demonstration and negotiate a new payment arrangement based upon those changed circumstances. OCA St. FCI-1 at 41.

OCA witness Colton provided some specific recommendations that PGW should follow in establishing payment plans:

On the front-end, PGW should build check-points into the payment plans of working poor households with substantial arrears. Through such a process, PGW would break-up arrears above certain threshold amounts into multiple component parts. A payment arrangement for a \$400 arrears, for example, might be made subject to a payment plan for the first \$200 over a 3-month period. Upon successful completion of that plan, PGW would develop a payment plan for the next increment of arrears.

Subsequent to entering into a payment plan, PGW should provide for a revision to the payment plan should customer circumstances change. With working poor households, in particular, as I discuss in detail above, this ability to revisit payment plan terms is important.

OCA St. FCI-1 at 41-42.

The OCA submits that adoption of these recommendations will result in more reasonable, affordable payment plans that are within the means of lower income customers and fit within the requirements of Chapter 56. This will result in more consistent and timely payment patterns from these customers. PGW's one-strike and you are out approach should be rejected and a more reasonable approach pursued.

6. 52 Pa.Code § 56.82

PGW is also seeking a waiver of Section 56.82 that prohibits Friday shut-offs for nonpayment of service. 52 Pa. Code § 56.82. PGW claims that this regulation was promulgated

at a time when customers were not as able to pay bills on Fridays or Saturdays due to limited banking hours and lack of ATM machines. Chapter 56 Waiver Petition at 23. PGW estimates that this modification will result in a value of \$2.5 million. The prohibition on Friday shut-offs is also statutorily mandated in Section 1503 of the Public Utility Code. *See* 66 Pa. C.S. § 1503. The OCA recognizes that Section 2212(c) of the Public Utility Code allows the Commission to “suspend or waive the application to [PGW] of any provision of [the Public Utility Code], including any provision of this chapter other than [Section 2212].” 66 Pa. C.S. § 2212(c). The OCA submits, however, that granting a waiver of a statutorily mandated rule such as this requires even greater scrutiny than other Chapter 56 waiver requests.

The OCA submits that banking hours were not the only reason for the prohibition against Friday shut-offs. OCA witness Colton testified that customers turn to many sources when confronted with an imminent termination of utility service. Energy assistance – such as private fuel funds or aid from community-based organizations – is an important asset for low-income households to avoid termination. OCA St. FCI-1 at 42-43. Many consumers facing termination turn to community advocacy organizations, social service agencies and state government for assistance. Many of these services would not be available over the weekend. *Id.* at 43-44. This is especially problematic where someone comes home from work late in the day on Friday to find that gas service has been terminated.

Another important purpose behind the Friday shut-off rule is the ability to avoid disconnection of service when a medical emergency exists. Obtaining a medical certification on a weekend may not be possible. OCA St. FCI-1 at 44.

In addition, the Commission would not be available over the weekend. If a customer

believes that he or she was unreasonably terminated, they would not be able to seek relief until the next business day. OCA St. FCI-1 at 44.

The OCA submits that all of these considerations must be weighed in determining whether to allow PGW to do Friday terminations. PGW has provided evidence that allowing Friday terminations would increase the number of field visits it does each week and that field visits often lead to collection of amounts owed. Chapter 56 Waiver Petition, Appendix A (Gyory) at 13. Therefore, allowing PGW to terminate service on Fridays may be a reasonable modification to Chapter 56, but only if PGW can demonstrate that customers will have access to the full range of services that are necessary to appropriately respond to the loss of natural gas service. OCA St. FCI-1 at 44-45.

7. 52 Pa. Code §§ 56.94, 56.95

PGW requests a waiver of the personal contact immediately prior to termination provision and the subsequent 48 hour notice posting requirement if personal contact is not made immediately prior to termination. According to Chapter 56, PGW is required to provide termination notice in three instances. First, pursuant to Section 56.91, PGW must provide written notice to the ratepayer at least 10-days prior to the date of the proposed termination; second, pursuant to Section 56.93, PGW must make personal contact with the ratepayer or a responsible adult occupant at least 3 days prior to termination of service; and, third, pursuant to Section 56.94, PGW must attempt to make personal contact in the same manner immediately prior to termination of service. *See* 52 Pa Code §§ 56.91, 56.93, and 56.94. If PGW does not make personal contact immediately prior to termination in accordance with Section 56.94, PGW must post a 48-hour termination notice in a conspicuous location at the ratepayers residence and

the affected dwelling. 52 Pa. Code § 56.95.

PGW is requesting modification of Section 56.94 to give it discretion to personally contact a responsible person at the residence of the ratepayer immediately prior to termination. Chapter 56 Waiver Petition, Appendix A (Gyory) at 13-14. Furthermore, PGW is requesting waiver of 56.95, which requires the posting of a termination notice at the residence of the ratepayer. *Id.* at 5. PGW's modifications provide that the only prior personal contact required of PGW before termination is the personal contact requirement contained in Section 56.93.⁸ *Id.*

The OCA submits that these waivers should be denied. OCA witness Colton testified that elimination of the notice requirements requested by PGW eliminates the ability of the notice to perform its intended function:

As I explained in detail elsewhere, through a shutoff notice, a consumer should be provided with the information he or she needs to quickly and intelligently take available steps to prevent the threatened termination of service. However, additional functions can be served as well. For example, one *different* function of a shutoff notice is to permit the customer to make alternative plans after service is, in fact, terminated. Consider, for example, that the right to receive notice does not depend upon the right to contest the disconnection of service. Regardless of whether the customers have a right to contest the discontinuance of service, they certainly have a right to know that service is being discontinued to enable them to protect themselves from damages that might occur.

OCA St. FCI-1 at 46. Mr. Colton testified about a host of consumer responses to a pending termination. These responses take time to pursue. A household might think that it can pay the amount due when it gets the ten day notice. The later notice, however, serves the precise function for which it is intended -- to notify the customer that time is running out and that final

⁸ Section 1503 of the Public Utility Code requires personal contact *at least three* days prior to discontinuance of service. 66 Pa. C.S. § 1503(b)[emphasis added].

payment arrangements must be made or alternative living arrangements pursued. OCA St. FCI at 47-48.

The OCA submits that these notice requirements provide important consumer protections. The ability to arrange services to help consumers cope with a loss of natural gas service is critical to protecting health and safety. Unless or until PGW can demonstrate that this full range of services is available, the Company's waiver request should be denied.

8. Time Limits For Acting On Shutoff Notices

PGW seeks to modify the BCS informal guideline requiring that a termination notice must lead to termination of service within 30 days of the notice if a customer does not enter into a payment arrangement to avoid shut-off. PGW states that if termination does not occur within 30 days, PGW must begin the entire process again with another 30-day termination window.

OCA witness Colton sets forth a number of reasons why some time limit for acting on a shutoff notice should be set. OCA St. FCI-1 at 48-53. In order for a notice to be meaningful, it must give a clear and believable warning that termination is imminent. *Id.* at 50. If a utility sends out repeated shutoff notices without follow-up action, it destroys the message contained in the notice. *Id.* As OCA witness Colton testified:

... a notice of discontinuance serves several different functions. As time passes subsequent to the initial issuance of the notice, the efficacy of the notice deteriorates. Eventually, at some point after the final notice of discontinuance is issued, if no action has occurred, the purpose of the notice is no longer served. Since the passage of time makes the initial notice void, it is as though the initial notice had not been issued in the first place. Under these circumstances, a new notice must be issued. Accordingly, the new notice must be issued using the same procedures as the initial notice with the proper amount owed.

OCA St. FCI-1 at 50-51. In addition, sending out empty threats of termination adds to administrative costs for the utility. *Id* at 52.

The OCA recognizes, however, the number of shutoff notices that PGW must deal with each year. In this limited circumstance, some relaxation of the BCS informal guideline might be appropriate. The OCA suggests that such a waiver might be appropriate for a limited 24-month pilot program. At the end of the 24 month pilot program, PGW should be required to demonstrate that this waiver request resulted in a material improvement in the PGW disconnect process without substantial offsetting harm to consumers.

This waiver, however, must be accompanied by the condition that the customer can stop the termination by paying the amount in arrears stated on the original notice, or entering into a payment arrangement for that amount. The amount the customer owes to avoid termination should not become a moving target as time passes simply because PGW cannot complete the termination process in a timely manner.

9. 52 Pa. Code § 56.191

PGW's final waiver request seeks to extend the time limit for restoration of service after a termination has occurred. Section 56.191 requires service to be restored by the end of the first full working day after payment plus a reasonable reconnection fee has been received. 52 Pa.Code §56.191. PGW proposes that during the time period from April 1 through November 30, the requirement be extended from one day to seven days for restorations that require "dig ups." For restorations that do not require "dig ups," PGW is proposing to extend the requirement from one day to three days. Chapter 56 Waiver Petition at 24, Appendix A (Gyory) at 15-17. In the case where a termination was made in error, PGW will restore service within 24 hours.

Chapter 56 Waiver Petition at 25.

The OCA is concerned that allowing a seven-day period to restore service could present serious health and safety concerns, particularly in the months of November and April. OCA St. FCI-1 at 55. However, given PGW's unique circumstances, the OCA agrees that the current one-day requirement may be too stringent. The OCA believes that an extension of the time to restore service in situations which require a "dig-up" is reasonable. However, seven days is too long a period. There is also no need to extend the time for restoring service where the property has a curb box.

OCA witness Colton had one further observation about this issue. If the Company must go out and dig-up a property to terminate service, it should install a curb box, if practical, at that time. OCA St. FCI-1 at 54. This will make restoration of service less burdensome and eliminate the need to do "dig-ups" to restore service after a termination has occurred. *Id.*

III. Conclusion

The expedited procedural schedule adopted in this proceeding has provided the parties with insufficient time to take a “comprehensive approach” to PGW’s financial and collections problems that the June 2 Order called for. In spite of that, the OCA has offered several viable alternatives to PGW’s proposed Chapter 56 waivers. The OCA submits that while certain waivers of Chapter 56 may be acceptable, a majority of PGW’s proposed waivers would strip consumers of important protections and could lead to serious public health and safety concerns. For the reasons set forth above, PGW’s Chapter 56 Waiver Petition should be denied in substantial part. To the extent the Commission grants any of the requested waivers, it should do so with the necessary conditions to ensure that consumers are adequately protected.

Respectfully submitted,



Tanya J. McCloskey
Stephen J. Keene
Senior Assistant Consumer Advocates
Lori A. Herman
Christy M. Appleby
Assistant Consumer Advocates

Counsel for:
Irwin A. Popowsky
Consumer Advocate

Office of Consumer Advocate
555 Walnut Street 5th Floor, Forum Place
Harrisburg, PA 17101-1923
(717) 783-5048
Dated: July 2, 2004

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Re: Investigation into Financial
Collections Issues Regarding the
Philadelphia Gas Works**

**: Docket Nos. P-00042090
: R-00049157
: M-00021612
: P-00032061
:**

DIRECT TESTIMONY

ROGER D. COLTON

ON CREDIT AND COLLECTION ISSUES

OCA Statement No. FCI-1

***ON BEHALF OF THE*
Office of Consumer Advocate (OCA)**

Harrisburg, Pennsylvania

June 28, 2004

RECEIVED
2004 JUL -2 4:11:36
SECRETARY'S BUREAU

TABLE OF CONTENTS

Part 1:	Introduction	3
	A. Impact of Time Limitations.....	4
	B. Further Innovations in Collection.....	7
Part 2:	PGW's Specific Chapter 56 Requests	16
	A. General Overview Comments	16
	B. 52 Pa. Code §56.191	21
	C. 52 Pa. Code §56.100.....	25
	D. 52 Pa. Code §56.32.....	30
	E. 52 Pa. Code §56.35 and §56.83	35
	F. 52 Pa. Code §56.97	37
	G. 52 Pa. Code §56.82.....	42
	H. 52 Pa. Code §§56.94 and 56.95.....	45
	I. Time Limits for Acting on Shutoff Notices	48
	J. 52 Pa. Code §191 and §115	54
Part 3:	PGW's Customer Responsibility Program (CRP)	55

1 Q. PLEASE STATE YOUR NAME AND ADDRESS.

2 A. My name is Roger Colton. My address is 34 Warwick Road, Belmont, MA
3 02478.

4
5 Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?

6 A. I am a principal in the firm of Fisher Sheehan & Colton, Public Finance and
7 General Economics. In that capacity, I provide technical assistance to a variety of
8 public utilities, state agencies and consumer organizations on rate and customer
9 service issues involving telephone, water/sewer, natural gas and electric utilities.

10

11 Q. FOR WHOM ARE YOU TESTIFYING IN THIS PROCEEDING?

12 A. I am testifying on behalf of the Pennsylvania Office of Consumer Advocate.

13

14 Q. PLEASE DESCRIBE YOUR PROFESSIONAL BACKGROUND.

15 A. I work primarily on low-income energy issues. This work involves not only rate and
16 customer service work, but involves the design and implementation of low-income
17 energy assistance programs as well. At present, I am working on various projects in
18 the states of Pennsylvania, Michigan, Missouri, Louisiana, Indiana and Colorado.
19 My clients include state agencies (e.g., the New Hampshire Public Utilities
20 Commission, the Pennsylvania Office of Consumer Advocate, the New Jersey
21 Division of Ratepayer Advocate, the Maryland Office of People's Counsel), federal
22 agencies (e.g., the U.S. Department of Health and Human Services, Oak Ridge
23 National Laboratory), community-based organizations (e.g., the Indiana Community

1 Action Association, Colorado Energy Assistance Foundation, The Heat and Warmth
2 Foundation [Detroit]), and private utilities (e.g., Entergy Services, Citizens Gas and
3 Coke Company, Empire District Company).

4
5 **Q. HAVE YOU EVER PUBLISHED ON PUBLIC UTILITY REGULATORY**
6 **ISSUES?**

7 A. Yes. A list of my publications is attached as Appendix A.

8
9 **Q. HAVE YOU EVER TESTIFIED BEFORE THIS OR OTHER UTILITY**
10 **COMMISSIONS?**

11 A. Yes. A list of proceedings in which I have appeared as an expert witness is attached
12 as Appendix A as well.

13
14 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY TODAY?**

15 A. The purpose of my testimony today is two-fold:

- 16 ➤ to review the Philadelphia Gas Works (PGW) requests for Chapter 56
17 waivers to assess their reasonableness; and
18 ➤ to determine whether there are reasonable alternatives to the requested
19 Chapter 56 waivers in those instances where I conclude that those waiver
20 requests should not be granted.

21 In brief, I conclude that the PGW waiver requests, with some limited exceptions,
22 should not be granted. I conclude further, however, that there are reasonable steps
23 that the Company might take to accomplish the primary objectives it seeks to

1 accomplish through its waiver requests. Before I turn to an evaluation of the specific
2 requests, however, I will set forth some brief overview comments.

3
4 **PART 1: INTRODUCTION.**

5 **Q. WHAT IS THE PURPOSE OF THIS SECTION OF YOUR TESTIMONY?**

6 A. In this section of my testimony, I seek to place the analysis and recommendations
7 into some broader context. Several basic themes underlie the full range of
8 recommendations that I make below. I present those themes in these introductory
9 comments before turning to the specific waiver requests.

10
11 **Q: WHAT IS THE PURPOSE OF THE COMMISSION'S INVESTIGATION?**

12
13 A: In its June 2 Order, the Commission noted that PGW continues to face challenges
14 regarding its financial condition and its collections process. The Commission
15 stated that it is opening this investigation "to take a comprehensive approach to
16 PGW's financial and collection problems." The investigation is to examine the
17 following issues:

- 18
19 1. the adequacy, cost effectiveness and management of PGW's collection
20 practices;
- 21 2. the reasonableness of any requested waivers or modifications of the
22 Commission's Chapter 56 regulations;

- 1 3. the level of PGW's universal service costs as well as the cost
2 effectiveness and management of these programs;4. the costs associated
3 with a means-tested Senior Citizen Discount program; and
4 5. remaining issues pertaining to PGW's compliance tariff from the
5 restructuring proceeding.

6 With respect to proposed Chapter 56 waivers, the Commission specifically
7 directed that it "would be PGW's responsibility to explain in such a petition how
8 the alternative standard or procedure adequately balances consumer protection
9 rights with PGW's financial integrity."

10
11
12 **A. Impact of Time Limitations.**

13 **Q. HAVE YOU HAD ADEQUATE TIME TO REVIEW THE NEED FOR**
14 **CHANGES IN PGW COLLECTION PROCEDURES GENERALLY AND**
15 **THE SPECIFIC PGW CHAPTER 56 WAIVER REQUESTS IN**
16 **PARTICULAR?**

17 A. No. PGW's specific waiver requests were filed only twelve days ago. A broader
18 discussion of PGW's collection problems has not been possible under the
19 schedule adopted for this proceeding. This schedule necessitates a focus on
20 responding to the PGW filing. A more detailed review of PGW's credit and
21 collection practices could not be conducted in the time period allotted for
22 discovery and testimony.

1 Neither has the schedule provided time for a complete review of the specific
2 waiver requests advanced by PGW. For example, as of the time my testimony has
3 been prepared, the Company has been unable to respond to the vast majority of
4 the data requests propounded by OCA. The Company has not been able to provide
5 sufficient data requested by OCA to support the range of waivers that it seeks in
6 the time provided.

7
8 **Q. HAVE YOU HAD ADEQUATE TIME TO EVALUATE WHAT PGW IS**
9 **DOING, GENERALLY, TO INCREASE THE EFFECTIVENESS AND**
10 **EFFICIENCY OF ITS COLLECTION PRACTICES?**

11 A. No. In June 2003, PGW realized that it was experiencing a significant decline in
12 collections in comparison to its historic 10-year average of 92%. For the fiscal
13 year ending August 2003, PGW had a collections rate of 86.57% of revenues
14 billed. The Company's five year average for the five years ending August 2003
15 was 91.85%. As a result of this decline in collections, in November 2003, PGW
16 launched its Collection Renewal Initiative. The Collections Initiative has a two-
17 tiered approach to collection through (1) enhancing cash flow and containment of
18 uncollectibles, and (2) a long-term initiative to improve collections processes and
19 efficiencies. Given the accelerated time period for this proceeding, there has been
20 insufficient time to evaluate PGW's ongoing improvements in its collection
21 practices. Nor has there been time to review the ongoing changes in PGW's
22 collection practices and results from its Collections Initiative.

23

1 **Q. HAVE YOU HAD ADEQUATE TIME TO REVIEW THE EFFECTS**
2 **GENERATED BY PGW'S COLLECTIONS RENEWABLE INITIATIVE?**

3 A. No. Consideration of the specific Chapter 56 waivers requested by PGW is
4 premature at best. Although the Collections Initiative began in September 2003,
5 the actual effect of the initiative did not start to yield results until the end of
6 March and early April 2004. In March 2004, PGW was projecting a collections
7 rate of 89% for the fiscal year ending August 31, 2004. PGW subsequently
8 recognized an improvement in collections, and updated their projected collections
9 rate to 90.5% for the 12 months ending March 2004. If this improvement
10 continues, PGW is projecting a collections rate of 93%. (PGW Statement CRRC-
11 1R, at 2). Each one percent change in the collections rate for PGW results in a
12 change of approximately \$8 million in cash reserves for the Company. (PGW
13 Statement CCRC-1, at 5). It now appears that PGW's Collection Initiative is
14 yielding positive results. There has been insufficient time, however, to allow the
15 Collections Initiative to fully work. Before PGW is granted waivers of Chapter
16 56 protections for its customers, the PUC should determine whether the
17 Collections Initiative would generate the increased collections that it appears
18 capable of generating.

B. Further Innovations in Collections.

Q. ARE THERE ADDITIONAL INNOVATIONS IN COLLECTIONS THAT YOU RECOMMEND PGW ADOPT PRIOR TO PURSUING SIGNIFICANT CHAPTER 56 WAIVERS?

A. Yes. I will discuss two proposals that PGW should pursue. The first involves an increased use of Electronic Funds Transfer (EFT) payments. The second involves mandatory budget billing.

Q. PLEASE EXPLAIN YOUR FIRST PROPOSAL.

A. I recommend that PGW increase its use of e-commerce in its payment plans for customers with incomes at or above 250% of the Federal Poverty Level. Electronic Funds Transfer (EFT) systems are widely used by various commercial institutions to receive and transfer money. Institutions ranging from banks to credit unions to insurance and mortgage companies (as well as public utilities) use EFT both to make payments and to collect payments from their consumers. Not only does EFT result in lower transaction costs (such as processing and mailing), it has been found to be useful in reducing delinquencies and defaults.

Q. HAS ANYONE USED EFT SPECIFICALLY AS A MECHANISM THROUGH WHICH TO COLLECT DELINQUENT BILLS?

A. Yes. Both Minnesota and California changed their installment agreement programs for delinquent taxes to promote tax payments by EFT. Minnesota has required taxpayers entering into new installment agreements since July 1995 to pay by EFT.

1 In April 1997, California initiated procedures to let taxpayers make installment
2 agreement payments by EFT. By mid-November 1997, 90% of California's
3 installment payments on delinquent taxes were being made by EFT; 60% of
4 Minnesota's installment payments on delinquent taxes were.

5
6 **Q. WHAT HAS BEEN THE IMPACT OF THAT MOVE TO EFT FOR**
7 **INSTALLMENT AGREEMENT PLANS FOR DELINQUENT TAXES?**

8 A. According to state officials, both Minnesota and California have seen a sharp
9 decrease in their installment agreement default rates, in part due to EFT. In
10 Minnesota, officials said that default rates were reduced from about 50 percent to
11 between three and five percent. In California, officials said that default rates were
12 reduced from about 40 percent to about five percent. Officials in both states have
13 said that the lower default rates have resulted in collecting revenues from
14 installments faster as well.

15
16 **Q. DESCRIBE WHAT YOU MEAN BY THE USE OF E-COMMERCE**
17 **TECHNOLOGY FOR PAYMENT AGREEMENTS.**

18 A. EFT transactions involve the paperless transfer of funds between accounts in
19 financial institutions, which allows for transactions such as the direct deposit of
20 payroll checks, mortgage payments, and installment payments. In today's
21 technology-rich environment, nearly every financial institution can both make and
22 receive EFT transactions.

23

1 **Q. CAN EFT PAYMENTS BE REQUIRED AS A MECHANISM THROUGH**
2 **WHICH TO PAY BILLS?**

3 A. Because of the advantages that EFT payments offer to the commercial institutions,
4 most institutions provide incentives for customers to make their current bill
5 payments electronically. States such as Minnesota and California, however, require
6 persons who owe back taxes, and who enter into installment agreements through
7 which to pay those taxes, to make those installment payments through EFT transfers
8 (with some exceptions). One exception in Minnesota, for example, is for taxpayers
9 who do not have bank accounts. A bank account is necessary for an electronic
10 transaction to occur. In addition, in Minnesota, payment agreements of fewer than
11 four months in duration can be exempt from the EFT requirement.

12
13 So, too, does California require taxpayers who enter into installment agreements to
14 pay their installments through EFT. Like Minnesota, California allows exceptions,
15 including for taxpayers that do not have bank accounts, taxpayers for whom an EFT
16 transaction would represent a particular hardship, or tax liabilities that are small in
17 nature. By the end of the first six months of the program, 60% of the agreements,
18 and 90% of the value of outstanding taxes subject to new installment agreements,
19 were arranged as EFT transactions.

20
21 **Q. HOW WOULD AN EFT PAYMENT AGREEMENT OPERATE IN**
22 **PRACTICE?**

1 A. An EFT payment agreement for PGW arrears would likely be arranged as an
2 Automated Clearinghouse (“ACH”) debit transaction. In such a transaction, PGW’s
3 financial institution would originate the transaction by sending a request for funds to
4 the customer’s financial institution. The customer’s financial institution then
5 transfers the funds in order to settle the transaction. ACH transactions generally
6 settle the next day after they are originated. Settlement means that the funds are
7 actually transferred and made available to the requesting institution.

8

9 **Q. WOULD PGW NEED PRIOR AUTHORIZATION FROM THE**
10 **CUSTOMER TO MAKE THE PAYMENT REQUEST EACH MONTH?**

11 A. Absolutely. However, the payment agreement entered into with the customer could
12 contain the prior authorization needed for PGW to make such a direct call on the
13 customer’s funds. PGW would not be required to gain customer approval in each
14 subsequent month.

15

16 **Q. WHY SHOULD A CUSTOMER BE REQUIRED TO ENTER INTO AN**
17 **ELECTRONIC FUNDS TRANSFER AGREEMENT AS PART OF A**
18 **PAYMENT AGREEMENT?**

19 A. Through a payment agreement, the PGW customer is agreeing to make monthly
20 payments toward an arrears in any event. The e-commerce aspect of the agreement
21 merely reduces costs as well as the possibility that the customer will breach the
22 agreement.

23

1 **Q. WHAT IF A CUSTOMER WITH INCOME AT OR ABOVE 250% OF**
2 **POVERTY REFUSED TO ENTER INTO AN EFT AGREEMENT?**

3 **A.** I propose that PGW make EFT agreements a precondition of payment plans for
4 customers with incomes at or above 250% of the Federal Poverty Level, with narrow
5 hardship exceptions akin to those promulgated by the Minnesota and California tax
6 agencies. Agreements that would impose undue hardship, agreements with
7 customers lacking checking accounts, and agreements for arrears that are below
8 designated threshold limits (to be determined by PGW), could be exempt.

9

10 **Q. WHY WOULD YOU EXEMPT CUSTOMERS WITH INCOME BELOW**
11 **250% OF THE FEDERAL POVERTY LEVEL FROM THIS MANDATORY**
12 **EFT PAYMENT AGREEMENT ARRANGEMENT?**

13 **A.** A fundamental assumption for an EFT requirement to work is that customers have
14 bank accounts from which payments may be drawn. Based on data from the Federal
15 Reserve Board, I conclude that there is too high of a likelihood that customers at
16 these lower income levels would *not* have bank accounts to use for EFT payments.
17 In addition, a series of studies has found that even when customers at these lower
18 income levels *do* have bank accounts, they maintain insufficient balances to ensure
19 that an EFT arrangement would provide the *guarantee of automatic payment* that
20 PGW seeks.

21

22 **Q. WHAT FUNCTION DOES AN EFT PAYMENT PLAN SERVE?**

1 A. One primary “rule” with respect to designing collection programs is to design the
2 program to address the underlying reason why customers do not pay their bills.
3 There is considerable information on why customers do not pay. I have attached my
4 review of why customers do not pay as Appendix B. As you can see, directing
5 mandatory EFT payment plans toward customers with incomes at 250% of the
6 Federal Poverty Level or below does not address the underlying reason why bills are
7 not paid in the first instance. Directing EFT payment plans toward higher income
8 customers, however, does match the collection technique with the cause of the
9 underlying nonpayment.

10

11 **Q. IS THERE A SECOND ALTERNATIVE THAT YOU PROPOSE?**

12 A. Yes. It is clear that the primary reason for nonpayment of natural gas bills is the
13 high burden which winter natural gas heating bills place on customers. While this
14 is primarily true for low-income customers, it is true across-the-board as well. I
15 reach this conclusion based on a study of nearly four years of payment data for
16 both fuel assistance recipients and non-fuel assistance recipients in the State of
17 Iowa. I have attached a copy of that study as Appendix C. I find that levelizing
18 bills, and eliminating the peaks in winter natural gas bills, will not only improve
19 payment patterns, but will help the Company by generating a prepayment of some
20 portion of the winter bills before they become due.

21

22 Based on this analysis, I conclude that PGW should not be held to an historic
23 billing structure under which customers are billed after-the-fact based on current

1 usage. Instead, PGW should be allowed automatically to place residential
2 customers on levelized budget billing plans. Customers could, upon a
3 demonstration of creditworthiness, be allowed to opt out of the levelized budget
4 billing.

5
6 **Q. WILL A MOVE TO MANDATORY BUDGET BILLING YIELD ANY**
7 **ADDITIONAL COLLECTION ADVANTAGES TO PGW?**

8 A. Yes. The impact of high winter heating bills on increasing arrears has been
9 documented throughout the nation. A study released by the National Energy
10 Assistance Directors' Association (NEADA) in April 2001 reported on both the
11 level of arrears and the number of utility customers subject to the termination of
12 service coming out of the winter heating season that year. High winter gas rates
13 combined with cold temperatures resulted in substantial increases in winter bills.
14 As a result, state-after-state reported dramatic increases in arrearages.

- 15 ➤ Indiana reports that arrearages have increased to \$30.5 million from
16 \$14.4 million at the same time last year.
- 17 ➤ Iowa reported that more than 180,000 families had more than \$34.5
18 million in arrearages, more than double last year's amount.
- 19 ➤ Kansas reported that customers have two to three times the level of
20 arrears they had at the end of the 1999/2000 winter heating season.
- 21 ➤ Minnesota reported that the average residential arrears increased from
22 \$168 last year to \$267 this year.

1 ➤ One Louisiana utility reported an increase in arrears from \$14 million
2 to \$32.9 million in that one winter heating season.

3 Pennsylvania did not provide information about the changes in arrearage levels.

4
5 Consider the implications of this for PGW. PGW states that it “collects a huge
6 percent (75%) of its total revenue in the winter months. . .” (Petition, para. 15).

7 One problem with this concentration of revenue within the winter months,
8 combined with high gas bills and declining real income within the City, is that the
9 Company has a substantial level (\$137.5 million) in what it refers to as
10 “unprotected accounts receivables.” (Petition, at para. 19). The Company
11 continues to state: “Because of the sheer volume of the problem, PGW will not be
12 able to complete the collections process for these 133,000 customers [in arrears]
13 (i.e., either receive full payment, enter into a payment agreement or terminate
14 service) until late June.” (Petition, at para. 19). PGW expresses concern because it
15 anticipates a further increase in natural gas prices of \$77 million for the winter of
16 2004/2005. (Gyory Direct, at 11).

17
18 Given the above information, it seems clear that one impact of mandatory budget
19 billing would be to improve the Company’s cash flow by generating prepayments
20 of winter revenue. Through budget bill, PGW customers will have paid some
21 portion of their winter heating bill during the non-heating months. Thus, if PGW
22 does experience substantial price increases this winter, customers will at least

1 have prepaid some portion of those bills. As a result, if customers do miss winter
2 payments, they will be placing a smaller proportion of PGW revenue in jeopardy.

3
4 **Q. WHAT DO YOU CONCLUDE?**

5 A. I conclude that PGW's request for Chapter 56 waivers is premature. Reasonable
6 alternatives exist to the grant of Chapter 56 waivers sought by PGW. The
7 alternatives recommended above can yield immediate results for PGW's
8 collection efforts. I recommend that, PGW convert its residential customers to
9 mandatory budget billing in order to begin to receive the affordability and
10 prepayment benefits offered by such a billing approach. Prior to such conversion,
11 PGW should provide consumer notice and education as to the reasons for the
12 conversion, the benefits to individual consumers arising from the conversion, and
13 the benefits to the Company arising from the conversion. While this notice and
14 education process will likely mean that the conversion cannot happen early in the
15 fall, the conversion of consumers to mandatory budget billing will offer benefits to
16 the Company in the long term.

17
18 In addition, PGW's Collections Initiative appears to be generating positive results.
19 The Company should be required to allow that Collections Initiative to continue
20 so that its impacts on collections can be evaluated. Pursuing collections within
21 Chapter 56 requirements should be the highest priority for the Company and can
22 produce improved collections as the Collections Initiative has shown.

1 **PART 2:**

2 **PGW'S SPECIFIC CHAPTER 56 REQUESTS.**

3 **A. General Overview Comments.**

4
5 **Q. IS THERE A GENERAL APPROACH THAT YOU AND THE OFFICE OF**
6 **CONSUMER ADVOCATE HAVE TAKEN TO THE PGW WAIVER**
7 **REQUESTS?**

8 A. Yes. Clearly something is amiss at PGW. Now is not the time to “just say no” to
9 PGW waiver requests. As seen above, both the OCA and myself have
10 endeavored to offer reasonable alternatives to the waiver requests. Many of the
11 specific waiver requests, however, are not in the public interest and should not be
12 granted.

13
14 **Q. IS THERE A GENERAL OBSERVATION THAT YOU WISH TO MAKE**
15 **ABOUT PGW'S WAIVER REQUESTS?**

16 A. PGW's waiver requests lack adequate evidentiary or data-based analysis. The
17 Company provides no data supporting their assertions that the specific waiver
18 requests it seeks address specifically-identifiable problems on the Company's
19 system. Indeed, as I indicate below, many of the assertions advanced by the
20 Company are based on stereotypes or anecdotal information rather than on data-
21 based analysis. The Company provides no data supporting its conclusions that the
22 waiver requests will generate the results it postulates. While the Company sets
23 forth broad statements of the financial impacts of its proposed waiver requests, it
24 presents no information or supporting data to support those broad statements.

1
2 After its eighteen month investigation into the control of uncollectible accounts in
3 1991 and 1992 (Docket No. I-900002), BCS concluded with respect to Chapter
4 56: "In short, the standards in Chapter 56 are effective collection tools provided
5 companies properly categorize their customers and correctly apply all pertinent
6 provisions. Where Chapter 56 is ineffective, that is with customers with an
7 inability to pay, the problem is not Chapter 56. Other programs are needed to
8 address this problem. . ." (BCS Final Report, at 114). Given that conclusion,
9 based on substantial factual inquiry, I would submit that to the extent that PGW
10 seeks to have multiple waivers of Chapter 56 regulations, PGW should be
11 required to make a clearer evidentiary showing, and responding parties should be
12 allowed to engage in a reasonable and adequate factual inquiry into the waiver
13 requests, before any such waivers are approved.

14
15 **Q. DO YOU HAVE GENERALIZED CONCERNS ABOUT THE WAIVERS**
16 **SOUGHT BY PGW IN THIS PROCEEDING?**

17 A. Yes. Each of the specific waiver requests submitted by PGW has an impact unto
18 itself. The Company seeks to constrain the availability of payment plans (Request
19 #1, #5). The Company seeks to broaden its ability to terminate service (Request
20 #2, #4, #6). The Company seeks to increase the financial consequences of
21 nonpayment (Request #3). The Company seeks to reduce notice requirements.
22 (Request #7, #8). Each of these waiver requests individually has specifically
23 identifiable consequences, many of which I discuss below. What tends to get lost

1 in the discussion, however, is the synergistic impacts that the package of requests
2 as a whole will have on PGW customers. The compounding effect of the package
3 of waiver requests is to strip PGW customers of much of their ability to be
4 protected against the loss of essential home heating services. One of the stated
5 purposes of Chapter 56 is to protect against unreasonable termination of service.
6 (52 Pa. Code §56.1).

7
8 It is important to note, for example, how BCS emphasized the inter-relatedness of
9 proposals in its Draft Report in the previous docket on the control of uncollectible
10 accounts. In setting out its recommendations, BCS noted that “these groups
11 reflect the Bureau’s perspective that the recommendations are interdependent, and
12 as such, no single recommendation is meant to stand alone. . . Since the
13 recommendations are interdependent and as a whole provide a balanced approach,
14 failure to implement one recommendation may affect the impact of effectiveness
15 of other recommendations.” (BCS Final Report, at 6).

16
17 **Q. DO YOU HAVE ANY FINAL GENERALIZED COMMENT ABOUT THE**
18 **PGW WAIVER REQUESTS?**

19 A. PGW structures many of its waiver requests to apply only to BCS Level 3 and
20 Level 4 customers. The implicit message in these requests is that if customers
21 live with incomes above 150% of the Federal Poverty Level, these households are
22 no longer “low-income” and thus do not require the protections offered by
23 Chapter 56. It should be remembered, however, that BCS Level 3, in particular,

1 covers a wide range of households. Working poor households, as well as seniors
2 receiving fixed incomes through Social Security, frequently have incomes falling
3 just above 150% of Federal Poverty Level. In addition, as I describe in more
4 detail below, 150% of the Federal Poverty Level falls below that income which is
5 necessary in Pennsylvania for a household to live a minimally sufficient life.

6
7 The choice of 150% of Federal Poverty Level as the demarcation of households
8 that are provided low-income assistance contrasted to those that are not finds its
9 historical roots in the federal LIHEAP program. Due to federal budget
10 constraints, LIHEAP eligibility has often been set at 150% of the Federal Poverty
11 Level. This decision, however, reflected constrained federal funds, not a decision
12 that households with higher incomes did not “need” assistance, or merit consumer
13 protections. The federal LIHEAP statute allows a state program to increase
14 LIHEAP eligibility standards to 60% of the state’s median income. As a rule of
15 thumb, 50% of median income is generally considered to be roughly equivalent to
16 200% of Federal Poverty Level. Thus, the LIHEAP statute, itself, recognizes that
17 inability-to-pay can go to well above 200% of the Federal Poverty Level. Indeed,
18 as LIHEAP has been supplemented in recent years through emergency
19 appropriations, some states have increased their LIHEAP eligibility to the full
20 60% of median income allowed by statute. It is important not to accept the
21 implicit assumption that merely because a household has income above BCS
22 Level 2, that household *a priori* can be found to have an ability-to-pay its home
23 heating bills.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

In a related vein, it is important to remember that Chapter 56 was not designed to protect the “deadbeats” that exist within any given population. It is an unfortunate fact of life that no matter what system of consumer protections is developed, some extent of “gaming the system” can be perpetrated. In fact, no matter what system is developed, some amount of outright fraud is possible. The existence of that potential, however, is no reason to introduce wholesale revisions into the system. Chapter 56 is not designed to protect those deadbeats. It is a system that is designed to help rehabilitate customers who may fall into arrears on their utility bills. It works to assist marginal customers, such as working poor customers that make too much money to be eligible for public assistance but too little money to consistently be assured of being able to pay their home energy bills. It works to prevent collection mechanisms from exacerbating rather than helping to resolve payment problems.

After an extensive empirical review of credit and collection actions by Pennsylvania’s electric and natural gas utilities, the Pennsylvania BCS concluded in 1992 that “more generally, BCS believes that Chapter 56, when properly applied, is effective and provides reasonable methods of dealing with non-low income delinquencies. . .In short, the standards in Chapter 56 are effective collection tools provided companies properly categorize their customers and correctly apply all pertinent provisions.” (BCS Final Report, at 113, 114).

1 **Q. HAS THE COMMISSION REACHED SIMILAR CONCLUSIONS MORE**
2 **RECENTLY?**

3 A. Yes. In its Opinion and Order in *Frayne v. PECO Energy* (Docket No.
4 C-20029005), the PUC stated that “The 2001 Universal Service Programs and
5 Collections Performance Report reveals a range of gross bad debt write-offs from
6 a low of 1.5% to a high of 2.8% for those electric companies that participated in
7 the survey. This data leads us to conclude that most energy companies have found
8 Chapter 56 compliant programs to be effective in managing over-due accounts
9 and payment troubled customers. This does not suggest that Chapter 56
10 contributes to dramatic increases in uncollectible accounts.” (Opinion and Order,
11 September 10, 2003).

12
13 **Q. WHAT DO YOU CONCLUDE?**

14 A. PGW has provided no compelling argument, and certainly no factual information,
15 to conclude otherwise with respect to itself.

16

17 **B. 52 PA. CODE §56.191**

18

19 **Q. PLEASE EXPLAIN THE FIRST WAIVER REQUESTED BY PGW.**

20 A. PGW proposes to modify the payment arrangement procedures for restoration of
21 service contained in Section 56.191 for Level 3 and Level 4 customers. Section
22 56.191 provides that a utility must reconnect service by the end of the first full
23 working day after full payment of outstanding charges and a reasonable
24 reconnection fee is received; however, these amounts can be amortized over a

1 reasonable period of time. PGW requests that Level 3 and Level 4 customers be
2 required to pay the full amount of the outstanding balance and restoration fee
3 without a payment arrangement before service can be restored. Petition at 19-20.
4 PGW estimates that this will result in a \$4.2 million savings.

5
6 **Q. SHOULD THIS REQUEST BE GRANTED?**

7 A. No. PGW's waiver request assumes that Level 3 and Level 4 customers have, by
8 virtue of the fact that they have incomes above the Bureau of Consumer Services
9 (BCS) Levels at which low-income rate affordability is provided, an ability to
10 consistently pay their bills. This is demonstrably in error. In particular, Level 3
11 customers constitute the working poor, many of whom are living from paycheck
12 to paycheck and do not qualify for PGW's CRP or other social program. Level 3
13 customers may not be able to provide payment in full to have their service
14 restored but may be able to make monthly payments. Without the ability to enter
15 into a payment arrangement, these customers may be left without heat during the
16 winter heating season.

17
18 **Q. WHAT DATA DO YOU HAVE TO SUPPORT THAT CONCLUSION?**

19 A. The National Priorities Project documented its the minimum monthly costs for a
20 four-person household in each state in 1999. This research found that a four
21 person household in Pennsylvania (two adults with two children) would need, on
22 an after-tax basis, \$34,069 a year (1999\$) to maintain a subsistence budget.

23
24 **Q. HOW DO THESE FIGURES COMPARE TO THE POVERTY LEVEL?**

1 A. The 2001 poverty level for a four-person household was \$17,650. The Pennsylvania
2 cost of living (on an after-tax basis) is thus nearly 200% of the Poverty Level. It is
3 important to note that this budget I have identified is merely a subsistence budget. It
4 may not meet a household's entire range of basic needs. According to the National
5 Priorities Project, the household purchases day care that is 30% cheaper than the
6 statewide average. The household spends half of what the average family spends on
7 transportation. There is no savings for repairs of a car, the home, or any appliances.
8 There is no money for a college education or a vacation. There is certainly no
9 savings for retirement.

10

11 **Q. IS THERE OTHER DATA DOCUMENTING THAT 150% OF THE**
12 **FEDERAL POVERTY LEVEL IS NOT AN ADEQUATE MEASURE OF**
13 **ABILITY-TO-PAY?**

14 A. Yes. PathwaysPA quantified a "self-sufficiency standard" for Pennsylvania in 2001.¹
15 According to the Self-Sufficiency Standard for Pennsylvania: 2001, a three person
16 household (one adult, one preschooler, one school age child) would require a
17 monthly wage of \$3,156 (an annual wage of \$37,872). This wage is nearly 260% of
18 the 2001 Federal Poverty Level of \$14,630 for a three-person household. In
19 addition, a four-person household (two adults, one preschooler, one school age
20 child) would require a monthly wage of \$3,567 (an annual wage of \$42,804). This
21 wage is more than 240% of the 2001 Federal Poverty Level for a household of four.

¹ Self-sufficiency standards are used for a number of purposes. One is to compare those public assistance benefits needed to fully cover household costs. Some private and public employers also use self-sufficiency standards as a benchmark against which to compare the level of wages.

1

2 **Q. DO YOU HAVE REASON TO BELIEVE THAT THE WORKING POOR,**
3 **IN PARTICULAR, WILL NOT HAVE SUFFICIENT SAVINGS TO MAKE**
4 **LUMP SUM PAYMENTS TOWARD AN OUTSTANDING ARREARS?**

5 A. Yes. Substantial research has examined the nature of the “unbanked” population.
6 The “unbanked” population is that group of persons who do not maintain either
7 checking or savings accounts. These “unbanked” consumers are overwhelmingly
8 poor. Four of five have incomes below \$25,000. Moreover, even low-income
9 households that do have bank accounts frequently have insufficient savings to make
10 lump sum payments toward expenses such as a utility deposit.

11

12 **Q. ARE THERE REASONS WHY WORKING POOR CUSTOMERS MIGHT**
13 **FALL INTO ARREARS AND THEN HAVE INSUFFICIENT INCOME TO**
14 **RETIRE THOSE ARREARS, ALONG WITH ASSOCIATED FEES, IN**
15 **ONE LUMP SUM?**

16 A. Yes. In 2003, I performed a study for the National Fuel Funds Network on the
17 ability of working poor households to maintain payment arrangements. The
18 observations that I made with respect to payment arrangements are equally
19 applicable to utility bills in general. I have attached a copy of that NFFN paper as
20 Appendix D. Working poor households, in particular, are likely to have incomes
21 above the eligibility guidelines for public assistance. Despite this, they are also
22 likely to have incomes that are not only insufficiently high to allow them to meet

1 their living expenses without occasional disruption, but that are also insufficiently
2 stable to allow them to meet their living expenses without occasional disruption.

3
4 **Q. WHAT DO YOU CONCLUDE?**

5 A. Based on the above analysis, I reach two conclusions. First, I conclude that PGW
6 has not justified its proposal to waive PUC regulations regarding payment plans
7 for Level 3 and Level 4 customers. Second, I conclude that the proposed waiver
8 request will affirmatively harm customers.

9
10 **Q. DO YOU PROPOSE ANY ALTERNATIVES?**

11 A. Yes. As stated above, mandatory budget billing, along with the mandatory use of
12 Electronic Funds Transfer (EFT) for payment plans, are appropriate alternatives.

13
14 **C. 52 PA. CODE §56.100**

15
16 **Q. PLEASE EXPLAIN THE SECOND WAIVER REQUESTED BY PGW?**

17 A. PGW's Petition proposes to waive the Chapter 56 provisions pertaining to winter
18 terminations. 52 Pa. Code § 56.100 prohibits termination of heat-related services
19 from December 1 through March 31, the winter moratorium period. If a
20 reasonable payment arrangement cannot be reached, PGW can request from the
21 Commission permission to terminate the customer. PGW wishes to waive the
22 prohibition of termination during the winter moratorium period for Level 3 and
23 Level 4 customers.

1 **Q. SHOULD THIS REQUEST BE GRANTED?**

2 A. No. PGW's waiver request assumes that Level 3 and Level 4 customers have, by
3 virtue of the fact that they have incomes above the Bureau of Consumer Services
4 (BCS) Levels at which low-income rate affordability is provided, an ability to
5 consistently pay their bills. As I demonstrated above, this is demonstrably in
6 error.

7

8 **Q. IS THERE ANY OTHER EMBEDDED ASSUMPTION INHERENT IN**
9 **THE PGW REQUEST THAT IS IN ERROR?**

10 A. PGW's implicit argument behind the request to waive the winter moratorium is
11 that the PUC's winter moratorium causes an increase in the nonpayment of bills
12 during the moratorium period. The PUC has found this not to be the case.
13 According to a 1983 BCS analysis, contrary to the argument by the utility
14 companies, the Pennsylvania winter shutoff moratorium does not result in an
15 increase in the number of unpaid bills, or the amount of unpaid bills, that would
16 have existed in the absence of a moratorium. The BCS study reported that:

17 Average overdue bills are at a low in November and rise to a high
18 point in March or April. The apparent relationship of this pattern to
19 Public Utility Commission regulations is obvious. That is, arrears are
20 greatest at the end of the Commission's winter termination restrictions
21 (December 1 to March 31 of the following year) and have been
22 reduced to their lowest point immediately prior to the introduction of
23 those restrictions for the following year. This pattern is consistent
24 with the assertion put forward by utilities that they would be able to
25 control arrearages if there were no winter termination restraints.
26 However, the seasonal fluctuations are substantial only for heating
27 accounts. Arrearages for non-heating accounts show only minor
28 seasonal fluctuations. A comparison of [the data] suggests a simple
29 explanation for this difference, that is, that the size of arrearages is
30 related to the size of monthly bills. Heating customers' bills grow

1 radically in the winter and so do their arrearages. Non-heating
2 customers' bills change very little seasonally and their arrearages
3 follow suit. In other words, if the assertion that winter termination
4 restraints invite nonpayment were correct, then non-heating
5 arrearages should show the same seasonal pattern of variations as do
6 heating arrearages. That they do not casts substantial doubt on the
7 assertion that PUC winter termination restraints are responsible for
8 willful non-payment and consequent collection problems.²
9

10 This Pennsylvania report introduces the notion that any assessment of arrears must
11 control for the impact of monthly bills. The BCS report is consistent with the BCS
12 recommendation, often stated, to use a "weighted arrears" or "bills behind" statistic
13 to factor out the impact of increased arrears caused by factors other than
14 nonpayment. BCS explains that its "bills behind" statistic "permits comparisons to
15 be drawn between companies by eliminating the effects of different customer bills
16 on arrearages." Without such a measure, "the interpretation of average arrearages,
17 either over time or in comparison between companies, presents some difficulties."
18

19 **Q. DO YOU HAVE INDEPENDENT REASON TO BELIEVE THAT THE**
20 **1983 BCS CONCLUSIONS REMAIN VALID TODAY?**

21 A. Yes. I performed a study of the Iowa winter shutoff moratorium for the Iowa
22 Department of Human Rights, the state agency that administers the federal Low-
23 Income Home Energy Assistance Program (LIHEAP) in Iowa. A copy of that
24 study is attached as Appendix E. In that study, I found as follows:

25 Iowa's LIHEAP recipients do not experience an increase in the number of
26 weighted "bills behind" they incur during the winter shutoff moratorium
27 period. While average arrears increase during the winter, this increase is a
28 reflection of the fact that winter bills are higher, not of the fact that LIHEAP
29 recipients are a larger number of months behind in their payments.

² Joseph Farrell (1983). *Utility Payment Problems: The Measurement and Evaluation of Responses to Customer Nonpayment*, at 19, Pennsylvania Public Utility Commission: Harrisburg, PA

- Iowa's LIHEAP recipients do not reduce the number of payments made each month resulting in a \$0 balance during the shutoff moratorium period.
- Iowa's LIHEAP recipients continue to make payments each month during the winter moratorium period even when such payments do not reduce the account balance to \$0. Partial payments continue to be made both toward bills for current usage and toward arrears.
- Iowa's LIHEAP recipients do not reduce the total dollars paid each month relative to the total bills for current usage rendered each month during the shutoff moratorium period.
- Iowa's LIHEAP recipients continue to make winter month payments equal to 90+% of the winter month bills despite the presence of the winter shutoff moratorium.
- Iowa's LIHEAP recipients do not reduce the number of total payments they make relative to the number of bills they receive during the shutoff moratorium period.

Iowa's winter shutoff moratorium is an important health and safety protection for Iowa's low-income customers who frequently find that they face high home energy bills that are simply not affordable. The moratorium has been implemented without creating substantive nonpayment problems for Iowa's utilities.

Q. IS THERE ANOTHER IMPORTANT REASON NOT TO ALLOW A WAIVER OF THE WINTER SHUTOFF PROTECTIONS FOR PGW?

A. Yes. Pennsylvania's winter shutoff protections³ provide critical health and safety protections for customers having difficulty paying their winter natural gas bills. Problems are caused not only by the nonpayment of bills, but by the payment of bills as well. The recent National Energy Assistance (NEA) survey performed by the National Energy Assistance Directors Association (NEADA)⁴ reports that

³ I recognize that Pennsylvania does not have a complete winter shutoff moratorium.

⁴ Apprise, Inc. (April 2004). *National Energy Assistance Survey Report*, National Energy Assistance Directors Association: Washington D.C.

1 “despite. . .significant residential energy expenses, most low-income households pay
2 their energy bills regularly. But at what cost?” The NEA survey found that

3 “LIHEAP recipients faced life-threatening challenges.”

4 ➤ 17% of the national respondents had their heating disconnected or discontinued
5 because of an inability to pay.

6 ➤ 8% had their electricity (as opposed to heating) disconnected due to an inability
7 to pay.

8 ➤ 38% went without medical or dental care in order to have money to pay their
9 home energy bill;

10 ➤ 30% went without filling a prescription or taking the full dose of a prescribed
11 medicine.

12 ➤ 22% went without food for at least one day.

13 I have attached the NEADA survey as Appendix F.

14
15 **Q. WHAT WILL BE THE IMPACT OF GRANTING PGW’S WAIVER**
16 **REQUEST?**

17 A. Granting PGW’s waiver request of winter shutoff protections will place more
18 households in the position of making the untenable choices outlined above. PGW’s
19 consultant, H. Gil Peach, has correctly noted that these financial choices are no
20 longer limited to the very low-income. Pennsylvania’s cold weather rules protect not
21 *only those customers who do not pay, but those who do pay as well.* The PGW
22 waiver request should be denied.

23

1 **Q. ARE THERE REASONABLE ALTERNATIVES TO PGW'S REQUESTED**
2 **WAIVER OF WINTER SHUTOFF PROTECTIONS?**

3 B. Yes. PGW should move forward with the mandatory budget billing and mandatory
4 EFT payment plan proposals that I describe in more detail above.

5

6 **D. 52 PA. CODE §56.32**

7

8 **Q. PLEASE EXPLAIN THE THIRD WAIVER REQUESTED BY PGW?**

9 A. PGW's Petition proposes to waive the Chapter 56 provisions pertaining to credit
10 standards. Section 56.32 allows an applicant to avoid a deposit by showing a prior
11 utility payment history, by owning property or leasing property for at least one
12 year, or by otherwise demonstrating that he or she is not a poor credit risk. PGW
13 wishes to set a flat deposit fee for all customers who initiate service with PGW.
14 PGW proposes to set the deposit at twice the average monthly bill for customers,
15 which is \$250 for heating customers and \$100 for non-heating customers. If a
16 heating customer is restoring service after termination, a deposit of \$500 would be
17 required. For non-heating customers seeking restoration, a deposit of \$200 would
18 be required.

19

20 **Q. SHOULD THIS REQUEST BE GRANTED?**

21 A. No. PGW's waiver request assumes that deposits are an effective and appropriate
22 response to nonpayment. This assumption is in error. Moreover, alternatives
23 exist that will more appropriately respond to the risk of lost revenue from
24 nonpayment.

1 Q. **WHAT IS THE PURPOSE OF A UTILITY DEPOSIT?**

2 A. The *sole* purpose of a deposit is to minimize the possible money loss to a utility due
3 to nonpayment of bills. This principle has been ignored by PGW in its waiver
4 request concerning residential deposits. Late payment, standing alone, does not
5 represent an adequate predictor of the loss of revenue due to bad debt. I
6 performed a study for the Washington Utilities and Transportation Commission
7 that empirically examined this relationship. That study is attached as Appendix
8 G.

9
10 Q. **WHAT DID YOU FIND IN YOUR STUDY FOR THE WASHINGTON
11 COMMISSION?**

12 A. My study examined data from 25 utilities in Colorado, Massachusetts, Michigan,
13 New York, Vermont and Ohio. It presents data for gas, electric and combination
14 (gas/electric) companies. It presents geographically disaggregated data. It presents
15 data from small and large companies. It presents data using some 30-day arrears and
16 some 60-day arrears. The data was designed to test whether a customer who pays
17 late poses a risk to the company of ultimately losing revenue due to disconnection
18 and bad debt.

19
20 As I note above, the only purpose of a deposit is to protect against revenue loss, not
21 to protect against late payments. What I found was that late payment is no predictor
22 of the potential loss of revenue through disconnection and bad debt. The number of
23 delinquent accounts that are actually eventually disconnected ranges from one

1 percent (1%) to five percent (5%). In the case of the best case of prediction,
2 therefore, use of late payment as the predictor of the potential loss of revenue would
3 be wrong 95 out of 100 times. And even that rate of success was obtained in only
4 one of 25 companies. In six (6) of the 25 companies, use of late payment as a
5 predictor would be wrong 96 out of 100 times; in eight (8) of the 25 companies, it
6 would be wrong 97 out of 100 times; in seven (7) of the 25 companies, it would be
7 wrong 98 out of 100 times; in three (3) of the 25 companies, it would be wrong 99
8 out of 100 times.

9
10 For the WUTC, I concluded that being late on one's payment more than once in a six
11 month period may indeed represent an "unsatisfactory payment history" from
12 several different perspectives. Such a payment history may impose working capital
13 costs on a utility. It may cause a utility to incur credit and collection costs. But
14 these adverse consequences are not the consequences against which a deposit is
15 designed to protect. And, from the perspective of whether a customer is going to
16 ultimately contribute to the permanent loss of revenue through bad debt, the mere
17 fact that a customer has been late in his or her payment is no predictor at all.

18
19 **Q. HOW IS THIS APPLICABLE TO THE PGW WAIVER REQUEST?**

20 A. PGW takes its Chapter 56 waiver request regarding deposits one step further than I
21 studied in Washington State. PGW seeks permission to automatically impose a
22 deposit irrespective of payment history or credit history. The Company attributes,
23 without substantiation, a substantial savings (\$7.6 million) to these automatic

1 deposits. I conclude that PGW's approach and its calculations are incorrect.
2 Requiring deposits in the way PGW proposes will not generate the cost savings it
3 claims.

4
5 In addition, as I indicate in my testimony above, many working poor households will
6 not have the financial assets to afford a deposit. These households do not have bank
7 accounts from which they can draw a utility deposit in an amount ranging up to
8 \$250. Imposing such a deposit demand would represent a substantive barrier to
9 having households obtain PGW service. This is particularly true if the PUC grants
10 PGW's request to eliminate the payment period over which a deposit can be
11 collected.

12
13 Finally, PGW's request for permission to apply a customer's deposit against his or
14 her account after twelve months, rather than refunding the deposit to the customer as
15 is required by PUC regulation, may well be counterproductive. Applying a deposit
16 against a customer's bill may well be counterproductive to creating prompt bill
17 paying habits rather than productive. In response to discovery from the Office of
18 Trial Staff (OTS), PGW reported that its average annual residential heating bill in
19 the past seven years ranged from \$870 (2002) to \$1,301 in 2003. A \$250 deposit
20 would thus represent a payment equal to between 20% and 30% of the total annual
21 bill. Rather than generating regular monthly payments, in other words, application of
22 the deposit to the typical residential heating account would generate an extended
23 series of months in which *no* payment would be required. This result is contrary to

1 the need to develop payment patterns that consist of making regular monthly
2 payments.

3
4 **Q. IS THERE A REASONABLE ALTERNATIVE TO THE ACROSS-THE-**
5 **BOARD REQUEST FOR FLAT DEPOSITS FROM RESIDENTIAL**
6 **CUSTOMERS?**

7 A. Yes. The need for PGW is not to collect deposits from every customer. The need for
8 PGW is to identify those customers that represent a risk of the permanent loss of
9 revenue due to nonpayment. A number of Pennsylvania utilities have implemented
10 a credit scoring pilot project involving the Energy Risk Assessment Model
11 (ERAM) to accomplish precisely that. Pursuant to these pilots, credit scoring will
12 apply to applicants for service who are not exempt from providing security
13 deposits due to a favorable prior utility payment history. In addition, an applicant
14 that is certified as low-income will not be required to post a deposit. If an
15 applicant is unable to pay a security deposit, and indicates an inability-to-pay, the
16 applicant will be referred to the appropriate agency to determine whether he or
17 she is eligible for the company's Customer Assistance Program (CAP). Other
18 protections are also included in these pilot programs.

19
20 **Q. WHAT SIGNIFICANCE LIES IN THE FACT THAT PGW CLAIMS A**
21 **LACK OF SOFTWARE TO IMPLEMENT CREDIT SCORING?**

22 A. Any number of Pennsylvania electric and natural gas utilities are now pursuing
23 credit scoring pilot projects. One aspect of PGW's response to its collection

1 problems is to redirect its resources into effective and efficient credit and
2 collection activities. Given the experience of other Pennsylvania utilities, PGW
3 should be required to direct its resources to credit scoring in the same manner as
4 other utilities have been, in order to determine whether it will be of substantial
5 assistance in identifying customers who present a risk of lost revenue through
6 nonpayment.

7
8 **Q. WHAT DO YOU RECOMMEND?**

9 A. PGW should be permitted to apply a deposit to a customer's bill only if that
10 customer presents a demonstrated risk of lost revenue through nonpayment. One
11 way that such a demonstration can be made is if a particular customer has been
12 terminated or had service discontinued. A second way for this demonstration to be
13 made is through the ERAM credit scoring model in the same manner as is being
14 done by other Pa utilities. Additionally, after one year of current payments, PGW
15 should be required to return the deposit to customers unless the customer chooses to
16 have it applied to his or her bill.

17
18 **E. 52 PA. CODE §56.35 AND §56.83.**

19
20 **Q. PLEASE EXPLAIN THE FOURTH WAIVER REQUESTED BY PGW?**

21 A. PGW's Petition proposes to waive Section 56.35. Section 56.83 requires an
22 applicant to pay any outstanding residential account with the utility within the
23 past four years for which the applicant is legally responsible and for which the
24 applicant was billed properly. Section 56.35 prohibits a utility from requiring an

1 applicant to pay for residential service previously furnished to a person of another
2 name, unless the applicant is legally responsible for that person. PGW requests
3 that it be able to require an applicant to present positive identification to
4 determine whether the applicant was a previous resident and, if so, may require
5 the applicant to pay any outstanding residential account accrued on the residence
6 within the last four years or for the time the applicant was a resident. Section
7 56.83 prohibits termination of service of service for non-payment of delinquent
8 bills by a prior ratepayer at the same address.

9
10 **Q. SHOULD THIS REQUEST BE GRANTED?**

11 A. No. This PGW request violates a host of legal tenets regarding regulatory law,
12 family law, contract law, and consumer credit law. It impermissibly allows the
13 denial of service for a collateral matter. It impermissibly allows PGW to impute
14 an implied-in-fact contract when faced with an express contract with contrary
15 terms. It impermissibly allows PGW to ignore spousal responsibility laws. It
16 impermissibly allows PGW to communicate the existence of a consumer's debt to
17 a third party. The request should be denied. I have attached an analysis of the
18 lawfulness of holding a person responsible for their roommate's utility bill as
19 Appendix H. I have attached an analysis of the lawfulness of holding one spouse
20 liable for the utility bills of the other spouse as Appendix I.

F. 52 PA. CODE §56.97

1
2
3 **Q. PLEASE EXPLAIN THE FIFTH WAIVER REQUESTED BY PGW?**

4 A. PGW's Petition proposes to waive the Chapter 56 provision requiring reasonable
5 payment agreements to avoid termination. With PGW's modification, customers
6 at Levels 1-4 would be limited to only one payment arrangement. Customers
7 would be required to pay a specified minimum monthly payment amount for
8 Level 1 customers of \$15, for Level 2 customers of \$40, and for Levels 3 and 4
9 customers of \$100.

10
11 **Q. SHOULD THIS REQUEST BE GRANTED?**

12 A. No. This PGW proposal commits a classic error of assuming a perfect correlation
13 between the "ability to pay" of a customer with the "income" of a customer. I
14 previously testified as to a study that I performed for the National Fuel Funds
15 Network (NFFN) in 2002. In that study, I examined reasonable payment plan
16 practices for working poor households in particular.

17
18 In my NFFN study, which I have previously attached as Appendix D, I reported
19 that standard regulations adopted by utility regulators around the country provide
20 that a utility shall take into account designated factors in deciding what payment
21 plans are "reasonable." These factors include, but are not limited to, "ability to
22 pay."⁵ The phrase "ability to pay," however, as PGW does in this proceeding, is

⁵ See e.g., IDAPA 31.21.01.313 (2001) (Idaho); 83 Ill. Adm. Code 280 Appx. D (2001) (Illinois); CMR 65-407-860 (2001) (Maine); 4 CSR 240-13.060 (2001) (Missouri); MONT. ADMIN. R. 38.5.1415 (2001) (Montana); 52 Pa. Code § 56.97 (2001) (Pennsylvania); 16 TAC § 7.45 (2001) (Texas); Wis. Adm. Code PSC 113.0404 (2001) (Wisconsin).

1 often treated as being synonymous with “level of income.” If a household’s
2 income is sufficiently high, the reasoning goes, the household is deemed to have
3 an ability to pay its home energy bills.

4
5 **Q. WHAT IS THE MORE REASONABLE APPROACH?**

6 A. Taking into account the “ability to pay” of the working poor should involve *more*
7 than simply taking into account income level. The *stability* of income is one
8 additional aspect of the ability to pay of the working poor. The negotiation of a
9 payment plan for utility arrears should take into account the potential instability of
10 income amongst the working poor as one aspect of ability to pay. Income for the
11 working poor, in particular, can be erratic and unpredictable. A working poor
12 customer may not *know* in April what his or her income is going to be in July or
13 August, let alone in the following December or January. Periods of unstable wages
14 may make payments that were reasonable in April unreasonable at a later date.

15
16 This income attribute of working poor households has been recognized in a variety
17 of contexts. The instability of income has been found to be a barrier to effective
18 budget counseling. The evaluation of one asset-building program, for example,
19 reported that “staff and participants thought the budgeting worksheet. . .became
20 obsolete almost immediately because participants’ incomes were very unstable.”⁶

21 One major barrier to savings and asset accumulation by working poor households

⁶ Dianne Lazear (September 1999). *Implementation and Outcomes of an Individual Development Account Project*, at 12, Center for Social Development, Washington University: Saint Louis (MO).

1 involves their “irregular incomes.”⁷ One barrier to the long-term accumulation of
2 assets has been found to be the “recurring crises,” such as unemployment, which
3 force working poor households to deplete their savings.⁸ Individuals have been
4 found to view saving and systematic budget planning as not worthwhile because of
5 the inability to predict income and labor-market conditions.⁹

6
7 I found that working poor families tend to find themselves in lower quality hourly
8 wage jobs, often marked by considerable income fluctuations due to the number
9 of hours they are called upon to work. The Urban Institute quantified the types of
10 occupations that characterize the working poor. Even aside from the level of
11 wages,¹⁰ the presence of hourly wages and unpredictable hours mark occupations
12 that are the province of the working poor.¹¹

13
14 I finally reported that families in the bottom quartile of income are
15 significantly less likely to have access to paid sick leave, paid vacation
16 leave, or flexible work schedules than families with higher incomes. More

⁷ See e.g., David Smyth (1993). *Toward a Theory of Savings*, in James Gapinski (ed.). *The Economics of Savings*, at 47 – 92, Kluwer Academic Publishers: Boston; Franco Modigliani (1986). “Life cycle, individual thrift, and the wealth of nations,” *American Economic Review*, 76(3): 297-313.

⁸ Cathleen Finn, et al. (1994). “Assets and Financial Management Among Poor Households in Extreme Poverty Neighborhoods,” *Journal of Sociology and Social Welfare*, 21(4):75-94.

⁹ Arthur Kennickell, Martha Starr-McCluer, and Annika Sunden (1997). “Saving and Financial Planning: Some Findings from a Focus Group,” *Financial Counseling and Planning*, 8(1):1-8.

¹⁰ The median hourly wage of primary earners in working poor families (\$7.55) is less than half the median wage of primary earners in families with incomes above 200% of poverty (\$16.67).

¹¹ Acs, Gregory, Katherin Ross Phillips and Daniel McKenzie (May 2000). *Playing by the Rules but Losing the Game*, at 10 – 11, Urban Institute: Washington D.C.

1 than three fourths (76 percent) of workers in the bottom quartile of family
2 income lack regular sick leave; more than half (58 percent) do not have
3 consistent vacation leave. Families in the bottom income quartile are
4 more likely than other workers to lack *both* sick leave *and* vacation leave.

5
6 The lack of paid leave time may directly affect the ability of a working poor
7 customer to maintain payments on a payment arrangement. A person working 35
8 hours a week on hourly wages may lose three days of work simply due to a sick
9 child missing school and requiring care. If no leave time exists for that employee,
10 the sick child translates into permanently lost wages. Personal illness, too, results in
11 permanently lost wages, whether illness keeps a worker away from his or her job for
12 a day, for two days, or for a week.

13
14 One of my primary recommendations in the NFFN report was to avoid the one-
15 strike-you're-out payment plan structures now being requested by PGW.

16
17 **Q. IS THERE ANY CONFLICT BETWEEN YOUR RECOMMENDATION**
18 **AND THE PUC'S RECENT DECISION LIMITING THE REQUIREMENT**
19 **TO OFFER NEW PAYMENT PLANS?**

1 A. No. The PUC's recent decision in *Frayne* allows for payment plans to be
2 renegotiated should the customer be able to show changed circumstances. This is
3 precisely the recommendation that I advance as well. As the attached NFFN report
4 demonstrates, the problem that I seek to address is the situation where working poor
5 customers face changed circumstances. They should be allowed to make that
6 demonstration and to negotiate a new payment plan based on those changed
7 circumstances.

8
9 **Q. IS THERE A REASONABLE ALTERNATIVE TO PGW'S REQUEST TO**
10 **IMPLEMENT A ONE-STRIKE-YOU'RE-OUT PROVISION FOR**
11 **PAYMENT PLANS?**

12 A. Yes. The NFFN report which is attached presents a series of recommended payment
13 plan alternatives that appropriately respond to the fragility of income of working
14 poor households in particular. Each of these recommendations is consistent with
15 past PUC precedent and is appropriate for PGW. More specifically, I recommend
16 that PGW adopt the following payment plan policies:

17 ➤ On the front-end, PGW should build check-points into the payment plans
18 of working poor households with substantial arrears. Through such a
19 process, PGW would break-up arrears above certain threshold amounts
20 into multiple component parts. A payment arrangement for a \$400
21 arrears, for example, might be made subject to a payment plan for the
22 first \$200 over a 3-month period. Upon successful completion of that
23 plan, PGW would develop a payment plan for the next increment of
24 arrears.¹²

25
26 ➤ Subsequent to entering into a payment plan, PGW should provide for a
27 revision to the payment plan should customer circumstances change.

¹² My NFFN analysis documents the advantages to approaching large arrears in this fashion.

1 With working poor households, in particular, as I discuss in detail
2 above, this ability to revisit payment plan terms is important.
3

4 **G. 52 PA. CODE §56.82**
5

6 **Q. PLEASE EXPLAIN THE SIXTH WAIVER REQUESTED BY PGW?**

7 A. PGW's Petition requests that PGW be able to terminate service on Fridays.
8 Section 1503(a) of the Public Utility Code, as well as Section 56.82 of the
9 Commission's regulations, prohibit Friday shut-offs for nonpayment of service.
10

11 **Q. SHOULD THIS REQUEST BE GRANTED?**

12 A. In order for this waiver to be granted, PGW should be required to document that
13 consumers will have access to the full range of community and commercial
14 services needed to allow a customer to appropriately respond to the termination of
15 service. Should such a documentation be made, PGW's waiver request should be
16 granted on an experimental basis.
17

18 PGW claims that this regulation was promulgated at a time when customers were
19 not able to pay bills on Fridays or Saturdays due to limited banking hours and
20 lack of ATM machines. PGW, however, erroneously attributes the need to avoid
21 Friday shutoffs only to the need to gain access to banks. Other responses are as
22 common if not more so. I had occasion to consider the responses of low-income
23 customers to the disconnection of service in my recent study on home energy
24 insecurity in Missouri. I found that "Energy assistance is an important
25 mechanism for Missouri low-income households to use to restore energy service

1 once it has been disconnected or discontinued. One-third (33%) of the 338
2 households that experienced a service disconnection either often or sometimes
3 reported that they used energy assistance to pay their overdue bill after their loss
4 of service and had service restored. The use of energy assistance to pay past due
5 bills so that service could be restored after a service termination was the most
6 frequent response to the disconnection of service.”¹³ Accessing energy assistance
7 to pay utility arrears after a shutoff occurred half again as often as paying the past
8 due utility bill from a household’s own resources.

9
10 My Missouri study did not distinguish between private and public sources of
11 energy assistance. The energy assistance referenced by survey respondents could
12 refer to basic federal LIHEAP assistance. It could refer to federal LIHEAP crisis
13 assistance. It could just as easily refer to private fuel funds or other community-
14 based organizations.

15
16 Work by the National Regulatory Research Institute (NRRI) released in April
17 2003 further supports the conclusion that it is not merely banks that consumers
18 would turn to in response to an actual or pending service disconnection. The
19 NRRI study *Where Consumers Go for Help Paying Utility Bills* (April 2003)
20 reports that community advocacy organizations, social service agencies, and state
21 government are among those entities to whom a consumer would turn for
22 assistance. I have attached a copy of the NRRI study as Appendix J. These

¹³ Roger Colton (June 2004). *Paid but Unaffordable: The Consequences of Energy Poverty in Missouri*, at 46, prepared for National Low-Income Home Energy Consortium.

1 agencies would not be available to a household that experienced a disconnection
2 of service on a Friday and who would need to seek assistance over the weekend.
3 This is especially true where someone comes home from work on Friday to find
4 that service has been terminated.

5
6 Finally, one important consumer protection is the ability to avoid a disconnection
7 of service when a medical emergency is present. Whether or not banks are open
8 on Saturdays or weekends, obtaining a medical certificate would generally not be
9 possible on weekends. The failure to be able to respond when a medical
10 emergency exists could pose life-threatening consequences.

11
12 Just as importantly, the Pennsylvania PUC would not be available. Should the
13 customer believe that he or she had been unreasonably disconnected, that
14 customer would not be able to seek immediate relief from the PUC.

15
16 **Q. WHAT DO YOU CONCLUDE?**

17 A. The Chapter 56 regulation limiting the days on which service is disconnected
18 provides important consumer protections to consumers. The PUC's regulation in
19 this regard is certainly not unique. Other state utility commission regulations limit
20 service disconnections on Fridays, or at other times on or before days when banks
21 are closed or consumers cannot gain access to assistance that would help address
22 the loss of service. Before any waiver of this important consumer protection is
23 granted, PGW should be required to factually document that a consumer has

1 access to the full range of services that are necessary to appropriately respond to
2 the loss of natural gas service.

3
4
5 **H. 52 PA. CODE §§ 56.94 AND 56.95**

6
7 **Q. PLEASE EXPLAIN THE SEVENTH WAIVER REQUESTED BY PGW?**

8 A. PGW's Petition requests a waiver of the personal contact immediately prior to
9 termination provision and the subsequent 48 hour notice posting requirement if
10 personal contact is not made immediately prior to termination. According to
11 Chapter 56, PGW is required to provide termination notice in three instances.

- 12 ➤ First, pursuant to Section 56.91, PGW must provide written notice to the
13 ratepayer at least 10-days prior to the date of the proposed termination.
14 ➤ Second, pursuant to Section 56.93, PGW must make personal contact with the
15 ratepayer or a responsible adult occupant at least 3 days prior to termination of
16 service; and,
17 ➤ Third, pursuant to Section 56.94, PGW must attempt to make personal contact
18 in the same manner immediately prior to termination of service.

19 If PGW does not make personal contact immediately prior to termination in
20 accordance with Section 56.94, PGW must post a 48-hour termination notice in a
21 conspicuous location at the ratepayers residence and the affected dwelling.

22
23 PGW is requesting modification of Section 56.94 to give it discretion to
24 personally contact a responsible person at the residence of the ratepayer

1 immediately prior to termination. Furthermore, PGW is requesting waiver of
2 56.95, which requires the posting of a termination notice at the residence of the
3 ratepayer. PGW's modifications provide that the only prior personal contact
4 required of PGW before termination is the personal contact requirement contained
5 in Section 56.93.¹⁴
6

7 **Q. SHOULD THIS REQUEST BE GRANTED?**

8 A. No. Eliminating the notice requirements as requested by PGW eliminates the
9 potential ability of a notice to perform its intended functions. As I explained in
10 detail elsewhere, through a shutoff notice, a consumer should be provided with
11 the information he or she needs to quickly and intelligently take available steps to
12 prevent the threatened termination of service. However, additional functions can
13 be served as well. For example, one *different* function of a shutoff notice is to
14 permit the customer to make alternative plans after service is, in fact, terminated.
15 Consider, for example, that the right to receive notice does not depend upon the
16 right to contest the disconnection of service. Regardless of whether the customers
17 have a right to contest the discontinuance of service, they certainly have a right to
18 know that service is being discontinued to enable them to protect themselves from
19 damages that might occur.
20

21 **Q. IS THIS AN IMPORTANT CONSUMER PROTECTION?**

¹⁴ Section 1503 of the Public Utility Code requires personal contact at least three days prior to discontinuance of service. 66 Pa. C.S. § 1503(b).

1 A. Unfortunately, yes. The Missouri study that I have previously discussed found
2 that nearly one-in-five customers that experience a termination of service for
3 nonpayment simply go without service as a result. Should households be in that
4 situation, they should have a right to receive the notice which PGW seeks to
5 eliminate.

6

7 **Q. IS IT ONLY THIS PREPARATION FOR GOING WITHOUT SERVICE**
8 **ABOUT WHICH YOU HAVE CONCERNS?**

9 A. Clearly not. I prepared a study in 1999 looking at the various alternative courses
10 of action that low-income households have available to them, and actually use, in
11 response to pending service disconnections for nonpayment. Among the
12 responses that customers utilize are:

- 13 ➤ Signing up for a utility low-income program;
- 14 ➤ Negotiating payment plans;
- 15 ➤ Borrowing money from friends or family;
- 16 ➤ Borrowing money from commercial institutions;
- 17 ➤ Seeking pay advances;
- 18 ➤ Rearranging other bills;
- 19 ➤ Requesting public or private assistance;

20 A host of other responses were identified as well. I have attached this report as
21 Appendix K. The point is that these alternative responses require time to pursue.
22 At the time of a the ten day notice, households may well believe that they can pay
23 the bill from their own resources (a result we know to be the case from the

1 Missouri study). The later notice, however, serves the precise function for which
2 it is intended—to notify the customer that time is running out and that final
3 payment arrangements must be made or alternative living arrangements pursued.
4

5 **Q. WHAT DO YOU CONCLUDE?**

6 A. The notice requirements which PGW seeks to waive serve important consumer
7 protection functions. The availability of a host of services is necessary to help
8 consumers respond to a loss of service. These services provide important health and
9 safety protections. Unless or until PGW can demonstrate that this full range of
10 services is available, the Company's waiver request should be denied.
11

12 **I. TIME LIMITS FOR ACTING ON SHUTOFF NOTICES.**
13

14 **Q. PLEASE EXPLAIN THE EIGHTH WAIVER REQUESTED BY PGW.**

15 A. PGW's Petition seeks to modify the BCS informal guideline requiring that a
16 termination notice must lead to termination of service within 30 days of the notice
17 if a customer does not enter into a payment arrangement to avoid shut-off. PGW
18 states that if termination does not occur within 30 days, PGW must begin the
19 entire process again with another 30-day termination window. PGW seeks to
20 extend this 30-day period to 60-days.
21

22 **Q. SHOULD THIS REQUEST BE GRANTED?**

23 A. The Company should be permitted to demonstrate that extending the period in
24 which shutoffs can occur subsequent to a notice will materially increase the

1 efficacy of its shutoff process. This waiver should be granted with certain
2 protective conditions. In addition, the waiver should be granted only with a
3 sunset provision effective 24 months after the final order granting the waiver,
4 unless specifically extended by the PUC.

5
6 **Q. WHAT CONCERNS LEAD YOU TO RECOMMEND LIMITING THE**
7 **GRANT OF THIS WAIVER TO A LIMITED PERIOD OF TIME?**

8 A. In order to assess the reasonableness of this waiver requested by PGW, it is
9 necessary to consider the purposes and functions of a notice. Through a shutoff
10 notice, a consumer should be provided with the information needed to quickly and
11 intelligently take available steps to prevent the threatened termination of service.
12 The notice should meet sufficiently stringent standards so as to protect all
13 customers, given that customers are of various levels of education, experience and
14 resources. The notice should be made at a meaningful time and in a meaningful
15 manner. It should present truthful information.

16
17 To meet these standards, the notice should contain specific information and meet
18 specific standards. For example:

- 19 ➤ The notice should state the reasons for having the utility seek the termination
20 of service.
21 ➤ To fulfill the standard that the notice be "meaningful," it should give a clear
22 and believable warning that termination is about to occur.

1 ➤ The notice must inform the consumer of the required procedure by which the
2 proposed termination can be avoided. It should, for example, mention the
3 available procedure by which a disputed termination can be challenged.

4 ➤ It must provide the amount that a customer needs to pay in order to avoid the
5 termination.

6 In sum, through a shutoff notice, the customer should be informed clearly of the
7 pending shutoff along with the means to avoid it.

8
9 **Q. UPON WHAT DO YOU BASE THIS CONCLUSION?**

10 A. To meet the requirement that the notice be "meaningful," it must give a clear and
11 believable warning that termination is about to occur. The key word in this
12 formulation is that the notice be "believable." Note, for example, the case of
13 *Palmer v. Columbia Gas Co.*, where the utility's notice was invalidated when the
14 utility sent out 120,000 to 140,000 shutoff notices each year while actually
15 disconnecting only 6,000 households.¹⁵ By sending repeated disconnect notices,
16 with no collection follow-up, PGW would destroy the message contained by the
17 notice. As a result, the basis for its claimed compliance with notice requirements
18 collapses.

19
20 As discussed above, a notice of discontinuance serves several different functions.
21 As time passes subsequent to the initial issuance of the notice, the efficacy of the
22 notice deteriorates. Eventually, at some point after the final notice of

¹⁵ 342 F.Supp. 241, 242 - 243 (N.D.Ohio 1972)

1 discontinuance is issued, if no action has occurred, the purpose of the notice is no
2 longer served. Since the passage of time makes the initial notice void, it is as
3 though the initial notice had not been issued in the first place. Under these
4 circumstances, a new notice must be issued. Accordingly, the new notice must be
5 issued using the same procedures as the initial notice with the proper amount
6 owed.

7
8 It should be noted that providing notice of a pending discontinuance of service,
9 when in fact such discontinuance is not imminent or intended, can be destructive
10 to a customer's life, health and property and should be discouraged by the PUC.
11 This is particularly true for low-income consumers. In addition to the NEADA
12 study I discuss above, one study by the Iowa Department of Human Rights (the
13 Iowa LIHEAP agency), for example, found that Iowa LIHEAP recipients go to
14 extraordinary lengths to pay unaffordable bills. The Iowa study found, for
15 example, that:

- 16
17 ➤ More than 12% of the more than 3,000 Iowa survey respondents reported
18 going without food for at least one meal a week to try to save enough money
19 to pay their utility bills.
20
- 21 ➤ More than 20% reported going without medical care, by either not filling
22 prescriptions, taking prescription medicines in lower than prescribed doses, or
23 by skipping or postponing doctor's appointments in order to save money to
24 pay for utility bills.
25
- 26 ➤ Nearly 10% reported not making their rent or mortgage payments in order to
27 pay their home heating bills.
28

29 Customers should not be forced into making these decisions by threats of non-
30 existent collection actions.

1
2 **Q. IS THERE ANY OTHER REASON TO PLACE A TIME LIMIT ON THE**
3 **EFFICACY PERIOD FOR PGW SHUTOFF NOTICES?**

4 A. Aside from the social cost of empty collection threats, there is a business cost as
5 well. A study by the New York Public Service Commission staff, for example,
6 reported that:

7 The effectiveness of Final Termination Notices as a means to
8 encourage payments or to make payment arrangements prior to field
9 action has deteriorated. The rate of customer non-responses to Final
10 Termination Notices has increased from 33% in 1983 to 46% in 1987.
11 This may result in part from customer perception that utilities threaten
12 to terminate service, but rarely do. In 1983, 16% of the customers
13 who did not make arrangements on their arrears in response to a
14 termination notice had their service terminated; in 1987, only 9% of
15 those customers had their service terminated.¹⁶
16

17 For both these business and social reasons, PGW's request to waive the
18 requirement that notice procedures begin anew if the notice has not resulted in a
19 disconnection within 30 days should be approved on a pilot basis.
20

21 **Q. IS THERE ANY OPERATIONAL CONCERN THAT YOU HAVE IN**
22 **THOSE INSTANCES WHERE SHUTOFFS DO NOT OCCUR WITHIN THE**
23 **FIRST THIRTY DAYS AFTER A SHUTOFF IS ISSUED?**

24 A. Yes. It is generally the case that the amount of arrears that appears on a notice of
25 discontinuance is a different dollar amount than the total arrears on a utility bill.
26 In addition, the amount of the bill that is outstanding (i.e., that bill which includes
27 current charges in addition to arrears) will likely be different from the amount

¹⁶ David Sawyer and Phillip Teumin, *Gas and Power Utility Uncollectibles and Collection Activity*,
A Report by the consumers Services Division of the New York State Public Service Commission.

1 subject to the notice of discontinuance. Given these observations, it is important
2 for customers to receive notice of what payment must be received in order to
3 avoid the termination of service. The date and dollar amount that is on the notice
4 of discontinuance should be that dollar amount which the customer needs to pay
5 in order to prevent the discontinuation of service.

6
7 **Q. WHAT DO YOU CONCLUDE?**

8 A. One factor that leads to the decreased efficacy of shutoff notices is having a utility
9 issue shutoff notices without those notices leading to the actual loss of service upon
10 nonpayment. In this situation, nonpaying customers “learn” that shutoff notices can
11 be ignored with little or no threat of consequences. This was the lesson in New
12 York. This was the lesson of Columbia Gas. Given this observation, PGW should
13 demonstrate that extending the period in which the actual disconnection of service
14 can be implemented will increase the effectiveness of its disconnect procedures.

15
16 At the end of a 24 month period, however, before extending the grant of this waiver
17 for additional time, PGW should be required to demonstrate, and the PUC should be
18 required to find, that the waiver request has resulted in a material improvement in
19 the PGW disconnect process without substantial offsetting harm to consumers.

20

J. 52 PA. CODE §191 AND §115.

1
2
3 **Q. PLEASE EXPLAIN THE NINTH WAIVER REQUESTED BY PGW?**

4 A. PGW's Petition that restoration of service should be extended from one day to
5 seven days for "dig ups" and three days for "non-dig ups." Section 56.191
6 provides that "a utility shall reconnect service by the end of the first full working
7 day" where restoration of service is required during April 1 through November 30.
8 Section 115 requires that a utility act diligently to restore service on the day of
9 receipt of a medical certification and shall restore service by the end of the next
10 working day.

11
12 **Q. SHOULD THIS REQUEST BE GRANTED?**

13 A. No. Allowing PGW to take up to seven days for a service restoration imposes an
14 unreasonable burden on customers, especially in situations where a medical
15 certificate has been provided. PGW should, of course, be required to install curb
16 boxes, when practical, at the time of any service disconnection requiring a dig-up.
17 Then restoration of service will be less burdensome on the Company. Given this
18 practical alternative, no reason exists that the service restoration would also
19 require a dig-up.

20
21 It should be remembered, as well, that weather in Philadelphia can be quite cold
22 in the months of April and November. Normal heating degree days for November
23 in Philadelphia are roughly 540. Normal heating degree days for April in
24 Philadelphia are roughly 380. Two of the past four Novembers (2000 and 2002)

1 have been colder than normal. I conclude that one cannot assume the lack of need
2 for heating service simply because a natural gas shutoff falls between April and
3 November.

4
5 **Q. WHAT DO YOU CONCLUDE?**

6 A. Allowing a seven-day period within which PGW can restore service will present
7 serious health and safety concerns, particularly in the months of April and
8 November. Given PGW's unique circumstances, however, requiring service
9 restoration within by the end of the next full working day, however, may provide the
10 Company insufficient time within which to restore service. Should this waiver be
11 granted in whole or part, the PUC should limit the waiver to non-cold weather
12 months. The PUC should further limit the waiver to those situations where a curb
13 box does not exist or could not practically be installed at the time the Company digs
14 up to terminate service in the first place.

15
16 **PART 3:**
17 **PGW'S CUSTOMER RESPONSIBILITY PROGRAM (CRP).**

18
19 **Q. DOES YOUR TESTIMONY ADDRESS THE STRUCTURE OF PGW'S**
20 **CUSTOMER RESPONSIBILITY PROGRAM (CRP)?**

21 A. No. PGW presented no proposal to restructure its CRP low-income rate
22 affordability program. There can be little question but that the costs that the CRP
23 program are imposing upon PGW, like the costs of Customer Assistance
24 Programs (CAPs) for other Pennsylvania natural gas utilities, are being stretched
25 due to increasing natural gas prices today. No serious suggestion can be made,

1 however, that these increased CRP costs are attributable to changes made by
2 PGW in response to regulation by the PUC. Before the PGW restructuring
3 proceeding, the CRP required participants to pay 7.35% of their income toward
4 the PGW bill. In its restructuring proceeding, the household percentages were
5 adjusted to 8%, 9% and 10%, depending on the Federal Poverty Level at which
6 the customer lives. This restructuring did not impose additional costs on the
7 Company. While it is necessary to consider the impacts of the historically high
8 natural gas prices on CRP (and other CAP programs), the time allowed for the
9 prosecution of this proceeding, as well as the lack of a proposal by PGW, itself,
10 did not permit OCA to develop such a proposal.

11
12 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

13 A. Yes, it does.

14 79999.msw

CERTIFICATE OF SERVICE

Re: Investigation into Financial	:	
Collections Issues Regarding the	:	Docket Nos. P-00042090
Philadelphia Gas Works	:	R-00049157
	:	M-00021612
	:	P-00032061

I hereby certify that I have this day served a true copy of the foregoing document, Office of Consumer Advocate's Answer to the Petition of Philadelphia Gas Works for Limited Waiver or Modification of PUC Chapter 56 Rules and Administrative Interpretation, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 2nd day of July, 2004.

SERVICE BY E-MAIL and INTEROFFICE MAIL

Richard A. Kanaskie, Esquire
 Johnnie E. Simms, Esquire
 Pennsylvania Public Utility Commission
 Office of Trial Staff
 P.O. Box 3265
 Harrisburg, PA 17105-3265

RECEIVED
 2004 JUL -2 AM 11:35
 SECRETARY'S BUREAU

SERVICE BY E-MAIL AND FIRST CLASS DELIVERY

Daniel Clearfield, Esquire
 Mark S. Stewart, Esquire
 Wolf, Block, Schorr and Solis-Cohen LLP
 212 Locust Street, Suite 300
 Harrisburg, PA 17101

Christopher B. Craig, Esquire
 Main Capitol Building
 Room 545
 Harrisburg, Pa 17120

David M. Kleppinger, Esquire
 Charis Mincavage, Esquire
 McNeese, Wallace & Nurick LLC
 100 Pine Street
 P.O. Box 1166
 Harrisburg, PA 17108-1166

Renardo L. Hicks
 Anderson, Gullotta & Hicks, PC
 1110 N. Mountain Road
 Harrisburg, PA 17112

Steven Gray, Esquire
 Office of Small Business Advocate
 Suite 1102 Commerce Building
 300 North Second Street
 Harrisburg, PA 17101

Gregory J. Stunder, Esquire
 Philadelphia Gas Works
 800 West Montgomery Avenue
 Philadelphia, PA 19122

Mr. Robert D. Knecht
Industrial Economics Incorporated
2067 Massachusetts Avenue
Cambridge, MA 02140

Philip A. Bertocci, Esq.
Laura Moskowitz, Esq.
1424 Chestnut Street
3rd Floor
Philadelphia, PA 19102

Roger D. Colton
Fisher, Sheehan and Colton
34 Warwick Road
Public Finance and Genera
Belmont, MA 02478

Michael Bleiweis
243 Banks Road
Easton, CT 06612

Barbara Alexander
83 Wedgewood Ave.
Winthrop, ME 04364

Kent Murphy, Esquire
Amy E. Hamilton, Esquire
Exelon Business Transmission LP
2301 Market Street, S23-1
Philadelphia, PA 19103

Scott J. Rubin
3 Lost Creek Drive
Selingsgrove, PA 17870

Richard A. Baudino
J. Kennedy & Associates, Inc.
570 Colonial Park Drive, Suite 305
Roswell, GA 30075

Richard Lelash
Financial & Regulatory
18 Seventy Acre Road
Redding, CT 06896

SERVICE BY FIRST CLASS MAIL

Thomas E. Knudson, President
Philadelphia Gas Works
800 W. Montgomery Drive
Philadelphia PA 19122

James P. Leonard, Esquire
City Council of Philadelphia
Cooper Leonard & Schaffer
1525 Locust Street, 13th Floor
Philadelphia, PA 19102

A. Wesley Bridges, Esquire
Philip Hinerman, Esquire
Fox Rothschild, LLP
2000 Market Street
Tenth Floor
Philadelphia, PA 19103

Helen Richardson
Mondre Energy Inc
1880 John F. Kennedy Boulevard
Suite 1705
Philadelphia, PA 19135

Wendy Beetlestone, Esq.
School District of Philadelphia
Office of General Counsel
2130 Arch Street, 5th Floor
Philadelphia, PA 19103

Lance Haver, Director
Mayor's Office of Consumer Affairs
116 City Hall
Philadelphia, PA 19102

Mr. William Kitsch
1233 Stanwood Street
Philadelphia, PA 19111

Barbara Greening, Esq.
Locks Law Firm
1500 Walnut Street, 20th Floor
Philadelphia, PA 19102

Ms. Adrienne Glenn
6342 Ardleigh Street
Philadelphia, PA 19138

Leslie B. Hope, Esquire
Assistant City Solicitor
One Parkway, 16th Floor
1515 Arch Street
Philadelphia, PA 19102



Stephen J. Keene
Senior Assistant Consumer Advocate
Aron J. Beatty
Lori A. Herman
Christy A. Appleby
Assistant Consumer Advocates

Counsel for
Office of Consumer Advocate
555 Walnut Street 5th Floor, Forum Place
Harrisburg, PA 17101-1923
(717) 783-5048
79657



OFFICE OF CONSUMER ADVOCATE

555 Walnut Street, 5th Floor, Forum Place
Harrisburg, Pennsylvania 17101-1923
(717) 783-5048
800-684-6560 (in PA only)

IRWINA. POPOWSKY
Consumer Advocate

FAX (717) 783-7152
consumer@paoca.org

July 6, 2004

Daniel Clearfield, Esquire
Wolf, Block, Schorr, and Solis-Cohen LLP
212 Locust Street, Suite 300
P.O. Box 3265
Harrisburg, PA 17105

DOCUMENT
FOLDER

2004 JUL -6 PM 3:52
SECRETARY'S BUREAU

RECEIVED

Re: Investigation into Financial and Collections
Issues Regarding the Philadelphia Gas
Works

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

Dear Mr. Clearfield:

Enclosed please find the Office of Consumer Advocate's Responses to Philadelphia Gas Works' Interrogatories Set I, in the above referenced proceeding.

Also enclosed is a copy of the Certificate of Service for these responses, which has been filed with Secretary McNulty of the Pennsylvania Public Utility Commission.

Sincerely,

Stephen J. Keene
Senior Assistant Consumer Advocate

Enclosures
cc: All parties to Record
79041

CERTIFICATE OF SERVICE

RECEIVED
2004 JUL -6 PM 3:52
SECRETARY'S BUREAU

Re: Investigation into Financial :
Collections Issues Regarding the : Docket Nos. P-00042090
Philadelphia Gas Works : R-00049157
: M-00021612
: P-00032061
:

I hereby certify that I have this day served a true copy of the foregoing document, Office of Consumer Advocate's Responses to Philadelphia Gas Works' Interrogatories Set I, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 6th day of July, 2004.

SERVICE BY HAND DELIVERY IN PHILADELPHIA

Richard A. Kanaskie, Esquire
Johnnie E. Simms, Esquire
Pennsylvania Public Utility Commission
Office of Trial Staff
P.O. Box 3265
Harrisburg, PA 17105-3265

Daniel Clearfield, Esquire
Mark S. Stewart, Esquire
Wolf, Block, Schorr and Solis-Cohen LLP
212 Locust Street, Suite 300
Harrisburg, PA 17101

Steven Gray, Esquire
Office of Small Business Advocate
Suite 1102 Commerce Building
300 North Second Street
Harrisburg, PA 17101

Renardo L. Hicks
Anderson, Gullotta & Hicks, PC
1110 N. Mountain Road
Harrisburg, PA 17112

Gregory J. Stunder, Esquire
Philadelphia Gas Works
800 West Montgomery Avenue
Philadelphia, PA 19122

Mr. Robert D. Knecht
Industrial Economics Incorporated
2067 Massachusetts Avenue
Cambridge, MA 02140

Philip A. Bertocci, Esq.
Laura Moskowitz, Esq.
1424 Chestnut Street
3rd Floor
Philadelphia, PA 19102

Roger D. Colton
Fisher, Sheehan and Colton
34 Warwick Road
Public Finance and Genera
Belmont, MA 02478

Kent Murphy, Esquire
Amy E. Hamilton, Esquire
Exelon Business Transmission LP
2301 Market Street, S23-1
Philadelphia, PA 19103

SERVICE BY FIRST CLASS MAIL

David M. Kleppinger, Esquire
Charis Mincavage, Esquire
McNees, Wallace & Nurick LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166

Christopher B. Craig, Esquire
Main Capitol Building
Room 545
Harrisburg, Pa 17120

Michael Bleiweis
243 Banks Road
Easton, CT 06612

Barbara Alexander
83 Wedgewood Ave.
Winthrop, ME 04364

Scott J. Rubin
3 Lost Creek Drive
Selingsgrove, PA 17870

Richard A. Baudino
J. Kennedy & Associates, Inc.
570 Colonial Park Drive, Suite 305
Roswell, GA 30075

Richard Lelash
Financial & Regulatory
18 Seventy Acre Road
Redding, CT 06896

Thomas E. Knudson, President
Philadelphia Gas Works
800 W. Montgomery Drive
Philadelphia PA 19122

James P. Leonard, Esquire
City Council of Philadelphia
Cooper Leonard & Schaffer
1525 Locust Street, 13th Floor
Philadelphia, PA 19102

A. Wesley Bridges, Esquire
Philip Hinerman, Esquire
Fox Rothschild, LLP
2000 Market Street
Tenth Floor
Philadelphia, PA 19103

Helen Richardson
Mondre Energy Inc
1880 John F. Kennedy Boulevard
Suite 1705
Philadelphia, PA 19135

Wendy Beetlestone, Esq.
School District of Philadelphia
Office of General Counsel
2130 Arch Street, 5th Floor
Philadelphia, PA 19103

Lance Haver, Director
Mayor's Office of Consumer Affairs
116 City Hall
Philadelphia, PA 19102

Mr. William Kitsch
1233 Stanwood Street
Philadelphia, PA 19111

Barbara Greening, Esq.
Locks Law Firm
1500 Walnut Street, 20th Floor
Philadelphia, PA 19102

Leslie B. Hope, Esquire
Assistant City Solicitor
One Parkway, 16th Floor
1515 Arch Street
Philadelphia, PA 19102

Ms. Adrienne Glenn
6342 Ardleigh Street
Philadelphia, PA 19138



Stephen J. Keene
Senior Assistant Consumer Advocate
Aron J. Beatty
Lori A. Herman
Christy A. Appleby
Assistant Consumer Advocates

Counsel for
Office of Consumer Advocate
555 Walnut Street 5th Floor, Forum Place
Harrisburg, PA 17101-1923
(717) 783-5048
79657

212 Locust Street, Suite 300, Harrisburg, Pennsylvania 17101
Tel: (717) 237-7160 ■ Fax: (717) 237-7161 □ www.WolfBlock.com

Daniel Clearfield
Direct Dial: (717) 237-7173
E-mail: dclearfield@wolfblock.com

ORIGINAL

July 6, 2004

VIA HAND DELIVERY

James McNulty, Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg., 2nd
Floor, 400 North Street P.O. Box 3265
Harrisburg, PA 17105-3265

DOCUMENT
FOLDER

RECEIVED
2004 JUL -6 AM 9:14
SECRETARY'S BUREAU

Re: Investigation into Financial and Collection Issues
Regarding the Philadelphia Gas Works
Docket Nos. P-00042090, R-00049157, M-00021612 &
P-00032061

Dear Secretary McNulty:

Enclosed are the original and three copies of Philadelphia Gas Works' Motion to Strike in the above-referenced matter. As evidenced by the attached Certificate of Service, all parties of record have been served in the manner indicated.

If you have any questions, please contact me at your convenience.

Sincerely,



Daniel Clearfield
For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

DC/jls
Enclosures

cc: Certificate of Service (w/enc)

87

DSH:41709.1/PH1211-220875

ORIGINAL

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Re: Investigation into Financial
Collections Issues Regarding the
Philadelphia Gas Works**

: Docket Nos.

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

DOCKETED
SEP 21 2004

**MOTION OF PHILADELPHIA GAS WORKS TO STRIKE PORTIONS OF DIRECT
TESTIMONY PRESENTED BY ROBERT D. KNECHT**

Philadelphia Gas Works ("PGW") hereby submits this Motion to Strike portions of the Direct Testimony presented by Robert D. Knecht on behalf of the Office of Small Business Advocate ("OSBA") on June 28, 2004, in the above-captioned matter. The testimony presented on page 6, lines 11-26, proposes radical changes in universal service program design and cost allocation, exceeds the scope of this proceeding, and amounts to nothing more than an attempt to relitigate matters already fully litigated and decided in the Commission's Restructuring Order. In support of its Motion, PGW states as follows:

1. On March 31, 2003, the Commission entered its Restructuring Order, approving as modified PGW's Restructuring Plan. The issues addressed in the Restructuring Proceeding and decided by the Commission in its Order included the design of the Company's CRP program, the approval of that program, and the allocation of the costs of all of its universal service programs through the application of the Universal Service Charge to all customer classes.

2. On June 2, 2004, the Commission initiated the above-captioned proceeding, in part to examine the "level of PGW's universal service costs as well as the cost effectiveness and management of those programs." June 2nd Order at ¶ 3.

**DOCUMENT
FOLDER**

SECRETARY'S BUREAU
2004 JUL -8 AM 9:14
RECEIVED

3. On June 28, 2004, the OSBA provided testimony by Mr. Robert Knecht regarding the program design and cost allocation of PGW's CRP program. Mr. Knecht proposed new changes on both points: (1) a cap on CRP participation at 60,000 customers regardless of the number of eligible customers; and (2) if the cap is not approved, the creation of a "CRPA" charge to be applied only to residential customers to recover costs incurred by the Company in order to provide CRP to customers above the 60,000 participant threshold. OSBA St. 1 at 6, ll. 11-26.

4. There is no question that Mr. Knecht's proposals exceed the scope of this proceeding. The Commission, in including the cost levels, management and cost effectiveness of PGW's universal service program, was not inviting the relitigation of the CRP program design or cost allocation issues already decided in the Restructuring Proceeding.

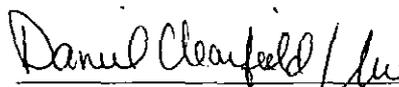
5. As to the 60,000 participant cap, Mr. Knecht admits that the OSBA and he, himself, had the opportunity to present such a proposal in the Restructuring Proceeding and failed to do so. OSBA St. 1 at 2, ll. 5-10. The fact that the OSBA made a conscious decision for purposes of strategy or based on some other perceived notion not to propose its cap in the Restructuring Proceeding, and instead chose to sleep on its opportunity, is no basis to give it a second bite at the apple or change the Restructuring Order. The Restructuring Proceeding was a full nine month proceeding that included an extensive evaluation of PGW's CRP program. Had Mr. Knecht proposed his cap in that proceeding, the Company and other parties, no doubt, would have vigorously opposed it. This abbreviated proceeding is not the place to raise such a proposal.

6. Moreover, as to limiting CRP cost recovery to the residential class, the OSBA did make such a proposal in the Restructuring Proceeding and fully litigate the same. The

Commission decided the issue against its position, and the OSBA should not be permitted to relitigate the issue or effectuate a rescission and amendment of the Restructuring Order in this matter. OSBA argued its residential-only position in its Main Brief (pp. 7-21), its Reply Brief (pp. 7-21), and its Exceptions (pp. 22-29). Both the ALJ (R.D. at 95) and the Commission (Opinion and Order at 62-64) heard and rejected the argument. Thus, the issue is decided and cannot be relitigated here.

WHEREFORE, for all the foregoing reasons, PGW requests that the Honorable Administrative Law Judge grant this Motion and strike the portion of Mr. Knecht's testimony identified above.

Respectfully submitted,



Daniel Clearfield, Esquire
Mark S. Stewart, Esquire
Wolf, Block, Schorr & Solis-Cohen LLP
212 Locust Street, Suite 300
Harrisburg, PA 17101
(717) 237-7160

Of Counsel:

Greg Stunder, Esquire
Philadelphia Gas Works
800 W. Montgomery Avenue
Philadelphia, PA 19122

Dated: July 6, 2004

CERTIFICATE OF SERVICE

I hereby certify that I have on 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 E-MAIL, HAND DELIVERY AND/OR FIRST CLASS MAIL

Tanya McCloskey, Esq.
James Mullins, Esq.
Steve Keene, Esq.
Office of Consumer Advocate
5th Floor, Forum Place Bldg.
555 Walnut Street
Harrisburg, PA 17101-1921
E-mail: TmcCloskey@paoca.org
Skeene@paoca.org

Johnnie Simms, Esq.
Richard A. Kanaskie, Esq.
Office of Trial Staff
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265
E-mail: josimms@state.pa.us

Steven Gray, Esq.
Office of Small Business Advocate
Commerce Building, Suite 1102
300 North 2nd Street
Harrisburg, PA 17101
E-mail: sgray@state.pa.us

Richard Lelash
18 Seventy Acre Road
Redding, CT 06896
E-mail: lelash@sprintmail.com

William Kitsch
1233 Stanwood Street
Philadelphia, PA 19111

Greg Stunder, Esquire
Philadelphia Gas Works
800 W. Montgomery Avenue
Philadelphia, PA 19122
E-mail: greg.stunder@pgworks.com

Charis Mincavage, Esquire
McNEES, WALLACE, NURICK
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
E-mail: Cmincavage@mwn.com

Philip Bertocci, Esq.
Edward A. McCool, Esq.
Community Legal Services
1424 Chestnut Street
Philadelphia, PA 19102
Fax: (215) 981-0434
E-mail: pbertocci@clsphila.org

Robert D. Knecht
Industrial Economics Incorporated
2067 Massachusetts Avenue
Cambridge, MA 02140
E-mail: rdk@indecon.com

Christopher Craig, Esq.
Senator Fumo's Office
Main Capital
Room B48
Harrisburg, PA 17120
E-Mail: ccraig@fumo.com

SECRETARY'S BUREAU
2004 JUL -5 AM 9:14
RECEIVED

Renardo L. Hicks, Esq.
Anderson Gulotta & Hicks, PC
1110 N. Mountain Rd.
Harrisburg, PA 17112
Email: rhicks@aghweb.com

Barbara Greening, Esq.
1904 Green Street
Philadelphia, PA 19130

Adrienne Glenn
6342 Ardleigh Street
Philadelphia, PA 19138-1002

Edward Morrison
767 Cinnaminson Street
Philadelphia, PA 19128

Ward Smith, Esquire
Exelon Business Services Company
2301 Market Street, S23-1
Philadelphia, PA 19103
ward.smith@exeloncorp.com

Philip L. Hinerman, Esq.
A. Wesley Bridges, Esq.
Fox Rothschild LLP
2000 Market Street, 10th Fl.
Philadelphia, PA 19103-3291
E-mail: phinerman@foxrothschild.com
abridges@foxrothschild.com

James P. Leonard, Esq.
Cooper Leonard & Schaffer, LLC
1525 Locust St., 13th Fl.
Philadelphia, PA 19102
E-mail: cooperleonardsch@aol.com

Barbara R. Alexander
83 Wedgewood Drive
Winthrop, ME 04364
E-mail: barbalex@ctel.net

Roger D. Colton
Fisher Sheehan & Colton
34 Warwick Rd.
Belmont, MA 02478-2841
roger@FSCOnline.com

Dated: July 6, 2004


Daniel Clearfield, Esq.

12 Locust Street, Suite 300, Harrisburg, Pennsylvania 17101
el: (717) 237-7160 ■ Fax: (717) 237-7161 ■ www.WolfBlock.com

Mark S. Stewart
Direct Dial: (717) 237-7191
Direct Fax: (717) 237-2771
E-mail: mstewart@wolfblock.com

July 8, 2004

VIA FEDERAL EXPRESS

Johnnie Simms, Esquire
Office of Trial Staff
PA Public Utility Commission
Commonwealth Keystone Bldg., 3rd Fl.
400 North Street
P.O. Box 3265
Harrisburg, PA 17120

**DOCUMENT
FOLDER**

RECEIVED
2004 JUL -9 AM 9:41
SECRETARY'S BUREAU

Re: Investigation into Financial and Collection Issues
Regarding the Philadelphia Gas Works; Docket Nos.
P-00042090, R-00049157, M-00021612 & P-00032061

Dear Mr. Simms:

Enclosed is Philadelphia Gas Work's response to the Office of Trial Staff's On-the-Record Data Request from the July 6, 2004 hearing.

If you have any questions, please contact me.

Sincerely,



Mark S. Stewart

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

MSS/jls
Enclosure

BTL.

cc: Certificate of Service (w/enc)
James McNulty, Secretary (Cert. of Service only)

DSH:41759.1/PHI211-220875

CERTIFICATE OF SERVICE

I hereby certify that I have on 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 FEDERAL EXPRESS

Tanya McCloskey, Esq.
James Mullins, Esq.
Steve Keene, Esq.
Office of Consumer Advocate
5th Floor, Forum Place Bldg.
555 Walnut Street
Harrisburg, PA 17101-1921
E-mail: TmcCloskey@paoca.org
Skeene@paoca.org

Johnnie Simms, Esq.
Richard A. Kanaskie, Esq.
Office of Trial Staff
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265
E-mail: josimms@state.pa.us

Steven Gray, Esq.
Office of Small Business Advocate
Commerce Building, Suite 1102
300 North 2nd Street
Harrisburg, PA 17101
E-mail: sgray@state.pa.us

Richard Lelash
18 Seventy Acre Road
Redding, CT 06896
E-mail: lelash@sprintmail.com

William Kitsch
1233 Stanwood Street
Philadelphia, PA 19111

Greg Stunder, Esquire
Philadelphia Gas Works
800 W. Montgomery Avenue
Philadelphia, PA 19122
E-mail: greg.stunder@pgworks.com

Charis Mincavage, Esquire
McNEES, WALLACE, NURICK
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
E-mail: Cmincavage@mwn.com

Philip Bertocci, Esq.
Edward A. McCool, Esq.
Community Legal Services
1424 Chestnut Street
Philadelphia, PA 19102
Fax: (215) 981-0434
E-mail: pbertocci@clsphila.org

Robert D. Knecht
Industrial Economics Incorporated
2067 Massachusetts Avenue
Cambridge, MA 02140
E-mail: rdk@indecon.com

Christopher Craig, Esq.
Senator Fumo's Office
Main Capital
Room B48
Harrisburg, PA 17120
E-Mail: ccraig@fumo.com

Renardo L. Hicks, Esq.
Anderson Gulotta & Hicks, PC
1110 N. Mountain Rd.
Harrisburg, PA 17112
Email: rhicks@aghweb.com

Barbara Greening, Esq.
1904 Green Street
Philadelphia, PA 19130

Adrienne Glenn
6342 Ardleigh Street
Philadelphia, PA 19138-1002

Edward Morrison
767 Cinnaminson Street
Philadelphia, PA 19128

Ward Smith, Esquire
Exelon Business Services Company
2301 Market Street, S23-1
Philadelphia, PA 19103
ward.smith@exeloncorp.com

Philip L. Hinerman, Esq.
A. Wesley Bridges, Esq.
Fox Rothschild LLP
2000 Market Street, 10th Fl.
Philadelphia, PA 19103-3291
E-mail: phinerman@foxrothschild.com
abridges@foxrothschild.com

James P. Leonard, Esq.
Cooper Leonard & Schaffer, LLC
1525 Locust St., 13th Fl.
Philadelphia, PA 19102
E-mail: cooperleonardsch@aol.com

Barbara R. Alexander
83 Wedgewood Drive
Winthrop, ME 04364
E-mail: barbalex@ctel.net

Roger D. Colton
Fisher Sheehan & Colton
34 Warwick Rd.
Belmont, MA 02478-2841
roger@FSCOnline.com

Dated: July 8, 2004


Mark Stewart, Esq.