

COMMONWEALTH OF PENNSYLVANIA



ORIGINAL

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July 16, 2004

HAND DELIVERED

James J. McNulty, Secretary
Pa. Public Utility Commission
Commonwealth Keystone Building
P.O. 3265
Harrisburg, PA 17105

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

Dear Mr. McNulty:

Enclosed for filing are the original and nine (9) copies of the Main Brief on behalf of the Office of Small Business Advocate in the above-docketed proceeding. As evidenced by the enclosed certificate of service, two copies have been served on all active parties in this case.

If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads "Steven C. Gray".

Steven C. Gray
Assistant Small Business Advocate

Enclosures

cc: Hon. Charles E. Rainey, Jr.
Administrative Law Judge

Parties of Record

Robert D. Knecht

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BEFORE THE

PENNSYLVANIA PUBLIC UTILITY COMMISSION

INVESTIGATION INTO FINANCIAL AND : DOCKET NOS. P-00042090
COLLECTION ISSUES REGARDING THE : R-00049157
PHILADELPHIA GAS WORKS : M-00021612
: P-00032061

MAIN BRIEF
ON BEHALF OF THE
OFFICE OF SMALL BUSINESS ADVOCATE

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SECRETARY'S BUREAU

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Dated: July 16, 2004

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I. INTRODUCTION

On March 1, 2004, Philadelphia Gas Works ("PGW") submitted its annual purchased gas cost filing to the Pennsylvania Public Utility Commission ("Commission") under 66 Pa.C.S. § 1307(f). Simultaneously with the Section 1307(f) filing, PGW filed its Petition of Philadelphia Gas Works to Establish a Cash Receipts Reconciliation Clause ("CRRC Petition"). The Section 1307(f) filing and the CRRC Petition were accompanied by PGW's Motion to Consolidate ("Motion") the two filings into one proceeding.

The Office of Small Business Advocate ("OSBA") intervened in PGW's Section 1307(f) proceeding on March 11, 2004. The OSBA filed an Answer to the Motion on March 11, 2004. The OSBA also filed an Answer to the CRRC Petition on March 22, 2004.

Administrative Law Judge ("ALJ") Charles E. Rainey, Jr., presided over a prehearing conference on March 15, 2004, to establish the hearing and briefing schedule and to consider PGW's Motion to Consolidate the Section 1307(f) and CRRC cases. The ALJ granted the Motion.

The OSBA served direct testimony on April 16, 2004; rebuttal testimony on April 30, 2004; and surrebuttal testimony on May 7, 2004. The ALJ presided over an evidentiary hearing in Philadelphia on May 11, 2004.

By Secretarial Letter of May 14, 2004, the Commission gave notice that evidentiary hearings would be conducted on two limited issues that had been the subject of a Joint Application for Remand for Further Proceedings before the Commonwealth Court. Both issues were originally addressed in the October 10, 2003, Commission Order that approved a gas service tariff for PGW, docketed at M-00021612. In that proceeding, PGW had requested the approval of a ten dollar residential field visit service charge.

PGW had also requested that applicants for service with existing civil judgments against them for unpaid Company balances be required to enter into payment arrangements as a condition for service. In the October 10 Order, the Commission denied both of PGW's requests, which resulted in PGW's appealing both issues to the Commonwealth Court. In response to the Joint Application for Remand filed by PGW and the Commission, the Commonwealth Court granted the Joint Application on March 24, 2004.

On May 15, 2004, the active parties submitted a request to bifurcate the consolidated Section 1307(f) and CRRC proceeding and to extend the briefing schedule in the CRRC case so that the parties could enter into settlement discussions regarding the CRRC Petition. On May 20, 2004, the ALJ granted that request.

On May 18, 2004, the Commission entered an Order that held in abeyance a proposed settlement at Docket P-00032061 involving PGW's proposed means-tested senior citizen discount ("SCD") program. The May 18 Order required the development of a factual record on certain issues before the Commission will render a decision on the proposal.

On May 28, 2004, certain active parties submitted a settlement that resolved all issues in the Company's Section 1307(f) proceeding. The OSBA did not oppose that settlement.

On June 2, 2004, the Commission entered an Order that consolidated numerous PGW cases, including the two issues remanded from the Commonwealth Court as well as the means-tested SCD program, and established a new procedural schedule. For purposes of the CRRC Petition, the Commission dispensed with the preparation of a Recommended Decision by the ALJ and ordered that the record on the CRRC issue be

certified to the Commission for a decision at the July 8, 2004, Public Meeting. On June 3, 2004, the ALJ issued an Order certifying the record on the CRRC to the Commission.

On June 14, 2004, the OSBA and other active parties filed Main Briefs regarding the CRRC. On June 22, 2004, the OSBA and other active parties filed Reply Briefs.

On June 16, 2004, PGW filed its Petition of Philadelphia Gas Works for Limited Waiver or Modification of PUC Chapter 56 Rules and Administrative Interpretations ("Chapter 56 Petition"). As part of the aforementioned June 2, 2004, Order, the Commission had set a deadline for PGW to file any such Chapter 56 Petition.

On June 29, 2004, the ALJ issued a Recommended Decision approving the settlement in the Company's Section 1307(f) proceeding.

By Secretarial Letter of June 28, 2004, the Commission requested answers to the Chapter 56 Petition by noon on July 2, 2004, and indicated that replies to answers would not be permitted. The OSBA filed an Answer to the Chapter 56 Petition on July 1, 2004.

On July 8, 2004, the Commission entered an Order denying PGW's CRRC Petition.

The OSBA submits this main brief on the remaining consolidated issues set forth in the June 2, 2004, Commission Order.

II. SUMMARY OF ARGUMENT

The OSBA takes no position on whether the Commission should grant PGW's request for a ten dollar residential field visit service charge.

The OSBA takes no position on whether the Commission should grant PGW's request that would require an applicant for service, with existing civil judgments against that applicant for unpaid Company balances, to enter into a payment arrangement with PGW in order to obtain that service.

The OSBA supports the January 9, 2004, settlement agreement on the proposed means-tested senior citizen discount program.

The OSBA proposes that the number of participants in PGW's customer responsibility program be capped at 60,000. In the alternative, the OSBA proposes that PGW's residential class customers pay for the incremental CRP costs for those participants in excess of the 60,000 number.

The OSBA generally supports PGW's various requests for waivers or modifications of the Chapter 56 rules to the extent that such waivers are just, reasonable, and appropriate.

The OSBA believes that PGW's various requests for waivers or modifications of the Chapter 56 rules may be granted under 52 Pa. Code §56.222. The OSBA objects to PGW's request that its waivers and modifications be granted under either subsection (c) or subsection (h) of 66 Pa. C.S. § 2212.

III. ARGUMENT

A. The Residential Field Visit Service Charge

The OSBA takes no position on the issue of whether the Commission should grant PGW's request for a ten dollar residential field visit service charge.

B. The Requirement of a Payment Arrangement as a Condition for Service

The OSBA takes no position on whether the Commission should grant PGW's request that would require an applicant for service, with existing civil judgments against that applicant for unpaid Company balances, to enter into a payment arrangement with PGW in order to obtain that service.

C. PGW's Proposed Means-Tested Senior Citizen Discount Program

The OSBA was a signatory to a settlement agreement submitted on January 9, 2004, that proposed to implement PGW's means-tested SCD program, albeit with slight modifications. On January 20, 2004, the OSBA submitted a *statement in support* on behalf of the settlement agreement.

The OSBA, however, is not an advocate for the means-tested SCD program, nor does it support charging small business customers for the costs of this program. Instead, the OSBA supported the settlement agreement because it required an audit that could save small business customers more money than the means-tested SCD program would cost them. As explained by OSBA witness Robert D. Knecht:

In its review of the means-tested SCD proposal, the OSBA concluded that the benefits of the settlement (particularly PGW's agreement to conduct an audit of the *overall* SCD program) outweighed the near-term costs for small business customers. The OSBA therefore agreed not to oppose the means-tested SCD in the settlement, though the OSBA did not offer any opinion regarding the merits of the program.

Since that time, the first stage of PGW's audit of the program identified 11,000 of SCD customers as deceased. Therefore, the OSBA believes that its conclusion was correct, and the OSBA intends to adhere to its agreement. In the appropriate forum, of course, the OSBA will argue that imposing SCD-related costs on small business customers is not consistent with cost causation, as small business customers are not eligible for the SCD.

OSBA Statement No. 1, at 7 (emphasis in original, footnote omitted).

On that basis, the OSBA continues to support the January 9, 2004, settlement agreement on the proposed means-tested SCD program.

D. PGW's Universal Service Costs

In its June 2, 2004, Order, the Commission stated:

Finally, the proceeding should investigate the level of PGW's universal service costs as well as the cost effectiveness and management of these programs. According to statistics compiled by the Bureau of Consumer Services, the cost of PGW's universal service programs was \$61.4 million dollars in 2003, compared to combined universal service costs of \$49 million for the seven largest investor-owned gas utilities in Pennsylvania. These seven gas utilities have over four times as many customers as PGW, yet their universal service costs are less. In addition, we note that 123,560 of PGW's 476,955 customers — 26% — are beneficiaries of PGW's universal service programs. In contrast, the seven largest investor-owned gas utilities have 58,766 of their 1,924,946 customers — 3% — enrolled in universal service programs.

PGW Investigation Order, Docket P-00042090 (Order entered June 2, 2004), at 5 (emphasis in original, footnotes omitted).

Unfortunately, the speed at which this proceeding was conducted did not allow a detailed investigation into PGW's universal service programs. See OSBA Statement No. 1, at 1. Therefore, the OSBA focused its resources on the limited question of the funding of PGW's universal service programs. As the Commission correctly observed:

[O]ne cannot lose sight of the fact that the burden of paying for each utility's programs falls on the customers of that utility. Although the goals of universal service programs are laudable, customers of PGW who pay their bills cannot be viewed as a bottomless well of funds for these programs. The Commission must ensure there is some balance between the interests of the beneficiaries and contributors to these programs.

PGW Investigation Order, Docket P-00042090 (Order entered June 2, 2004), at 5-6.

One program design issue involving PGW's customer responsibility program ("CRP") is helping drive the Company's universal service costs even higher.¹ As OSBA witness Knecht explained:

In contrast to the original program design, the level of rates charged to CRP customers is not sufficient to recover even the short-run marginal costs of providing gas service. When the wellhead price of gas was much lower than it is today, the CRP bills as a percent of income were sufficient to cover the short-run marginal cost of upstream gas supply. Under those conditions, it could potentially be argued that CRP customers were not being subsidized by other ratepayers, and that retaining CRP customers was beneficial to all ratepayers. However, with the rise of wellhead gas prices, the CRP payments are not sufficient to even pay for the commodity cost. As such, the CRP violates one of the fundamental economic precepts for utility rates.

OSBA Statement No. 1, at 4-5 (footnote omitted). See also, PGW Statement No. CP-2, at 13. PGW witness Cristina Coltro confirmed on cross examination that the CRP no longer provides sufficient revenue to cover the variable cost of natural gas, or to make a

¹ "The CRP is a percentage of income plan open to all residential customers with a household income of 150% or less of the federal poverty standard." PGW Statement No. CP-2, at 13. Thus, since the rates charged to CRP customers are solely determined on a percentage-of-income measure, CRP billed revenues are not affected by rising natural gas prices, rising universal service costs, or any other external influence on the rates charged to PGW's non-CRP customers. The CRP works to keep the rates charged to program participants low and affordable, but does so at a high cost to PGW's other customers who are not immune to PGW's rising costs.

minimum contribution towards the Company's fixed costs. See Transcript, page 644, line 5 – page 645, line 9.

In light of the program design flaws and the fact that CRP customers do not generate sufficient revenues to cover even the short-run variable costs of the service, the OSBA supports PGW's commitment to review the CRP and propose a new program design sometime in the future.²

PGW's redesign of its CRP is not before the ALJ or the Commission in this proceeding. However, the level of PGW's universal service costs is before the ALJ and the Commission.

The costs of the existing CRP program are excessively high, and there is a significant probability that they will rise in the future. First, PGW's current participation levels are relatively high by historical standards, and have risen sharply over the past year. See OSBA Statement No. 1, at 6. Second, consistent with the recent uptrend, PGW has pledged to maximize its enrollment in the CRP, leading to a potential cost impact of \$30 million. See OSBA Cross Exhibit FCI-1. See also OSBA Statement No. 1, at 6.³

² PGW witness Coltro stated:

While PGW is committed to continuing the [CRP], consistent with the Commission's universal service objectives, it is clear that review and revision of the program is appropriate. I do not believe, however, that such a complex task can be accomplished in the course of this proceeding. PGW intends to conduct a full review of the program and propose to this Commission a new design.

PGW Statement No. CP-2, at 13.

³ The testimony of OTS witness Janice K. Hummel indicates that there are nearly 154,000 households in Philadelphia that meet the Bureau of Consumer Services (BCS) definition of low-income. See OTS Statement No. 3, at 11. Of that group, PGW estimates that current participation is about 65,000 households, and that an additional 25,000 households could qualify for the CRP. See PGW Statement No. CP-2, at 14. Thus, a \$30 million increase in CRP costs would occur even if only about 60 percent of Philadelphia's low-income households were enrolled in the CRP.

Therefore, OSBA witness Knecht suggested two alternative ways in which the impact of PGW's escalating universal service costs could be minimized, at least in regards to the price paid by the Company's regular service customers. Mr. Knecht selected the two alternatives in light of the potential impact on full paying customers.

In the first alternative, the Commission would place a cap on the number of customers that can be enrolled in the CRP. As Mr. Knecht explained:

If all eligible customers were to enroll in the CRP, PGW's ratepayers would face a USC increase of some \$30 million, or about 60 cents per Mcf. If PGW were to undertake an aggressive program to enroll eligible customers, I would characterize the strategy as a 'stealth rate increase.' Because CRP costs are already annually reconciled in the USC, PGW could impose this kind of rate increase without explicit Commission approval. For the reasons laid out in my CRRC testimony, raising rates to paying customers is not going to solve the [under-collection] problem. While I recognize that it is a crude measure, I recommend that the Commission impose a cap on CRP participation until such time as a full review can be undertaken. Current CRP participation is already at some 64,000 customers, one of its highest levels in the past nine years, though PGW forecasts the participation rate to decline to 59,000 customers by the end of its fiscal year. I propose that PGW set a cap of 60,000 CRP customers to go into effect by fiscal year-end.

OSBA Statement No. 1, at 6. On cross examination, Mr. Knecht further explained how the cap of 60,000 could be implemented if CRP enrollment is above that level at fiscal year-end. See Transcript, page 816, line 10 – page 817, line 4.

In the second alternative, the costs incurred for the additional CRP participants above a certain number would be charged to only PGW's residential customer class. As Mr. Knecht explained:

To the extent that the Commission does not approve a cap for CRP participation, I recommend that any cost incurred by PGW above that associated with 60,000 participants be recovered in a separate 'CRPA' charge, that applies only to residential customers. Such an approach would make the assignment of incremental costs consistent with cost causation, and it would be consistent with the treatment of incremental universal service costs at other Pennsylvania NGDC's.

OSBA Statement No. 1, at 6. The second alternative would not remove the large financial burden that is currently placed upon PGW's commercial customers because they must pay for universal service programs for which they are not eligible. See, e.g., OSBA Statement No 1, at 2, footnote 1. Nonetheless, it would provide some measure of relief from the increasing universal service costs. The second alternative would also begin to bring the funding for PGW's universal service costs more in line with Commission decisions for other natural gas distribution companies throughout the Commonwealth. In those other decisions, the Commission recognized that only residential customers should pay for universal service programs.⁴

⁴ See, e.g., Petition of National Fuel Gas Distribution Corporation requesting Permission to Expand Participation in Low Income Residential Assistance (LIRA) Rate, Docket No. P-00021945 (Order Entered March 28, 2002) ("Furthermore, the allocation to the residential class only is consistent with Commission precedent. The Commission previously has allocated the costs of residential low-income gas service Customer Assistance Programs to the residential customer class only").

Therefore, the OSBA requests that the ALJ and the Commission approve one of the two OSBA alternatives to limit the costs of the increasingly expensive CRP, at least on an interim basis until Commission review of the comprehensive overhaul promised by PGW.

E. PGW's Petition for the Waiver of Certain Chapter 56 Regulations

The OSBA generally supports PGW's request for temporary waiver or modification of certain customer billing and collection regulations that are set forth generally in 52 Pa. Code Chapter 56, as well as certain administrative interpretations of those rules.

The OSBA takes no position, however, on the specifics of any particular request for waiver or modification. However, the OSBA recommends that the Commission carefully consider the implications for all of PGW's ratepayers when evaluating the specific PGW proposals. The witnesses representing the Office of Consumer Advocate, Action Alliance and the Office of Trial Staff focused their critiques on the impact of PGW's proposals on the payment-troubled customers, and paid minimal attention to the implications for PGW's regular paying customers. Moreover, these witnesses tended to focus on establishing, as Action Alliance witness Geller put it, "an equitable balance between the individual utility customer and the broad financial interests of the utility." See Action Alliance et al. Statement No. 1, at 3. The OSBA submits that for the specific circumstances facing PGW, Mr. Geller's description of the balancing act is wrong.

PGW is a cash flow regulated utility. Moreover, its ongoing cash position is uncertain. As a cash flow regulated utility in financial difficulties, when some customers do not pay their bills, other customers must make up the difference. Thus, the

appropriate balance to be struck in this proceeding is between providing reasonable protection to payment-troubled ratepayers and establishing just and reasonable rates for the customers who do pay their bills.

In addition, the Commission should recognize that the magnitude of PGW's collections problem is enormous. PGW indicated that it had some 133,000 customers facing service termination coming out of last winter's moratorium. See Chapter 56 Petition, at 4. While PGW's collections problems are largely of its own making (e.g., the disastrous BCCS experience⁵), those problems are not helped by the fact that PGW serves a relatively low-income urban territory. In any event, under cash flow regulation, the burden of those collections problems falls on the paying customers and not on PGW "shareholders." As such, the OSBA suggests that PGW is a special case and should be treated as such when the ALJ and the Commission evaluate the proposed waivers and modifications.

As OSBA witness Robert D. Knecht summarized:

I believe that PGW is now addressing its most fundamental need -- that of getting its customers to pay their bills. As a

⁵ As Mr. Gyory explained:

PGW has been continuously working to improve its billing and collections programs since 1999 when its entire billing system collapsed, leaving it with very limited ability to conduct collections efforts. As the Commission is aware from past submissions, PGW's Billing, Collections and Customer Service ("BCCS") system went on-line in July 1999. Start-up of the BCCS revealed a number of serious programming and employee training problems that resulted in an initial backlog of 55,000 billing exceptions and over 70,000 estimated or unbilled accounts. These problems adversely impacted customer service and collections in several ways. PGW was not only without assurance that non-paying customers had indeed received accurate bills that were accurate, but the BCCS failure also robbed PGW of several collections capabilities and dramatically eroded customer confidence in PGW, which still affects every aspect of our relationship with our customers and our customer service representatives.

PGW Statement No. CP-1, at 3.

result of a variety of factors, some beyond PGW's control but many self-inflicted, PGW's bill collections performance has been abysmal, leading to a continuing financial 'crisis.' PGW's efforts to tax its way out of the crisis by raising rates have failed. In my view, PGW is now addressing its fundamental problem, by aggressively pursuing improvements in bill collection rates. It has begun a major collections initiative (the 'CRI'), and that program appears to be bearing fruit. PGW is aggressively seeking alternative sources of funding for its universal service programs. And further, PGW has now petitioned this Commission for relief from various consumer-protection rules that it contends are particularly burdensome for operations in an economically-disadvantaged urban service territory. In my view, PGW is now addressing its real problem, albeit belatedly. I therefore offer guarded support to PGW's proposals to reduce the institutional impediments to bill collection if they can be shown to be either anachronistic or unduly constraining to an urban utility that is facing a critical cash crisis. I encourage the Commission to carefully consider these proposals, particularly in light of the already-high rates faced by PGW's paying customers as well as PGW's need for working cash. Moreover, PGW's proposal to implement these changes as a two-year pilot program will provide the opportunity for the Commission to evaluate both the efficacy of the changes and the need to extend the modifications, should PGW's financial circumstances change.

OSBA Statement No. 1, at 2-3.

Therefore, the OSBA requests that the ALJ and the Commission grant PGW's various requests for waivers or modifications of the Chapter 56 rules to the extent that such waivers are just, reasonable, and appropriate, given PGW's specific circumstances.

F. The Legal Basis for the Waiver of Certain Chapter 56 Regulations

PGW posits two legal bases upon which the Commission may grant its requested Chapter 56 waivers.

First, the Company states:

There should be no dispute that the Commission has the legal authority to grant the waivers and modifications requested by PGW. First, under Section 2212(c) of the Public Utility Code, the Commission 'may suspend or waive the application to [PGW] of any provision of this title, including any provision of this chapter other than this section.' Thus, the Commission has the authority to suspend or waive Section 1501's adequacy of service requirements in their entirety. As Chapter 56 of the Commission's regulations are promulgated under and are a further explication of the requirements in Section 1501 of the Code, the Commission clearly has the lesser included authority of waiving, suspending or modifying the collections rules embodied in those regulations.

Petition, paragraph 24.⁶

However, PGW's reliance upon Section 2212(c) is misplaced. The statutory construction advocated by the Company is an overbroad reading of 66 Pa.C.S. § 2212(c) that, if accepted by the Commission, would violate the Pennsylvania Constitution.

Section 2212(c) authorizes PGW to request a suspension or waiver of "the application of any provision of this title [66 Pa. C.S.]." However, the Pennsylvania legislature did not articulate the standards by which the PUC is to decide whether to grant or deny a specific request for suspension or waiver.

⁶ This assertion regarding Section 1501 illustrates the flaw in PGW's interpretation of Section 2212(c). Section 1501 (requiring a utility to provide "adequate, efficient, safe, and reasonable service and facilities") is a bedrock requirement of the Public Utility Code. There is no basis for inferring a legislative intent to allow the Commission total discretion to grant a request by PGW to waive this fundamental consumer protection. Such a waiver would be tantamount to repealing Section 1501 for the benefit of one utility. However, if the General Assembly did intend to give the Commission such sweeping powers, the General Assembly was constitutionally required to articulate standards for the exercise of these powers.

Section 1922(e) of 1 Pa. C.S. requires a statute to be construed with the presumption that the General Assembly did not intend to violate the Constitution. PGW argues, in effect, that Section 2212(c) allows the Commission to write a separate Public Utility Code solely for PGW, and to do so with no standards set by the legislature. Construing Section 2212(c) as broadly as supported by PGW would be contrary to the presumed legislative intent because such a construction would render the statute unconstitutional.

As set forth in *PPL Energyplus, LLC v. Commonwealth of Pennsylvania*, 814 A.2d 861 (Pa. Cmwlth. 2003), any delegation of power or discretion to an administrative agency is unconstitutional if the legislature fails to provide the necessary standards for the exercise of that power or discretion. The Court decided that the delegation in *PPL Energyplus* was constitutional because the Commission could exercise its discretion to impose sections of 66 Pa. C.S. on electric generation suppliers only "when such requirements are necessary to maintain the quality of service, to protect the public or to ensure the safety and reliability of electric service." *PPL Energyplus*, at 865. In contrast, PGW's interpretation would make the PUC's discretion under §2212(c) unfettered — and, therefore, unconstitutional under *PPL Energyplus* — because there are no comparable standards in Section 2212(c) to guide the PUC in deciding whether or not to grant a particular waiver request.⁷

Second, PGW relies upon 66 Pa. C.S. § 2212(h)(1) as an alternative legal basis that grants the Commission the authority to waive the Chapter 56 rules. However, the

⁷ In *PPL Energyplus*, the Commission could design a regulatory framework on its own motion or in response to a proposal by a party. However, only PGW may request a waiver under Section 2212(c). The Commission is not authorized by Section 2212(c) to institute any waiver unless PGW agrees.

Commission has apparently recognized that PGW's reliance upon Section 2212(h)(1) is in error because that waiver provision applied only in restructuring and does not apply to the Chapter 56 Petition. Specifically, the Commission stated:

We observe that Section 2212(h)(1) refers to the grant of waivers in the context of PGW's restructuring proceeding. Notably, PGW requested no waivers from Chapter 56 during this proceeding, which concluded in 2003.

PGW July 8 Order, Docket P-00042090 (Order Entered July 8, 2004), at 5, footnote 4.

Nonetheless, the Commission does have the authority to grant PGW's various requests for waiver under 52 Pa Code § 56.222.⁸ Section 56.222(a) states that "[i]f unreasonable hardship . . . to a utility results from compliance with a section in this chapter, application may be made to the Commission for modification of the section or for temporary exemption from its requirements." PGW's Chapter 56 Petition sounds under Section 56.222(a).

PGW will, however, have to demonstrate compliance with the notice requirement set forth in Section 56.222(b). PGW witness Gyory stated, on cross examination, that he was unaware of any notice provided to PGW's customers about the Company's request for the waiver of certain Chapter 56 rules. See Transcript, page 665, line 22 – page 666, line 2. However, although Section 56.222(b) lists bill inserts as one way to provide notice, the regulation also allows notice "in another reasonable manner." Therefore, the heavy media publicity, plus the notice to the parties (including the Office of Consumer Advocate, Action Alliance, and the elected officials), may be sufficient to satisfy Section

⁸ This authority has been acknowledged by the Commission. See PGW Investigation Order, Docket P-00042090 (Order entered June 2, 2004), at 5, footnote 2.

56.222(b), or may, at least, constitute the first step toward providing reasonable notice without a bill insert.

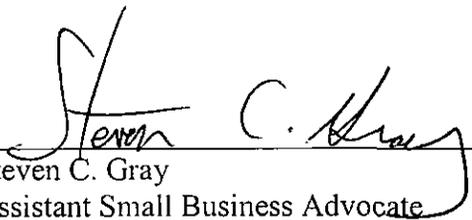
Therefore, the OSBA respectfully submits that the ALJ and the Commission may grant PGW's various requests for waivers or modifications of the Chapter 56 rules only as set forth under 52 Pa. Code §56.222.

IV. CONCLUSION

Wherefore, the OSBA requests that the ALJ and the Commission:

1. Approve the January 9, 2004, means-tested SCD program settlement agreement;
2. Limit the number of participants in PGW's customer responsibility program to 60,000 participants, or in the alternative, require PGW's residential class customers to pay for the incremental CRP costs for those participants in excess of the 60,000 number;
3. Grant PGW's various requests for waivers or modifications of the Chapter 56 rules to the extent that such waivers are just, reasonable, and appropriate, and represent a reasonable balance between payment-troubled and regular paying customers; and
4. Grant PGW's various requests for waivers or modifications of the Chapter 56 rules under 52 Pa. Code §56.222.

Respectfully submitted,


Steven C. Gray
Assistant Small Business Advocate

For:

William R. Lloyd, Jr.
Small Business Advocate

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Dated: July 16, 2004

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

INVESTIGATION INTO FINANCIAL AND	:	DOCKET NOS. P-00042090
COLLECTION ISSUES REGARDING THE	:	R-00049157
PHILADELPHIA GAS WORKS	:	M-00021612
	:	P-00032061

APPENDIX A

A. Residential Field Visit Service Charge

Proposed Findings of Fact

None

Proposed Conclusions of Law

None

Proposed Ordering Paragraphs

None

B. The Requirement of a Payment Arrangement as a Condition for Service

Proposed Findings of Fact

None

Proposed Conclusions of Law

None

Proposed Ordering Paragraphs

None

C. PGW's Proposed Means-Tested Senior Citizen Discount Program

Proposed Findings of Fact

None

Proposed Conclusions of Law

1. The means-tested senior citizen discount program settlement agreement submitted by certain active parties on January 9, 2004, is just, reasonable, and in the public interest.

Proposed Ordering Paragraphs

1. The means-tested senior citizen discount program settlement agreement submitted by certain active parties on January 9, 2004, shall be placed into effect without modification on October 1, 2004.

D. PGW's PGW's Universal Service Costs

Proposed Findings of Fact

1. Current participation in PGW's customer responsibility program is relatively high by historical standards, and has risen sharply over the part year. (OSBA Statement No. 1, at 6)
2. PGW has pledged to maximize its enrollment in the customer responsibility program, leading to a potential cost impact of \$30 million. (OSBA Cross Exhibit FCI-1; OSBA Statement No. 1, at 6)
3. The design of PGW's customer responsibility program is driving PGW's universal service costs higher. (OSBA Statement No. 1, at 4-5; PGW Statement No. CP-2, at 13)
4. The CRP no longer provides sufficient revenue to cover the variable cost of natural gas, or to make a minimum contribution towards PGW's fixed costs. (OSBA Statement No. 1, at 4-5; PGW Statement NNo. CP-2, at 13; Transcript, page 644, line 5 – page 645, line 9)

Proposed Conclusions of Law

None

Proposed Ordering Paragraphs

1. PGW shall cap the number of participants in PGW's customer responsibility program at 60,000 total participants.
(or, in the alternative)
2. PGW shall charge only its residential class customers for the incremental CRP costs for those participants in excess of 60,000 total participants.

E. PGW's Petition for the Waiver of Certain Chapter 56 Regulations

Proposed Findings of Fact

None

Proposed Conclusions of Law

None

Proposed Ordering Paragraphs

None

F. The Legal Basis for the Waiver of Certain Chapter 56 Regulations

Proposed Findings of Fact

None

Proposed Conclusions of Law

1. The statutory construction advocated by PGW is an overbroad reading of 66 Pa.C.S. § 2212(c) that, if accepted by the Commission, would violate the Pennsylvania Constitution.
2. PGW's reliance upon 66 Pa. C.S. § 2212(h)(1) as an alternative legal basis for Commission authority to waive Chapter 56 rules is in error.
3. The Commission has the authority to grant PGW's various requests for Chapter 56 waivers or modifications under 52 Pa Code § 56.222.

Proposed Ordering Paragraphs

None

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

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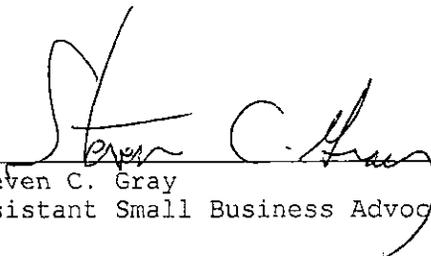
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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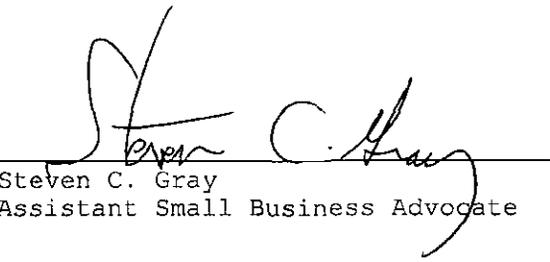
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Re: Investigation into Financial and Collection Issues
Regarding the Philadelphia Gas Works
Docket Nos. P-00042090, R-00049157, M-00021612 &
P-00032061

Dear Secretary McNulty:

Enclosed are the original and nine copies of Philadelphia Gas Works' Main Brief 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

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Enclosures

cc: Hon. Charles E. Rainey, ALJ (w/enc)
Certificate of Service (w/enc)

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

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

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I. INTRODUCTION & SUMMARY

“There is no free lunch” – unless its cooked with gas in Philadelphia. At the heart of this proceeding, is a Petition by PGW requesting nine waivers or modifications of certain collections rules in Chapter 56 and administrative rules interpreting that regulation. At the heart of this proceeding, is an effort by a cash-strapped utility to get those who use gas and who can or should be able to pay their bills to do so, and to stave off a gathering financial threat. Ensuring such payment is the fairest and most effective way to ensure that PGW will continue to be able to provide safe, adequate and reliable service at a reasonable cost. At its heart are the demands of personal responsibility.

PGW’s waiver request comes on the heels of the parties’ opposition to and the Commission’s rejection of its proposed Cash Receipts Reconciliation Clause (“CRRC”). In that proceeding, PGW demonstrated conclusively that the rating agencies have demanded that PGW materially improve its collections and cash margins in the near term, or its creditworthiness will be downgraded to junk bond status. One rating agency, Moody’s, has set the timetable for improvement as near as the next 90 days. The Commission found that the CRRC was not needed because PGW’s collections levels had improved to around historic levels. But, that does not change the need to make a material improvement over and above PGW’s historic collections levels in order to show that PGW should not be downgraded.

The message came through loud and clear, from the public all the way to the Commission, that the CRRC was not the means for solving PGW’s cash crisis and contributing to the material improvement required by the agencies. The notion of the “free lunch” – of paying customers footing the bill for those who refuse or fail to pay for their gas – was thoroughly rejected. Instead, the message was this: make those who use the gas, pay for it. As stated in the simple, yet eloquent, words of the citizens of Philadelphia:

[H]ere’s a simple way to collect. People don’t like cold showers and when the damn snowflakes fall and somebody’s cold, the deadbeats that are driving new cars -- I know that for a fact in my block -- the deadbeats that are driving new cars, cablevision, and all kinds of goodies paid for by me. They have cars . . . and what, but they don’t pay. . . . [I]f the snowflakes are falling you cut their gas off. Now the gas won’t be cut off for one reason. They’ll give

up a car, they'll give up cablevision but they'll find a way to pay the bill.¹

If you do not pay your oil bill, the oil gets shut off. If you do not pay your electric bill, your electric bill gets shut off. If you do not pay your mortgage, the bank forecloses. Well, then, you know what, if they don't pay their gas bill, shut it off. We do not feel it is our responsibility to pay someone else's bill. Everyone has to be responsible for their own actions. There are some people who do not pay gas bills even when they have the money . . . so we have to pick it up for them. Philadelphia deadbeats, and there's no other words for them, have a good thing going for them.²

It's common sense. If you don't have it, you know what, I get the Sunday paper every week, it costs me \$1.50, that help wanted section got to be a quarter inch thick, it's got to be. Now, there's no jobs out there? There's plenty of work out there, all you got to do is get up and go to work. You get up, you go to work, you pay your bills and if you got anything extra maybe you can order a cheesesteak or something . . . or maybe you can get a car, okay? But they are all luxuries. It's a luxury to do those things. It's a luxury to have cable. . . . A cell phone is not a necessity. Gas is a necessity. If you can't pay your gas bill, then you don't have gas. Simple as that. I don't care if it's two degrees or 200 degrees, pay up or, you know, go down to the Goodwill store and buy a heavier jacket.³

These same customers would plainly view the suggestions of the opposing parties – that PGW simply file a base rate case to repair its financial situation – in the same way. PGW has repeatedly said that it believes that a base rate increase is not the best way to solve its present problems, and that it will seriously consider that course (including extraordinary rate relief) only if it becomes the last potential means of keeping the Company from financial disaster.

Accordingly, PGW has proposed a series of measured steps to help it effectuate the people's prescription: make those who use the gas, pay for it, and on a more regular basis. The proposals call for limited waivers, only to the extent necessary, of certain rules developed a quarter century ago, which were based on a policy balance that never contemplated its

¹ Tr. 63-64 (Louis Rabonin).

² Tr. 77 (Mary Jane Hazell).

³ Tr. 102-03 (James Walsh).

applicability to PGW and its service territory. PGW is not claiming that Chapter 56 stops it from collecting its gas bills. Rather, PGW has shown that, by making strategic modifications, it can obtain the material improvement in its collections beyond historic levels that PGW needs and the rating agencies have demanded; something that it cannot do without these waivers.

Yet, the same parties (excepting the OSBA) and would-be consumer advocates that fought the CRRC, oppose the Company's waiver proposals as well. Clearly, PGW is not supposed to ask paying customers to support those who fail to pay, and, apparently, it is not supposed to ask those customers who actually used the gas to pay for it either.

While these parties point to PGW's recent uptick in collections levels – *as compared only to last year when collections were abnormally low* – as an answer to its collections and cash problems, they are only deluding themselves. Yes, the Company's massive collections effort has made progress, but it is expected to achieve, at best, the historic 92% collections levels (compared to the 93% or better PGW was projecting during the CRRC proceeding). The rating agencies have also sent a clear message: that is not good enough. 'Returning to the historic collections level in a year when gas costs and customer bills had escalated dramatically is an impressive achievement, but not enough to assuage the rating agencies and financial community, which are demanding a material improvement in the next 4-6 months.

The consequences of refusing PGW's request, and it failing so far to make this material improvement, have already begun to manifest themselves: bond insurers have deemed the Company too financially risky to insure more than \$50 million of its upcoming \$150 million bond issuance. The result: PGW and its customers will have to issue the remaining \$100 million at a lower investment grade and pay up to an additional \$40 million in the process over the next 20 years, or the Company will limit the issuance to \$50 million. This would mean that PGW and its customers will go without the needed capital improvements and the company may not have adequate liquidity to pay its bills when due.⁴

As should be evident to the Commission, the room for error is exceedingly slim. PGW has been denied one basis for relief in addressing its cash receipts crisis, and the only other basis

⁴ PGW St. CPI-R at 2-3.

for improving collections and receipts in the time period available is this Petition. If the Company is denied the Chapter 56 waivers requested, its failure to achieve material improvement in the near term – and its junk bond status – will virtually be assured. It will also be taken as a clear departure from the Commission’s past willingness to support the Company and to help it out of its past financial crises. Indeed, that was exactly Standard and Poor’s reaction to the PUC’s CRRC denial. Just a few days ago, the rating agency commented that:

[T]he denial of PGW’s request highlights the difficulty of PGW’s financial situation which could lead to lower ratings in the near term. The ratings on PGW have historically benefited from a supportive relationship with the PUC. The PUC’s recent decision points to the potential for a less supportive relationship going forward.⁵

The ramifications of such a downgrade for PGW’s customers will be profound (as the Commission recognized in granting PGW extraordinary rate relief in 2002 to avoid just such a scenario), and will certainly be far worse than any perceived inconvenience that the customers may realize by loosening the requirements of Chapter 56 and granting the waivers.

Indeed, given the circumstances before the Commission, the balance between customer interests and the need to ensure PGW’s financial stability is an easy one. Both customers and the Company should be aligned as one, with the common goal of securing the Company financially by making those who use gas pay their bills, with recognition of those with PUC-defined low income status. Despite the hyperbole offered by some parties to this proceeding (*e.g.*, an OTS witness suggested that an individual’s loss of gas could outweigh the entire City losing gas service),⁶ PGW asks only for additional tools to ensure that customers pay for a commodity and service that they have used so that other customers will not have to pay someone else’s bill. The PGW proposal is fair when considered against PGW’s precarious financial condition and the rating agencies’ threats to “pull the plug” if collections do not improve. Ultimately, the Company’s customers will suffer far greater harm if the waivers are not granted by the Commission. For example, if PGW’s waiver requests are denied, it will have no choice but to

⁵ S&P Bulletin: “Adverse Regulatory Decision For Philadelphia Gas Works Detracts From Credit Quality,” July 9, 2004 (Attached as Appendix A hereto).

⁶ Tr. 738-39.

consider the only other available means of significantly increasing cash working capital, a base rate case, which could propose increases of as much as \$94 million annually. This is something PGW will only do as a last resort.

Finally, the Company's waiver requests take into account today's realities "on the ground" in Philadelphia, and stand in stark contrast to the opposing parties' dogged adherence to a group of rules (from which PGW was always heretofore formally exempt) based on 1970's policy assumptions, gas prices, and demographics. A much more current balance of the policy interests involved in this proceeding, conducted by the Pennsylvania House of Representatives, can be found in its overwhelming passage (164-36) of the Responsible Utility Customer Protection Act.⁷ The Responsible Utility Customer Protection Act would make numerous changes to collections and terminations procedures for utilities that track, and even exceed in many cases, the relief requested by PGW via its Petition for Waiver. The House, in passing the Act, expressly found – contrary to the assertions of the opposing parties – that the rules adopted by the Commission in Chapter 56 "have not successfully managed the issue of bill payment."⁸ Significantly, the advocates for the people of Philadelphia and the customers of PGW – that is, their elected state representatives – supported the Act and its changes to Chapter 56 by more than a 2-1 margin.

With the scales tilted convincingly in favor of the need to heal PGW's cash wounds and preserve its investment grade bond rating, and the limited inconvenience to be experienced by customers, the Commission should grant PGW's nine proposed waivers as a two year pilot.

From discord to near unanimity, the Commission must also determine whether needy, senior citizens, with incomes up to 250% of the federal poverty standard, should benefit from a means tested senior citizen discount ("SCD"). PGW's means tested SCD is a consensus proposal, supported by the elected City representatives of the Company's customers, the Mayor and City Council, as well as senior and customer advocacy groups, including Action Alliance of Senior Citizens. The proposal is supported by the Office of Consumer Advocate ("OCA") and

⁷ Senate Bill 689, Printer's No. 1786.

⁸ *Id.* at Section 2801-D(1).

not opposed by the Office of Small Business Advocate (“OSBA”). PGW has demonstrated through expert testimony that the need for the means tested SCD exists and the cut-off level of 250% of Federal Poverty is reasonable for a senior program. Moreover, the evidence shows that the program does not affect the Company’s cash shortfall, and the new cost of the program to firm customers is minimal: \$5.81 yearly for a heating customer; and \$1.88 yearly for a non-heating customer on average through 2020.⁹ All of the Commission’s questions in its May 18, 2004 Order have been answered. Clearly, this proposal is just and reasonable, and therefore, the Commission should exercise its authority under Section 2212(r)(1) of the Code and approve the Company’s proposal.

Finally, with little to no contrary sentiment from any party, the Company has shown and the evidence reflects that: (1) its universal service programs are effective, PUC-approved, and in line from a cost perspective with those of other natural gas distribution companies; (2) the Company’s collections program is reasonable, although not sufficient by itself to reach the levels of success dictated by the rating agencies given PGW’s customer demographics; and (3) the remaining issues in the Company’s Restructuring Compliance Tariff, specifically, its residential field visit charge and judgment and liens provisions, should be approved.

II. CHAPTER 56 WAIVERS AND MODIFICATIONS

A. Standard By Which to Judge the Request

The Commission has set forth the standard by which the Company’s waiver requests are to be judged – and, unfortunately, except for PGW and the OSBA, the parties to this proceeding have completely, and in some cases, admittedly, ignored that standard. In its June 2nd Order, the Commission stated that, in considering the waivers, PGW needed to show “how the alternative standard or procedure adequately balances consumer protection rights with PGW’s financial integrity.”¹⁰ While PGW rightly has the burden of explaining how its proposals achieve this balance, the other parties were still obligated by the Commission’s Order to consider the waivers in the context of PGW’s precarious financial condition. However, those parties shunned their

⁹ Tr. 611.

¹⁰ Order at 5, n. 2.

obligation, choosing instead to reflexively oppose any modification of Chapter 56 to account for PGW's unique circumstances.

As set forth in greater detail below, an application of the Commission's standard to the facts of this matter strongly support PGW's waiver requests. The Company has demonstrated that it is on the brink of being downgraded to junk investment status' unless its collections and cash margins do not materially improve by this fall.¹¹ The rating agencies, and, particularly, S&P, are carefully charting PGW's progress, as the recent Bulletin (attached hereto Appendix A) indicates.

In the face of this serious diagnosis of PGW's "financial integrity," the Company has proposed modest waivers of Chapter 56 in order to both improve its collections levels in an order of magnitude required by the rating agencies, and send a signal to the financial community that such levels can be expected to be maintained over the next few years. The waivers carefully maintain one of Chapter 56's main goals: to assure the existence of "alternatives to termination,"¹² ask nothing more of customers than what is routinely asked and expected of them in every other commercial context, and simply attempt to ensure that those who can pay, do in fact pay for the natural gas that they use. Most importantly, they are projected to improve collections by approximately \$30 million, which could be enough to sustain its present bond rating.¹³

Nonetheless, other parties have flatly opposed the proposals seemingly without an ounce of concern for the Company's financial condition. Action Alliance's witness, Mr. Geller, frankly admitted that he had not given any thought whatsoever to PGW's financial crisis and how that crisis should impact the PUC's decision to modify Chapter 56's requirements in these limited circumstances.¹⁴ Similarly myopic, but less willing to admit it, was the OTS's witness, Mr. Mumford, who is employed by the Bureau of Consumer Services ("BCS"), ""of the bureau

¹¹ See, e.g., PGW St. CRRC-5, Exh. TEK-2, Section B, *infra*.

¹² 52 Pa. Code § 56.1.

¹³ PGW Exh. CP-1, PGW St. CP-1.

¹⁴ Tr. 822-23.

responsible for enforcing Chapter 56. Mr. Mumford claimed to have considered PGW's financial integrity, but apparently found it incapable of outweighing even the slightest of accommodations to the Company and its collections efforts and failed to even discuss PGW's financial issues. At one point, he even suggested that the potential for an individual to not know that they had failed to pay their gas bill, not read their subsequent bill showing an overdue balance, not understand that failing to pay your gas bill can result in termination of service, not receive the ten day termination notice, miss the Company's calls during the 72 hour notice period, and somehow miss the 48 hour notice was too great and outweighed PGW's request for relief from the Friday no-termination requirement.¹⁵ As to another waiver, Mr. Mumford suggested that the "right" of a customer to rely on more than just a change in income for the circumstances warranting a second payment arrangement outweighed the collective interests of the entire City of Philadelphia to avoid a complete collapse of the Company.¹⁶

Given their refusal to follow the Commission's standard and consider PGW's financial integrity, the positions and testimony of these parties¹⁷ is of very limited use to the Commission and should be disregarded. It should be no surprise that customer representatives, and an employee of the BCS, which, day in and day out, defends Chapter 56 and attempts to ensure that utilities adhere to its terms, would oppose every single one of PGW's requested modifications (and, coincidentally, fail to offer any alternative – even an infeasible one – in the process).¹⁸ Any reasoned application of both parts of the Commission's standard, however, leads to the conclusion that the Company's modest waiver requests strike an appropriate balance between consumer interests and preserving its financial integrity, and therefore should be approved.

1. The Commission is fully authorized to grant the requested waivers.

¹⁵ Tr. 763-766.

¹⁶ Tr. 738-39.

¹⁷ The OCA is equally remiss, as it does not even accept the fact of PGW's precarious financial condition. Tr. 806. Apparently, the OCA believes that S&P, Fitch and Moody's are all lying about the Company's condition and their intentions to downgrade (despite the fact that S&P and Fitch already have once).

¹⁸ The OTS and Action Alliance failed to offer any alternatives.

Additionally, it is important for the Commission to understand the legal authority on which the Company's requests are based and those statutory and regulatory provisions that are not applicable to this analysis. PGW's proposal is based on Sections 2212(c) and (h)(1) of the Public Utility Code, as well as Section 5.43 of the Commission's regulations,¹⁹ and there should be no dispute that the Commission has the legal authority to grant the waivers and modifications requested by PGW.

First, under Section 2212(c) of the Public Utility Code, the Commission "may suspend or waive the application to [PGW] of any provision of this title, including any provision of this chapter other than this section."²⁰ Thus, the Commission has the authority to suspend or waive Section 1501's adequacy of service requirements in their entirety. As Chapter 56 of the Commission's regulations are promulgated under and are a further explication of the requirements in Section 1501 of the Code, the Commission clearly has the lesser included authority of waiving, suspending or modifying the collections rules embodied in those regulations. The overriding standard for such a waiver, as with any PUC action, is whether the requested modification would be in the public interest, requiring a balancing of consumer and utility issues, identical to the standard articulated by the Commission in its June 2 Order.

Second, the Commission has instituted this *Investigation into Financial and Collections Issues Regarding PGW* as an extension of the Company's Restructuring Proceeding.²¹ In transitioning PGW to gas choice and full compliance with the Public Utility Code and PUC rules and regulations, the Commission is directed, by Section 2212(h)(1) of the Code, to examine the

¹⁹ 66 Pa. C.S. § 2212(c) and (h)(1); 52 Pa. Code § 5.43.

²⁰ 66 Pa. C.S. § 2212(c). PGW has requested that the Commission approve certain collection measures, and in the process it has identified provisions of the Code (e.g., Section 1503) and regulations, and has even included administrative interpretations, that it believes to be implicated by those requests. The Company's Petition for Waiver does not attempt to provide an exhaustive laundry list of every regulatory or statutory section that may be affected by its waivers, nor is such a listing required. To the extent that its Petition does not expressly act as a request for a general waiver of all legal provisions necessary to allow the desired collections measures, the Company makes that request now and also asks that it be permitted to amend its request to correspond to the evidence, as contemplated by the Commission's regulations. 52 Pa. Code § 5.92.

²¹ See June 2, 2004 Order at 4 (consolidating the restructuring docket, Docket No. M-00021612, with this investigation).

costs and benefits of such compliance.²² Further, upon request by PGW, Section 2212(h)(1) empowers the Commission to waive the application to PGW of any of its rules, regulations or orders in the event it determines that the costs of compliance would not be prudent.

Thus, under Sections 2212(c) and (h), the Commission has full authority to grant PGW's Petition for Waiver. The cost-benefit determination is one of policy which is within the Commission's expertise.²³ As demonstrated at hearing and set forth herein, the costs of continued adherence to the itemized Chapter 56 collections rules would not be prudent and would not be fair to PGW's customers who must assume the burden of failure of some customers to pay their bills. In the recent past, the Commission determined that a downgrade of PGW's debt below investment grade to junk status would be so costly that it warranted rare and extraordinary relief from the Commission.²⁴ The same threatened consequence from a lack of near term, material improvement in the Company's collections and cash receipts would be no less costly, and certainly outweighs any minimal benefit from pure and exact compliance with Chapter 56's collections rules.

2. Legal Provisions Referenced by other Parties Are Inapposite.

As PGW is seeking these waivers under Section 2212, it should be apparent that Section 56.222 of the Commission's regulations, the provision used to make typical waiver requests of Chapter 56 on an individual by individual basis, is inapplicable in this proceeding. Section 56.222 relates to "temporary exemptions in exceptional cases" upon the application of a person or utility and the showing of "unreasonable hardship."²⁵ Clearly, this section envisions waiver requests in the context of specific customer service scenarios impacting individuals or a limited number of customers, and not a comprehensive modification of the rules for a utility's entire customer base. The scope of PGW's payment and collections problems renders the use of this

²² 66 Pa. C.S. § 2212(h)(1).

²³ *Cohen v. Pa. PUC*, 463 A.2d 1274, 1279 (Pa. Cmwlth. 1983).

²⁴ *Petition of Philadelphia Gas Works for Extraordinary Rate Relief Pursuant to 66 Pa. C.S. § 1308(e)*, R-00017034F0002, Opinion and Order (April 12, 2002).

²⁵ 52 Pa. Code § 56.222.

section utterly infeasible.²⁶ As Section 56.222 is inapplicable, the testimony of Mr. Mumford, that PGW must show unreasonable hardship to justify its waiver request, is patently incorrect,²⁷ and any implication that the Company's Petition is deficient for failure to afford customers notice²⁸ of the requested waivers (as section 56.222 requires) is similarly erroneous, or, if deemed applicable, should be waived.

Finally, the OTS also attempted to employ, as some sort of bar to PGW's Petition, the admonition in Section 2206 of the Code that "customer 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" the Gas Choice Act.²⁹ Mr. Mumford asserted that waiving the Chapter 56 provisions, as requested by the Company, would not be consistent with maintaining the same level of quality as in existence at the time of the Act's July 1, 1999, effective date.³⁰

This position is clearly flawed. As Mr. Mumford conceded upon cross examination, his stance would essentially freeze Chapter 56, as it stood on July 1, 1999, and eliminate the Commission's ability to ever grant a general waiver thereof.³¹ Indeed, Mr. Mumford seemed to claim that the Commission, itself, could not change Chapter 56, nor could it engage in a new rulemaking to alter that Chapter, if it in any way lessened the protections in those rules.³² Such an analysis is obviously specious. Section 2206(a) is aimed at the actions and tariffs of NGDCs, to preserve overall levels of service, and was not intended to serve as a bar to changes in law or the waiver of Chapter 56 regulations when circumstances dictate. Moreover, as noted, Section

²⁶ For example, PGW had some 133,000 customers subject to termination and a full 250,000 customers that require some interaction with its collections system. PGW St. CRRC-5 at 4, 16; CRRC Tr. 355, 367.

²⁷ OTS St. 4. at 4. Notwithstanding, in light of the potential negative effects of failing to improve its cash working capital and collections, PGW will clearly experience "unreasonable hardship," absent the waiver requests.

²⁸ Tr. 665.

²⁹ 66 Pa. C.S. § 2206(a).

³⁰ OTS St. 4 at 3.

³¹ Tr. 739-41.

³² Tr. 741.

2212(c) empowers the Commission to waive or suspend “any provision of this title, including any provision of this chapter,” which plainly includes Section 2206. Thus, even if it was somehow an impediment to PGW’s Waiver Petition, the Commission could simply waive or suspend Section 2206 as necessary (as Mr. Mumford admitted).³³

B. Overall Justification – The Company Needs to Make a Material Improvement in Its Collections and Cash Working Capital in the Next 4-6 Months to Avoid a Calamity.

PGW’s financial condition, thoroughly documented in the CRRC record, provides ample justification for its waiver requests. On April 9, 2004, PGW received telling evidence of the serious financial crisis in which it found itself, as Standard & Poor’s lowered its rating on PGW senior revenue bonds to BBB-, the lowest investment grade rating.³⁴ S&P cited “weakened liquidity position and declining credit measures fueled by collection rates that deteriorated appreciably in the last year.”³⁵ It further summarized PGW’s current situation:

PGW’s unrestricted cash reserves are currently below \$1 million, representing less than one day’s cash. Cash flow from operations which takes into account PGW’s low collection rates, is generally insufficient to cover the utility’s fixed charges in high gas price years. Throughout the year, its \$80 million commercial paper program is often fully drawn. . . . To deal with the current liquidity strain, PGW has entered into gas storage deferral contracts, is seeking cash receipts – related relief from the [PA PUC] and has requested annual payment forgiveness from the City of Philadelphia for the next five years. The lowered rating assumes that PGW will obtain annual payment forgiveness from the City even though such payment forgiveness is still subject to Commission approval.³⁶

As for PGW’s outlook, S&P did not mince its words: if in the “near term” PGW’s “collections and cash margins do not materially improve,” the Company’s bond ratings “will be

³³ Tr. 767.

³⁴ PGW St. CRRC-5, Exh. TEK-1.

³⁵ *Id.* at 1.

³⁶ *Id.*

lowered further” to junk status.³⁷ The key points to this clear message are that action is needed immediately, and that the action taken must result in material improvement in the Company’s collections and cash margins.

After S&P, Fitch followed suit, stating that:

The City Administration has reviewed PGW’s current financial status and has agreed to significant steps to assist the Company in attempting to extricate itself from its cash crisis. It has agreed to grant back its \$18 million City payment for five years and it deferred the payment of the \$45 million City loan for two years. The Company has executed an expanded “forward purchase” of natural gas to provide it with reduced cash working capital requirements in the fall. None of these positive steps were sufficient to stave off the current downgrades.³⁸

Finally, on June 8, Moody’s placed PGW’s bonds on its Watchlist, and echoed the concerns over PGW’s financial condition: “PGW has faced a significant cash flow crunch due to slowed payment by customers of record high gas bills. While PGW has demonstrated that management is focused in the problems and the current marginal cash position allows for business to continue to operate further improvement to PGW’s liquidity are required to maintain the current rating level.”³⁹

Importantly, and as the rating agencies’ public statements made clear, the downgrade and the threat of further downgrades to junk bond status were made despite the knowledge that PGW had requested the CRRC mechanism and had initiated a Collections Initiative that was projected to put collections back to historic levels.⁴⁰ More troubling, the downgrade came after consideration of the promise by the City of Philadelphia to forgive or to otherwise not require the transfer of PGW’s legally mandated \$18 million payment for a five year period and to defer a \$45 million working capital line of credit loan for two additional years that had been awarded to

³⁷ *Id.* at 2.

³⁸ PGW St. CRRC-5, Exh. TEK-2 (emphasis added).

³⁹ The review will take place within the next 90 days. Moody’s Investors Service Global Credit Research Rating Update – PGW (June 8, 2004).
www.moodys.com/moodys/cust/research/genoa/report/rating%20Update8062

⁴⁰ PGW St. CRRC-5, Exh. TEK-1.

PGW by the City and which was initially scheduled to be repaid in 2004.⁴¹ This fact was overlooked by the Commission in its recent CRRC Order and is the subject of a pending request for reconsideration or clarification.

Moreover, PGW's outlook and financial condition has only worsened since the rating agencies' statements. First, a major response to the Company's collections and cash receipts problems that was recognized by S&P, the CRRC, was denied by the Commission on July 8th. There appears to be some confusion in the Commission's CRRC Order about the magnitude of the Company's financial crisis. The Order emphasizes the assistance PGW will receive from the City of Philadelphia in terms of the annual payment and loan deferment, as a means of suggesting that PGW's financial outlook "is not as desperate as it seemed."⁴² However, the Commission appears to have overlooked that fact that both S&P and Fitch expressly acknowledged these helpful steps, but found them insufficient to avoid the downgrade. Additionally, the Order suggests that the Company's end of year cash position will be approximately \$31-36 million, with the \$30 million in natural gas payments deferred into FY05 providing a benefit on top of that cash level.⁴³ To the contrary, the \$30 million in deferred gas payments (and the \$18 million grant back) must be taken into account just to reach the \$31-\$36 million in end of year cash.⁴⁴ Ultimately, the Commission did recognize that PGW's financial condition had deteriorated, but determined that it was not in such a severe state to warrant the departures from ratemaking law and principles that the Commission perceived to be necessary to approve a mechanism like the CRRC.⁴⁵ The financial fundamentals of PGW have severely eroded over the last several years. The reasons are a substantial reduction in cash working capital and a run-up in uncollectible charges and pension costs and health care increases. Without the gas deferral transaction, PGW's year-end cash position would be negative. The difficulty is that there is no assurance that the single vendor who made this deal possible will be

⁴¹ *Id.*

⁴² CRRC Order at 10-11.

⁴³ *Id.*

⁴⁴ PGW CRRC-1 at 3. Without these measures, PGW's end of year cash was projected to be a negative \$12-17 million. *Id.* Thus, PGW's gimmick-free end of year cash would be a mere \$1-\$6 million.

⁴⁵ Order at 10.

willing to enter into a similar transaction next year. PGW is down to the good graces of a single vendor for its operating funds. How can anyone suggest that this Company does not have a financial crisis. Also, the Company has lost its ability to insure two-thirds of its contemplated Fall bond issuance at a AAA level, leaving the Company with a stark choice: limit the amount of long term debt to be issued to the point of practically losing that financing option; or adding tens of millions of dollars onto the cost of each issuance, a cost that is ultimately paid by its customers.⁴⁶ Finally, the denial of the CRRC has prompted additional negative statements from the rating agencies, with further ominous warnings about downgrades and PGW's bleak financial condition. Just a few days ago, S&P issued a "Bulletin" with several negative comments:

Standard & Poor's Ratings Services said that the Pennsylvania Public Utilities Commission's (PUC) decision yesterday to reject Philadelphia Gas works' (PGW) request to establish a special surcharge to help defray the cost of its uncollectible billings is another unfavorable development for PGW's credit quality. The investment-grade rating on PGW's senior revenue bonds (BBB-/Negative) remains tenuous. Still, the PUC's decision in and of itself does not have an immediate impact on the ratings on PGW. However, it highlights the difficulty of PGW's financial situation, which could lead to lower ratings in the near term. The ratings on PGW have historically benefited from a supportive relationship with the PUC. The PUC's recent decision points to the potential for a less supportive relationship going forward. Should the regulatory environment affect the company's ability to access short-term or long-term financing or lead to gas suppliers placing additional liquidity demands on PGW, the ratings could be lowered. High debt levels, slim financial margins, and weak collection rates that are exacerbated by high gas prices remain the primary drivers for the company. The outlook on PGW is negative.⁴⁷

A time bomb is ticking, and absent action by the Commission to improve PGW's collections and cash margins it will explode in the form of a downgrade to junk bond status, a result admitted by all parties to be disastrous for PGW's customers.

⁴⁶ PGW St. CP-1R at 2-3.

⁴⁷ S&P Bulletin: "Adverse Regulatory Decision For Philadelphia Gas Works Detracts From Credit Quality," July 9, 2004 (Attached as Appendix A hereto).

1. PGW's Package of Proposed Chapter 56 Waivers and Modifications Are the Only Solution that Can Provide the Cash Improvement Necessary In the Necessary Time Period.

With the CRRC gone, the only hope for defusing this time bomb is to approve PGW's requested waivers. No other solution (and very few were offered by the parties) will provide immediate improvement in the Company's collections at the material level and in the timeframe demanded by the rating agencies. Without the waivers, PGW will have no choice but to reluctantly consider the filing of a general rate case.⁴⁸

PGW believed that there were three critical dates. First, PGW is in the midst of preparing to issue an additional long term bond this Fall, and the financial community will examine PGW's performance and/or the tools available to improve performance during the time of this issuance. Unfortunately, as noted, this benchmark has already been missed, as the bond insurers have deemed the Company too financially shaky to insure more than 33% of the planned issuance under current conditions – that could change with improved collections tools.⁴⁹

Second, PGW is scheduled for an annual review by S&P, the results of which would be formally announced in February 2005. That review will be based on information gathered in the few months prior to that date.⁵⁰ Finally, Moody's has indicated that it will take action in regard to PGW's ratings within the next 90 days. If these two dates come to pass without action by the Commission to approve the Company's waivers or otherwise enable it to materially improve its collections and cash receipts levels or some other substantial change in PGW's situation, the junk bond explosion appears destined to occur and PGW will have no choice but to consider a base rate request, a last resort, in its view. The evidence in this matter shows that PGW's proposals will produce positive cash flow and collections results,⁵¹ and their approval will send a signal to the rating agencies that they can anticipate the same. No other alternative before the Commission offers such a promise.

⁴⁸ In the CRRC proceeding, PGW witness Bogdonovage testified that such a filing would likely justify \$70-\$90 million in additional rate relief. PGW St. CRRC-1R at 5.

⁴⁹ PGW St. CP-1R at 2-3.

⁵⁰ CRRC Record, Tr. 391.

⁵¹ PGW St. CP-1; PGW Exh. CP-1, App. A.

2. Other Alternatives Raised by Waiver Opponents are Either Not Realistic or Viable or Can Not Deliver Benefits in the Necessary Time Period.

Few alternatives were offered by the parties to address PGW's collections problems and shore-up its financial integrity. Indeed, other than the OSBA which supports the waivers,⁵² the OCA was the only party to make any effort in this regard. Its proposals were: (1) mandatory electronic funds transfer ("EFT") payment by all higher income customers on payment plans; and (2) mandatory budget billing for all residential customers.⁵³ Unfortunately, the OCA's proposals, while welcome, are either not viable or cannot produce sufficient cash flow quickly enough to obviate the need for the requested waivers. In addition, PGW already plans to offer EFT, is in the process of upgrading that service, and has more practical experience on that subject than does Mr. Colton.

Mr. Colton for the OCA suggested that PGW's waiver requests should be rejected and replaced with a mandatory EFT payment requirement for income Level 3 and 4 customers on payment arrangements. But Mr. Colton admitted that he was aware of no public utility that has a mandatory EFT requirement for customers on payment plans,⁵⁴ that the record contained no assessment of what might be the potential benefit of the EFT requirement, if any, and that his *budget billing proposal could not and should not be implemented until next spring.*⁵⁵ Beyond these defects in the proposals (which the Company is not rejecting outright), the Commission should require additional study prior to approving such mandatory EFT and budget billing requirements to ensure they are not counter productive.

As explained by Mr. Gyory for PGW, these approaches are novel and may not produce positive additional collections and cash working capital.⁵⁶ As to the EFT proposal for Level 3 and 4 customers on payment plans, the record evidence in this matter reveals that of the Company's 133,000 customers in arrears on April 1, only approximately 9,700, representing

⁵² OSBA St. 1 at 7.

⁵³ OCA St. FCI-1 at 7.

⁵⁴ Tr. 792.

⁵⁵ Tr. 795-97.

⁵⁶ PGW St. CP-1R at 7.

some \$6 million in receivables, would fall under the EFT requirement.⁵⁷ Even if all of those customers were placed on EFT and the success rate increased from 9% to 50%, the net additional collection would be under \$3 million.⁵⁸ This calculation likely overstates the financial effect because the number of non-banking PGW customers, who do not use checking or savings accounts, appears to be roughly 7% of the entire residential class.⁵⁹ Moreover, for the EFT proposal to work, a customer must have funds in his checking account, which is far from guaranteed. Additionally, after the implementation of the necessary software already scheduled for this fall,⁶⁰ this proposal would still require several months of work-out and training to be put into effect – making it too late to be effective.⁶¹

Finally, while Mr. Colton cites to the success realized by California and Minnesota through their use of EFT to collect tax delinquencies, this comparison is truly apples to oranges. First, it is reasonable to predict that an official notice from the states of California or Minnesota, with the force of government behind it, would tend to carry more of a perceived threat than one from a utility, like PGW. Second, the failure to pay taxes carries far more significant ramifications than the failure to pay a utility bill, including foreclosure on one's home and garnishment of wages.⁶² Accordingly, the OCA's tax examples may not be the most accurate barometer of the EFT proposal's results.

As to budget billing, Mr. Gyory exposed a fundamental flaw in the assumption behind the OCA's proposal: that people on budget billing have far superior payment practices. The record reflects that the delinquency rates for payment plan customers are similar for budget billed (62%)

⁵⁷ PGW St. CRRC-5 at 16.

⁵⁸ Average arrearage for Level 3 and 4 customers: \$620 x 9,700 x 9% vs. 50%.

⁵⁹ PGW St. CP-1R at 8.

⁶⁰ *Id.* at 7.

⁶¹ *Id.* at 7-8; Tr. 796-97.

⁶² Cal. Code Civ. Proc. § 706.072 (2004); Minn. Stat. § 268.059 (2004).

and non-budget billed customers (75%)⁶³ despite the fact that the customers have chosen this option.

Furthermore, the mandatory budget bill option presents significant cash flow problems for the Company which would exacerbate, not improve, current problems. As admitted by the OCA's Mr. Colton, the Company is too close to winter to implement this initiative (which would take a year, conservatively, in any case).⁶⁴ Unless the average "budget bill" is implemented at a time when the actual customer bill would be lower than the budget amount, such a budget billing conversion could put PGW in a massive cash flow hole.⁶⁵ Additionally, in this environment of constantly increasing natural gas prices, PGW would continuously be behind in the recovery of gas cost increases, as its GCR can be adjusted quarterly, but customers' budgets for budget billing may only be increased three times annually.⁶⁶ Even if this discrepancy could be rectified, the purported benefit of budget billing would be diminished as the budget bills would be changing multiple times per year. For all these reasons, the Commission should not require PGW to implement the OCA's EFT and budget billing proposals at this time. PGW will commit to studying each of them.

The only other potential "alternative" offered by the opposing parties is basically to say that the Company's Collections Initiative is "good enough" and that no change in the status quo is needed.⁶⁷ Those parties apparently purport to speak on behalf of the rating agencies and to contradict the plain language of the rating agencies' own publications. While PGW has taken extraordinary steps to increase the success of its collection efforts within the traditional rules and parameters, the success achieved is not enough to satisfy the rating agencies. The Company's Initiative has included increases in overtime to permit additional collections, new efforts to provide reminder calls to customers who fall behind in their bill after a bill is overdue less than 30 days, and the implementation of an electronic information transfer process so that PGW now

⁶³ PGW St. CP-1R at 9-10.

⁶⁴ *Id.* at 8.

⁶⁵ Tr. 796.

⁶⁶ Tr. 714-16.

⁶⁷ *See, e.g.*, OCA Answer to Petition for Waiver at 3.

reports to the credit bureaus the payment status of every customer. Other steps include: filing liens on past due accounts and filing collections actions in court against commercial customers, including landlords.⁶⁸

Notwithstanding all of these efforts, and despite the fact that it has been in place in full force from the moment it could have any real effect – in March or April of this year,⁶⁹ PGW's current results show that, while it has improved in comparison to FY 2003, its FY 2004 results will likely produce collections and uncollectible levels that only approximates its historic experience – 92%.⁷⁰ This has nothing to do with “adopting” Chapter 56 procedures on September 1, 2003 – just the opposite is true; PGW has been living with rules very similar to Chapter 56 for years.⁷¹ This extraordinary achievement, considering the combined impact on customers of the high gas prices and cold weather, is due entirely to PGW's unprecedented Collections Initiative, undertaken in consultation with the nationally renowned consultant Accenture, in which almost one-third of the Company has been engaged. However, there are no assurances or promises that this recent improved performance will continue. Indeed, PGW historically has seen a drop-off in its level of collections in the summer months. Thus, relying on the status quo to address the rating agencies' concerns would not only be ineffectual, but also irresponsible.

Ultimately, the decision before the Commission is a policy decision. As Mr. Geller for Action Alliance noted, the standards for appropriate utility collections activities are determined by the Legislature, through the Commission.⁷² Recently, one half of the Legislature, the Pennsylvania House of Representatives, spoke with a clear and convincing voice as to what those collections standards should be, given *today's realities* and balance between customer and utility interests, when it passed the Responsible Utility Customer Protection Act by an

⁶⁸ PGW St. CP-1 at 4-5.

⁶⁹ Tr. 675.

⁷⁰ PGW St. CP-1R at 6.

⁷¹ Tr. 721-24; PGW Exh. CP-1R at 2.

⁷² Action Alliance St. 1 at 7-8.

overwhelming margin of 164-36.⁷³ The Responsible Utility Customer Protection Act recognizes the need to differentiate between those customers who are responsible and pay their bills and those who do not. As set forth in greater detail below, the new Act would make numerous changes to collections and terminations procedures for utilities that track, and even exceed, the relief requested by PGW via its Petition for Waiver.

Significantly, a key policy finding behind the Responsible Utility Customer Protection Act is that rules adopted by the Commission in Chapter 56 “have not successfully managed the issue of bill payment.”⁷⁴ Consequently, in making changes to deposit rules, termination procedures, the winter moratorium, payment plan requirements, restoration requirements, responsibility for bills, and Commission complaint procedures, the legislation would supersede numerous Chapter 56 regulations and abrogate any other inconsistent rules. PGW submits that this legislation, passed by a wide majority of the House and a better than 2-1 margin of the Philadelphia delegation, is a much better gauge of the current policy balance between customer and utility interests than the positions set forth by the opposing parties witnesses which are based on 1970s perceptions.

C. Specific Modifications and Waivers.

1. Introduction

PGW has advanced nine waiver proposals which, in their totality, are designed to both make a material improvement in the Company’s collections and vigorously signal to customers that PGW is completely serious about its commitment to try to insure that all who can pay do pay for the service they use. In each instance, PGW’s proposal is carefully crafted to achieve several goals:

— Most importantly, the proposals are focused on raising additional cash in the next 4-6 months by improving collections or reducing costs. The Company showed that its waiver requests could raise as much as \$30 million.⁷⁵ Although the Company is not basing its waiver

⁷³ The bill, Senate Bill 689, is presently in committee in the Senate, pending that body’s return to session later this fall.

⁷⁴ S.B. 689 (PN 1786) at Section 2801-D(1).

⁷⁵ PGW Exh. CP-1 at 4.

request on this specific calculation of benefits, they show that each of the proposals clearly will provide a positive benefit to PGW's collections and cash flow or a positive reduction in costs, at a time where such an infusion is desperately needed.

— The proposal modifies existing procedures and Chapter 56 rules only to the extent necessary to achieve the desired result. The waivers maintain consistency with the general goals of Chapter 56: to assure adequate provision of residential utility service, to restrict unreasonable termination or refusal to provide service, and to provide functional alternatives to termination.⁷⁶ In no case is PGW's request fundamentally inconsistent with an existing Chapter 56 goal. For example, PGW has proposed to limit the ability of customers to enter into a never-ending number of payment agreements, but has not proposed to completely eliminate the goal of Chapter 56 – to offer payment arrangements as a functional alternative to termination.

— The proposals maintain a customer's right to appeal to the PUC when extreme hardship would result, assuring that PGW's implementation of its modified rules will continue to be subject to independent review and revision to take account of special circumstances.

In addition, at least three basic assumptions undergird the various proposals:

- Only Customers Whose Income Level Makes Them Eligible for CRP and LIHEAP Should Be Viewed as Having an Inability to Pay.

All PGW customers who can pay must pay, in order to relieve the very serious burden that non-payers are imposing on remaining customers. Customers who have an inability to pay should be protected via established federal and state low income assistance programs. Importantly, PGW believes that the only standard that properly may be used to designate customers with an inability to pay is the standard used to determine income eligibility for the PUC's low income assistance program – CAP (referred to as "CRP" by PGW) – which sets the standard at 150% of the Federal Poverty Level or below (which is the same as LIHEAP). Several of the parties opposing PGW's proposals have suggested that the Commission should utilize a broader definition of "ability to pay," to include the "working poor" and that Chapter 56

⁷⁶ 52 Pa. Code § 56.1.

is designed to protect such customers.⁷⁷ But the Commission has clearly delineated the groups of general customers who, in its view, are deserving of support in paying their utility bills – customers at the 150% of the federal poverty level or less (income levels 1 and 2 under the BCS income level standards). While PGW understands and appreciates the concerns expressed by the parties regarding the ability to pay of customers in higher income groups, Chapter 56 should not and can not be used as a “stealth” assistance program for such customers.⁷⁸ It is both unfair and legally indefensible to create mechanisms that force the remaining general body of customers to subsidize other, non-protected customers unless those customers fall into some other protected class, such as senior citizens.⁷⁹ The Commission’s CRRC Order demonstrates the same.

- All customers have an obligation to pay the charges for the utility service they receive both in full and on time.

Just recently, in the now seminal *Frayne* decision,⁸⁰ the Commission made clear that this obligation is at the heart of Chapter 56:

Thus, at the very beginning of Chapter 56, there is the requirement of good faith on *both* parties to a payment arrangement. Just as the utility is required to abide by the terms regarding provision of service, the customer is required to abide by the terms governing timely payment.⁸¹

- Individual waiver mechanisms will not work for PGW.

In many instances, PGW could attempt to obtain the result it is seeking through this waiver request by applying for an individual, legal ruling from the PUC on a case-by-case basis. But the sheer volume of PGW’s collections problem makes such an approach infeasible. About

⁷⁷ See, e.g., OCA St. FCI-1 at 18-21; Action Alliance St. 1 at 8-10.

⁷⁸ OTS’s Mr. Mumford conceded this point when he admitted that Chapter 56 does not create a right or goal of allowing non-CRP level customers to continue to receive service and just pay whatever they can. Tr. 703, Ins. 4-22.

⁷⁹ PGW St. CP-1R at 11-12.

⁸⁰ *Mary Frayne v. PECO Energy Company*, Docket No. C-20029005, Opinion and Order (Sept. 10, 2003).

⁸¹ *Frayne*, supra. at 6 Tr. 729-30 (OTS’s Mr. Mumford admits the same).

one-half of PGW's total customer base is payment troubled; PGW had some 133,000 customers who were in arrears as of April,⁸² a number which has now grown to 150,000;⁸³ it anticipates having to terminate some 30-35 thousand customers by December 1;⁸⁴ and it has entered into some 54,000 payment agreements (91% of which, historically, have been broken).⁸⁵ Seeking to address this volume through an individual adjudicatory process is simply not feasible. For example, the Company has identified almost five thousand instances in which service was terminated at a particular location and then, shortly thereafter, service was applied for and initiated under the name of another person.⁸⁶ Each of these represent a potential instance in which a customer might have been seeking to avoid responsibility for a prior arrearage by having some other adult in the house apply for service. Obviously, even if PGW sought to challenge just 10% of these instances, it would need an army of lawyers and customer service experts to establish at the PUC that each new applicant should be held legally responsible for past arrearages. A demand that PGW follow this approach is tantamount to condoning this gaming of the system. Only by application of new rules – subject to challenge by the customer if he/she believes that PGW has gotten it wrong – will PGW be able to manage its enormous collections problem.

2. Specific Waiver Requests.

Following is a detailed discussion of each of PGW's Chapter 56 or administrative rule waiver requests. For each request, PGW will provide a summary of the initiative and a description of the existing rule, a discussion of the justification for the proposed change, a discussion of the concerns raised by the opposing parties and, finally, a showing of why the revision in consumer rights is justified in light of PGW's need to increase collections and cash working capital. In addition, PGW will explain how the Responsible Utility Customer

⁸² PGW Exh. CP-1, App. A at 5

⁸³ PGW St. CP-1R at 27.

⁸⁴ PGW Exh. CP-1, App. A at 5.

⁸⁵ Tr. 685; PGW Exh. CP-1, App. A at 6.

⁸⁶ PGW Exh. CP-1, App. A at 10.

Protection Act, recently approved by the Pennsylvania House of Representatives, proposes to handle the policy issue.

Importantly, each waiver request assumes that all remaining Chapter 56 procedures, either as written or as modified by a specific PGW request, would continue to apply. So, for example, PGW's request that the winter moratorium prohibition be waived for Income Level 3 and 4 customers contemplates that the Company would nonetheless be subject to all remaining PUC rules or BCS administrative procedures applicable to termination.

a. Permit PGW to Require Payment of the Full Balance and Related Charges to Restore Level 3 and 4 Customers Who Have Been Shut Off for Non-Payment. (Estimated Value: \$4.2 million).

(1) Background.

Under this proposal, PGW would be permitted to require customers to pay 100% of any outstanding arrearage as a condition of reinstating service after termination, for customers who are identified as income Level 3 (incomes of greater than \$28,275 and less than \$56,550 for a family of 4) and 4 (income levels over \$56,550 for a family of 4).⁸⁷ The present Chapter 56 rule, that a customer has a right to pay-off outstanding charges on an amortized basis,⁸⁸ would continue to apply to all other customers.

(2) Justification.

The facts justifying this proposal are straightforward and disconcerting:

- The number of PGW customers in arrears is enormous: As of April 1st, 133,000 customers were subject to receiving service termination notices,⁸⁹ and by the time of the hearing in this proceeding that number was up to 150,000;⁹⁰

⁸⁷ PGW CRRC-5, Exh. TEK-5.

⁸⁸ 52 Pa. Code § 56.191.

⁸⁹ PGW Exh. CP-1, App. A at 5.

⁹⁰ PGW St. CP-1R at 27.

- Of those customers, some 54,000 or more will likely enter into payment arrangements,⁹¹
- Most importantly, PGW's historic payment arrangement success rate is only 8-9%.⁹² This means that of the 54,000 or more customers who will be given a payment arrangement to pay their past due utility bills, less than 10% will actually honor that good faith agreement.

PGW's "lack of success" rate with payment agreements means that, without this waiver, a large number of upper income customers will break their agreements, be terminated and, rather than being required to pay their full outstanding balance as a condition of reinstatement, they will instead be given the chance to repay the outstanding arrearage over a period of months. The full payment requirement is only imposed on customers who have already been terminated at least once, therefore, providing consistency with the Chapter 56 policy goals of giving customers a functional alternative to termination.

While the PGW proposal would increase the payment that a non-low income customer would be required to remit, its effect on customers is limited by applying it to only Level 3 and 4 customers. As discussed above, customers at this level are assumed to have the ability to pay.

(3) Value to PGW

At the end of April 2004, approximately 133,000 accounts were eligible for shut-off. Of the 133,000 accounts, service will likely be terminated to approximately 33,000 accounts before December 1. Of the 33,000 accounts, approximately 7,500 are Level 3 and 4 customers. Experience shows that 90% of terminated customers reconnect service. It is therefore anticipated that 6,750 of the 7,500 customers will reconnect. Based upon an average account balance of all level 3 and 4 customers of \$620.00 as of April 2004, the estimated value is \$4.2 million (6,750 X \$620.00 = \$4,185,000).⁹³

⁹¹ See, Tr. 685.

⁹² PGW Exh. CP-1, App. A at 6.

⁹³ PGW Exh. CP-1, App. A at 5.

Action Alliance witness Geller has criticized this calculation, claiming that it fails adequately to take account of the amount of up front payment the Company can demand under existing regulations.⁹⁴ But, by Mr. Geller's own admission, PGW currently can only demand payment of 75% of an arrearage from a level 4 customer – of which PGW has less than 5%.⁹⁵ Only approximately 41% of its customers are in Levels 3 and 4.⁹⁶ Even if present rules would produce one-half of the predicted benefit, the proposed change will still produce a significant incremental benefit.

(4) Opposing Party Arguments.

The principal arguments raised by the opposing parties is that, even for Level 3 and 4 customers, requiring full payment of outstanding arrearages before a terminated customer can be reinstated could deny service to customers who, while exceeding the income level at which payment assistance is available, may, nonetheless, have trouble paying their utility bills.⁹⁷ But the PUC's policy is to protect the class of customers whose incomes are 150% of the FPL or less, not every customer, regardless of income level who has trouble paying his/her gas bill for some reason. Moreover, the opposing parties made no distinction between a family making \$30,000/year or a family making \$100-200 thousand/year. Their failure to make any distinction makes their entire testimony unreasonable.

As for the concern that adhering to strict income guidelines prevents individual circumstances from being considered, PGW witness Gyory indicated during rebuttal that the Company would be willing to modify its proposal to permit customers subject to this rule to file an informal appeal with BCS not only if there was some billing error but also if the customer

⁹⁴ Action Alliance St. 1 at 13.

⁹⁵ PGW's estimate of the number of customers with incomes over \$50,000, presented *unchallenged in the* CRRC proceeding, was 900 of 133,000 customers in arrears, or less than 1%. PGW St. CRRC-5 at 16. The number of non-paying customers with incomes over \$40,000 (Level 3) was 8700, or just 7.2%. *Id.* In answer to a question on cross-examination, OCA witness Colton opined that he didn't support the results of this study despite the fact that his "analysis" apparently consisted of listening to an answer given by Mr. Gyory during cross-examination. Tr. 794-5. In fact the study, using available income data and zip codes, it is the best available evidence of the income levels of PGW's payment troubled customers.

⁹⁶ Based upon the CRRC study, 54,600 of 133,000 customers, or 41%, have incomes above \$30,000. PGW CRRC St. 5 at 16.

⁹⁷ PGW St. CP-1R at 22-25; Action Alliance St. 1 at 9-12.

could show “extraordinary hardship.”⁹⁸ In such a circumstance, the customer could be given one additional opportunity to pay off his/her arrears under some schedule established by BCS. But, if that customer breaks that agreement and is terminated, no further dispensation should be permitted.⁹⁹

Finally, Mr. Mumford, for the Office of Trial Staff suggested that it was inappropriate to administratively determined income guidelines as the basis for a Chapter 56 modification.¹⁰⁰ But PGW is not proposing that these standards be built into regulations¹⁰¹ – only that a specific set of procedures authorized especially and only for PGW be approved by the PUC and reflected in PGW’s tariff, subject to the Commission’s continued monitoring and review.¹⁰² We envision that the Commission and the Company could identify and propose changes to these rules if actual experience makes such revisions appropriate. PGW used the guidelines because they are known to its service representatives and the PUC and because, as much as possible, it is important to eliminate individual reviews and investigations from the credit/collections process for PGW. Unlike the other gas companies, PGW has the unlucky fact of a huge number of customers who fall into the credit/collection path – some 250 THOUSAND customers are “payment troubled” on PGW’s system – far more, it believes, than any utility.¹⁰³

(5) The Modification Is Justified When Balanced Against The Consequences to PGW and All Its Customers If PGW Fails To Improve Collections.

⁹⁸ PGW St. CP-1R at 13.

⁹⁹ *Id.*

¹⁰⁰ OTS St. 4 at 30.

¹⁰¹ PGW St. CP-1R at 12-13. As Appendix B to PGW’s Petition expressly stated, the “regulation” style changes set out therein were for illustrative purposes only and were not proposed for promulgation as formal regulations. PGW is proposing that the specific rules governing it after the waivers are issued would be included in tariff revisions, while the PUC Order would serve as general permission for the activity.

¹⁰² In Appendix B to its Petition, PGW provided exemplary amendments to Chapter 56 to show how the proposals would modify the regulation. They were not intended to be an exhaustive list of all the ways in which PGW’s proposals will modify existing rules. PGW Exh. CP-1, App. B.

¹⁰³ PGW St. CP-1R at 12-13.

By permitting this change, the Commission will increase the chances that the Company will collect a substantial portion (\$4.2 million) of its receivables from these customers. While current rules would give the Company the opportunity to demand 50-75% of these arrearages in upfront payments, those decisions frequently are reversed by BCS upon appeal. For example, in the informal complaint resolution placed into the record, a non-CRP customer, and therefore one who was in an income Level 3 or 4, was permitted to receive service by paying a budget amount for current service together with just \$100/month even though the location had an arrearage of over \$7,000.¹⁰⁴ Permitting a customer to get back on the system without paying a large portion of his/her entire arrearage will put the Company in the position of losing a huge amount of up-front collections and risking recovery of the remaining balance while having to expend dollars to provide the customer with natural gas service, yet again, without realistic opportunity of full payment.

Notably the policy determination made by the Pennsylvania House in the Responsibility Utility Customer Protection Act is consistent with PGW's proposal in that it requires full payment of any balance outstanding as a condition of reconnection of utility service for any customer whose income exceeds 150% of the Federal Poverty Level.¹⁰⁵

b. Waive the Winter Moratorium Shutoff Ban for Level 3 and 4 Customers. (Estimated Value: \$1 million)

(1) Background.

Currently Chapter 56 prohibits PGW from terminating customers who are in arrears except in very limited and specific circumstances and only after receiving approval from the PUC.¹⁰⁶ PGW proposes to establish a presumptive rule that customers that can be identified as

¹⁰⁴ PGW Cross Exam Exh. CP-3.

¹⁰⁵ S.B. 689, Section 2807-D(C).

¹⁰⁶ 52 Pa. Code § 56.100. Attached to the testimony of BCS Mumford is a Secretarial Letter issued in 1993 which sets forth the procedure and criteria by which a utility can petition for a waiver of the winter moratorium for individual customers. OTS St. 4, Exh. 4, Sch. 3. In addition to requiring a plethora of information from the utility about the individual customer, the Secretarial Letter prohibits a waiver request for any household where: (a) the household gross income is below 150% of the federal poverty level; (b) children under the age of 12 are in the house; (c) senior citizens are present (age 60 or over); (d) physically or mentally handicapped household members are living at the premises; (e) seriously ill household members reported by the customer during the most recent contact between the customer and the utility; and (f) no landlord/tenant relationship is affected by the proposed termination. *Id.*, p. 3. Characterizing a

falling into income Levels 3 or 4 would be subject to termination even in the winter, subject to the customer's right to file a complaint with the PUC demonstrating that extraordinary circumstances should prevent termination.¹⁰⁷

(2) Justification.

The facts justifying a general rule permitting winter shutoffs for Level 3 and 4 income level customers include the following:

- As indicated above, of the 54,000 or so customers who will be extended payment agreements in this fiscal year, most will break their agreement. Of those who will break those agreements, a significant portion will do so during the winter when PGW has no effective recourse other than to continue to provide them with service.
- Contrary to the unsupported assertions of the other parties, PGW does indeed have customers who fail to pay during the winter and would otherwise be terminated. Last winter, PGW had over 15,000 customers (all non-CRP), representing \$5.3 million of accounts receivable, who were on the system from December 1, 2003 through at least March 31, 2004 without paying a single cent toward their bill.¹⁰⁸ Without the winter moratorium, all of those customers would either have been forced to enter into a payment arrangement or would have been terminated. As a result of the winter moratorium, PGW was forced to continue to provide service to those 15,000 customers, thereby transferring both the \$5.3 million in potential uncollectibles as well as the cost of the gas provided and the cash working capital effect of not receiving payment from these customers in a timely way, to the remaining body of customers.

winter termination as "a serious penalty for those who do not pay their bills," the Secretarial Letter directs "strict adherence to the procedures outlined in this letter," and the Commission will entertain such petitions "only when the utility can clearly demonstrate that it has undertaken all other possible alternatives to elicit payment." *Id.*

¹⁰⁷ PGW Exh. CP-1, App. A. at 5-7.

¹⁰⁸ PGW St. CP-1R.

- Without a general rule governing shutoffs for upper income level customers, PGW will have no ability to enforce any type of payment requirements for a full four months even though about 23% of its delinquent accounts facing shut-off have incomes that exceed the “protected levels.”¹⁰⁹

As noted above, while individual waivers of the winter moratorium are possible, they are extremely difficult and limited and based on the individual circumstances of each and every potential subject of termination. As Mr. Gyory indicated, “[winter shutoff moratorium waiver procedure] are so cumbersome that the net practical effect for all Pennsylvania utilities is that no (or hardly any) residential customers are terminated in the winter.”¹¹⁰

(3) Value to PGW.

Creating a presumptive rule of “no winter moratorium” for upper income customers is estimated to produce some \$1 million of additional collections, assuming that PGW is able to proceed to either terminate or obtain payment from some 4,000 customers during the winter. While there are additional customers who would be potentially subject to such a termination, PGW’s existing capabilities will only permit it to terminate approximately 1,000 customers a month in the winter. Assuming that PGW obtains 50% of the amount outstanding, the Company stands to gain an additional \$1 million in collections, not including the avoided cost benefit of not sending out gas for which no payment will be received.¹¹¹

(4) Opposing Party Arguments.

The main argument raised against this proposal is that eliminating the winter moratorium, even for higher income customers, creates greater risks that those customers will be without natural gas service in the winter months, potentially causing hardship and inconvenience.¹¹²

¹⁰⁹ See, discussion *supra*.

¹¹⁰ PGW Exh. CP-1, App. A at 6.

¹¹¹ *Id.* at 7.

¹¹² OTS St. 1 at 26; OCA St. FCI-1 at 28-29; Action Alliance St. 1 at 25-26. OCA introduced its Cross-Exam. Exh. FCI-2, an excerpt from the PUC’s 2003 Cold Weather Survey showing numbers of households in PGW’s territory using potentially unsafe heating sources or without service, presumably to attack this waiver request. However, the OCA completely failed to link the data to PGW’s request; likely because it is utterly irrelevant. PGW’s waiver request regarding the moratorium is limited to income Level 3 and 4

However, none of the opposing witnesses were willing to accept a winter moratorium suspension for any customers, regardless of income. It is difficult to fathom why PGW should be required to continue to provide natural gas service to a nonpaying customer in the winter if that customer has an income of \$100,000 a year or more, for example. Yet no witness made any distinction in income levels in their outright opposition to PGW's suggested change.

The other argument raised in opposition to the PGW proposal is that it would eliminate an individual, case-by-case assessment of whether a winter moratorium waiver was justified in a specific case.¹¹³ But a reduction in the potential for case-by-case assessment is the reason PGW proposed the rules change in the first place. By any calculation, PGW is faced with several tens of thousands customers who are failing to pay or paying only a small amount on their gas bills during the winter. The winter moratorium permits these customers to do so secure in the notion that their failure to pay, or their failure to pay on time, will not result in their losing gas service for months. Creating a general rule that such customers in the higher income levels can be terminated in the winter without pre-approval of the PUC creates a potent collection tool, the existence of which in and of itself very likely will produce additional payments from customers.¹¹⁴ To protect against cases in which serious hardship could occur if the termination went forward, and to allow resort to social service and other alternative helping agencies, customers subject to this rule should be permitted to file an informal appeal with BCS if the customer shows "extraordinary hardship."

The only other criticism of PGW's request came from Mr. Colton who disputed what he claimed to be PGW's "underlying assumption" that customers subject to the winter moratorium took advantage of it to stop paying their bill.¹¹⁵ Mr. Colton was wrong on several counts. First PGW's own evidence shows that, contrary to Mr. Colton's non-specific evidence – some 15,000 PGW customers last winter completely stopped paying their utility bills even though such

customers, who are likely not the customers using the suspect heating sources or without service. Certainly, OCA provided no proof to that effect, nor did it provide any evidence that PGW's proposed waivers would in any way worsen the statistics in the PUC's Survey.

¹¹³ OTS St. 1 at 26-27.

¹¹⁴ PGW St. CP-1R at 14.

¹¹⁵ OCA St. FCI-1 at 26-27.

customers would normally have been terminated or have been put into a payment arrangement if termination had been an option.¹¹⁶ Second, PGW needs to combat both outright non-payment and failure to pay on time; its cash working capital and probably its bond rating depends on it.¹¹⁷

(5) The Modification Is Justified When Balanced Against The Consequences to PGW and All Its Customers If PGW Fails to Improve Collections.’

PGW’s proposal would create a presumptive rule that non-protected customers could be terminated in the winter months, hopefully reversing the traditional perception that its “OK” to ignore your gas bill in the winter. Considering PGW’s desperate need to add to its cash flow and increase collections, especially in the winter, the financial needs of the company outweigh the opposition to this change in the existing procedure.

Again, the Company’s position is consistent with the revisions to Chapter 56 which were adopted by the State House. The Responsible Utility Customer Protection Act would actually eliminate the winter moratorium for all customers whose gross household income exceeds 150% of the FPL. The declaration of policy in Section 2802-D of the Act clearly states that the motive behind this proposed reduction of the winter moratorium’s reach is the implicit finding that customers have a personal responsibility to pay their utility bills and, absent recognized low income status, they must.

c. Require a Flat Turn-On Deposit for All New/Restored Customers and Refuse Service Until Deposit is Paid in Full. (Estimated Value: \$7.6 million)

(1) Background.

One of PGW’s most important proposals is to require all non-CRP customers to remit a deposit as a condition for new service. The deposit would represent two months of the system average monthly residential bills (\$250 for heating customers and \$100 for non-heating customers). The deposit will be held for one year and then credited to the customers who

¹¹⁶ PGW St. CP-1R at 14-15.

¹¹⁷ *Id.* Mr. Colton appeared to disregard the effect on PGW of slow paying customers. For a cash flow utility such as PGW, slow payment is just as insidious as nonpayment, robbing PGW of crucial cash working capital at a time when it most needs it. *Id.*

demonstrate that they pay on time. PGW's proposal would replace or modify the Chapter 56 provisions with respect to deposits which actually prohibit a utility from demanding a deposit in a variety of circumstances including, where the customer's prior utility credit history is adequate, where the applicant owns a home or has leased a residence for more than one year, or where the "applicant provides information demonstrating that he is not an unsatisfactory credit risk."¹¹⁸

(2) Justification.

The justification for PGW's deposit proposal is compelling:

- PGW has a massive number of customers who start service but who do not pay their bills or do not pay on time. PGW had some 68,000 customers initiate service since the beginning of the fiscal year (excluding those who were enrolled in CRP or who immediately entered into some kind of payment arrangement or had some other issue with respect to their account);¹¹⁹
- Of this 68,000 starting service just this year, 18,466 (or 27%) are already in arrears;¹²⁰
- PGW only secured 1,500 deposits from this group of customers, using its existing manual deposit procedures and Chapter 56 rules;¹²¹
- If PGW's deposit proposal had been in place from the beginning of fiscal year, PGW would have a potential pool of \$4.6 million that could have been applied against customer non-payment or slow payment.¹²²

¹¹⁸ 52 Pa. Code § 56.32. Existing rules also allow a utility to require a deposit as a condition to reconnection of service following termination or, whether or not termination of service has occurred if a ratepayer fails to comply with a material term or condition of a settlement or payment agreement. 52 Pa. Code § 56.41.

¹¹⁹ PGW St. CP-1R, Exh. CP/RG-4.

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² PGW St. CP-1R at 17. Assumes an average deposit of \$250 per heating and \$100 for non-heating.

A second aspect of PGW's proposal is that the standard deposit amount be doubled for previously terminated customers applying for service in the winter months. The reason for this should be obvious: customers who are applying in the period October 1 through April 30 have the ability to immediately stop paying their utility bill and PGW will not be able to terminate them because of the winter moratorium. The evidence in the record shows that the shortest period of time by which PGW can terminate a customer after the initial provision of service is 80-82 days.¹²³ Thus a customer starting service in December could exact a full 4-6 months of free service from the Company and its timely paying customers without any fear of loss of service. This is simply intolerable, in light of the serious nature of PGW's plight and the customer's history of repeated instances of non-payment.

(3) Value to PGW

Using an average turn-on figure of 47,000 customers, and assuming that approximately 50% of the customers would sacrifice their deposit for non-payment or non-timely payment, the value of requiring a deposit from all customers would be \$5.9 million of additional cash working capital. Requiring a double deposit for customers who were previously terminated and are restored October through April 30th would produce another \$2.1 million.¹²⁴

(4) Opposing Party Arguments.

The principal argument against PGW's flat turn-on deposit requirement is that it is "unfair" to "innocent" customers who the Company has no reason to believe will not pay or not pay their bills on time.¹²⁵ These arguments run completely counter to the following facts:

- Low income customers who are eligible for CRP would not be subject to the deposit requirements.
- Deposits are regularly required in all sorts of commercial transactions without regard to credit status, including leasing a house or apartment, leasing a car,

¹²³ PGW Cross Exam Exh. CP-2; Tr. 804-05.

¹²⁴ PGW Exh. CP-4, App. A at 7-8.

¹²⁵ See, e.g., Action Alliance St. 1 at 14-17.

renting an appliance or a garden tool and many other examples. In many instances, they apply to “critical necessities of life” such as housing.

PGW indicated that it would be willing to permit customers to file complaints with the PUC if the deposit requirements would create significant hardship.¹²⁶ In such instances, the Commission could modify the deposit requirements by permitting the deposits to be paid out over time or to reduce it. PGW believes that only one such reduction or modification should be justified for each customer.

OCA witness Colton made a different argument, claiming that the only reason for a deposit requirement is to justify the loss for nonpayment of bills.¹²⁷ But, unfortunately, Mr. Colton again failed to understand that PGW, as a cash flow utility, is subject to two potential losses when faced with customers who do not honor their obligations: the outright loss of payment as well as the effect of untimely payment.¹²⁸ While Mr. Colton may be right that “late payment, standing alone, does not represent an adequate predictor of the loss of revenue due to bad debt,”¹²⁹ it is precisely the effects of late payment which PGW is attempting to mitigate.

Mr. Colton also indicated that a better alternative to the flat deposit requirement would be to implement a credit scoring procedure, where customers who could not pass a set credit score would be required to pay a deposit.¹³⁰ However, Mr. Gyory testified that PGW’s systems and procedures would not permit the credit scoring to go into effect until the third quarter in 2005, at the earliest¹³¹ making it unhelpful as a solution to its present cash flow problems.¹³²

¹²⁶ PGW St. CP-1R at 17.

¹²⁷ OCA St. FCI-1 at 31.

¹²⁸ PGW St. CP-1R at 16.

¹²⁹ OCA St. FCI-1 at 31.

¹³⁰ *Id.*

¹³¹ PGW St. CP-1R at 18.

¹³² Leaving no stone unturned, Mr. Colton also complained that returning the deposit back to customers as a credit was inappropriate because it did not support good payment practices. OCA St. FCI-1 at 33. This desire obviously must give way to the Company’s cash flow needs. Having to remit these deposits in cash would just cause another cash working capital drain that eventually would have to be financed by customers. PGW St. CP-1R at 17-18.

(5) The Modification Is Justified When Balanced Against The Consequences to PGW and All Its Customers If PGW Fails to Improve Collections.'

The need to improve PGW collections and cash working capital outweigh any reduction in existing consumer rights. PGW's proposal merely takes an existing security option (requiring a deposit) and expands the circumstances in which such an option can be exercised in order to meet its acute financial needs to reduce the losses from nonpaying and slow paying customers. Customers who honor their obligations will lose nothing – the deposit will be returned with interest after a year. Customers who fail to pay or do not pay on time have no basis for arguing that the deposit requirement is unfair. Low income customers are exempt since the deposit requirement would not apply to CRP customers (and any customer not in CRP is eligible to transfer into CRP). Customers who do not satisfy the CRP criteria but nonetheless would suffer extreme hardship as a result of the deposit requirements can file a complaint with the PUC. There is simply no compelling argument to refrain from implementing this simple change in order to provide the Company and its ratepayers a small cushion against the prospect of a bond downgrade. Supporting this conclusion is the fact that the Responsible Utility Customer Protection Act would permit all utilities to demand a deposit from any new applicant, customers who were previously terminated for non-payment and other reasons, or any applicant who is unable to establish credit.¹³³

d. Require All Applicants To Establish Positive Identification And Require Applicants Who Are Identified As Previously Residing At That Location Be Held Responsible For Any Previous Arrearage During The Time They Resided There. (Estimated Value: \$1.8 million)

(1) Background

PGW proposes a two-fold addition to the service initiation requirements: First, an applicant would be required to establish positive identification; i.e., to prove to PGW that the applicant is who he or she says they are. This would be done by requiring a social security number or other identifying information which would then be checked against a standard credit

¹³³ S.B. 689, Section 2804-D.

reporting data base.¹³⁴ No one seems to dispute the appropriateness of securing positive identification for new applicants to prevent fraud.

The second part of the proposed requirement is equally straight forward and compelling. PGW proposes to use its credit reporting data bases to identify customers who are applying for service and who lived at the same location previously. For most customers, the Company's credit reporting service lists existing addresses and length of time at the address as part of the information accumulated on the individual. Information from this data base that the applicant's current address is the same as the address at which service is requested would be a positive indication that the applicant was applying for service in lieu of the prior, terminated (or, about to be terminated) customer, both of whom were seeking to avoid responsibility for arrearages built up when they both enjoyed utility service. PGW then proposes to require the applicant to take responsibility for the prior arrearage only for the period of time in which the PGW data base indicates that the customer resided at that same location.¹³⁵

Presently, Chapter 56 has no explicit rule about requiring a customer to provide information that positively identifies him or her, although presumably it would fall into the Chapter 56 requirement of good faith and fair dealing on the part of both the Company and the utility customer.¹³⁶ With respect to PGW's proposal to apply prior arrearages built up at a location to an applicant where factual information establishes that the applicant had resided at that same location, Chapter 56 already has a provision which permits such an application when the PUC determines that the applicant is "legally obligated to pay for the service."¹³⁷ It was demonstrated that the PUC Bureau of Consumer Services reads Chapter 56.35 to permit it to assign a prior arrearage to a new applicant whenever the facts show that the new applicant benefited from the utility service and should be responsible for the past charges.¹³⁸

¹³⁴ PGW Exhibit CP-1, App. A at 9, 10.

¹³⁵ *Id.*

¹³⁶ 52 Pa. Code § 56.1.

¹³⁷ 52 Pa. Code § 56.35.

¹³⁸ PGW Cross Exam Exh. 3; Tr. 831-33.

(2) Justification.

The record demonstrates that PGW's proposal changes existing rules only to a degree: it would establish a presumption that where there is factual evidence demonstrating that an applicant resided at the same address for which he or she is applying for service, the applicant should be responsible for the arrearage developed during the time the applicant resided at that address. The need for this rule stems from the large number of instances in which PGW believes customers are seeking to shirk their obligations to pay for service they receive by merely having a family member or another adult member of the household apply for service after termination. For example, PGW witness Gyory testified that in FY 2003 almost 5,000 (4,800) terminated accounts at a particular location were reinstated shortly after termination under a new name.¹³⁹ Importantly, PGW does not know – and never claimed to know – how many of the accounts were reinstated after termination but under a different name at the same address and the applicant would actually qualify for having the prior arrearage assigned to him/her. Such information is extremely difficult to garner retroactively since the applicant may well be engaging in activity that clearly is designed to circumvent taking responsibility for a prior arrearage, tantamount to fraud. People are usually not very forthcoming when such is the motive. While the present Chapter 56 would apparently permit PGW to seek a ruling from the PUC that the applicant should be responsible for a prior arrearage (as it did in the informal complaint that was placed on the record in this proceeding)¹⁴⁰ the sheer volume of cases that PGW would have to confront in this way is so huge that requiring it to follow the existing rule would mean that it would not be able to effectively combat this practice.

(3) Value to PGW

In 2003, 23,000 accounts were shut-off and 4,830 of these accounts were restored under a different name and without payment. The average balance of the arrearage was \$2,300. Of the 4,830 accounts, assuming 50% qualify to have the prior balances transferred (2,415) and further assuming that 25% of the 2,415 accounts (604 - L3's and L4's) pay the full balance, the estimated value will be \$1.4 million (\$2,300 x 604). As for the remaining 1,811 customers

¹³⁹ PGW Exhibit CP-1, App. A at 10.

¹⁴⁰ See, PGW Cross Exam Exh. CP-3.

(2,415 - 604) who, it assumed, qualify to have prior balances transferred, payment of a restoration fee and/or deposit in the amount of \$250.00 per customer will provide an additional value of \$453,000 (1,811 x \$250), thereby resulting in a total rounded estimated value of \$1.8 million (\$1.4M + \$0.4M).¹⁴¹

(4) Opposing Party Arguments.

All three of the parties responding to this specific Chapter 56 waiver opposed this rule change.¹⁴² But their main reason for opposing it – that it was legally impermissible to assign a prior arrearage to an applicant when the applicant was shown to have lived at the same residence and receive the benefit of utility service, unless proof was forthcoming that the applicant had engaged in fraud, was contractually obligated to pay for the prior utility service or where a court had found that the applicant was so responsible – was shown to be wrong. The PUC has already interpreted its Chapter 56 rule to permit the assignment of such arrearages to an applicant on the basis of a determination that the applicant benefited from the service and had sufficient ties to the prior customer.¹⁴³ In that case, a mother was assigned joint responsibility for gas bills that had not been paid while both she and the previous customer, her adult daughter, lived at the residence. It is hard to understand how assigning the prior arrearage to the applicant-mother is anything but fair and reasonable.

The other suggestion that it is somehow legally impermissible to force an applicant to take responsibility for the service he/she enjoyed is not credible. The PUC is not bound by strict contractual rules and frequently makes determinations in attempt to balance the equities in the “public interest.” But, even the underlying assumption of the parties -- that it is somehow not consistent with law to assign an arrearage to an applicant who has lived at the same location and enjoyed the benefits of utility service -- is fundamentally flawed.

¹⁴¹ PGW Exh. CP-1, App. A at 10-11. Because of the nature of the activity sought to be addressed, a more definitive calculation is not possible. However, the appropriateness of this proposed rule change is not dependent upon a precise quantification of the additional collections that will result if it is implemented. Just as important, is the effect such a rules charge will have in signaling that such gaming will not be tolerated.

¹⁴² *See, e.g.*, OCA St. FCI-1 at 36.

¹⁴³ *See*, PGW Cross Exh. CP-3; Tr. 831-33.

In fact, the Company's proposal to apply 52 Pa. Code § 56.35 in the manner requested is supported by the theory of quantum meruit or unjust enrichment. In order to establish a claim for quantum meruit or unjust enrichment, a plaintiff must prove: 1) a benefit was conferred on the defendant by the plaintiff; 2) appreciation of such benefit by the defendant; and 3) acceptance and retention of such benefit under circumstances that would create an inequity if the defendant retained the benefit without payment.¹⁴⁴ When such is shown, courts regularly make the beneficiary liable for the value of the benefit received.

When a customer is terminated, or threatened to be, for non-payment, and then avoids the arrearage by inducing someone else in the same household to apply for service, the customer is unjustly enriched vis a vis his receipt of gas service at that address on a going forward basis. Additionally, the new applicant is unjustly enriched to the extent that the new applicant resided at the same service address, enjoying gas service, during the period in which the arrearage was incurred.

Such a conclusion is clearly supported when the elements of unjust enrichment are applied to the instant situation. First, PGW conferred a benefit on the new applicant, who resided at the service address during the period gas service was provided under the first customer's name. Likewise, a benefit is conferred on the first customer, as he will continue to receive gas service despite termination or the threat thereof. Second, both the customer and applicant enjoy the benefit conferred, and appreciation of the gas service is clearly demonstrated by the new applicant's attempt to restore/continue the gas service. Finally, an inequity occurs when customers who have received the benefit of gas service do not pay for gas service. The inequity extends to both the Company and its paying customers who must bear the cost of this non-payment. Additionally, further inequity and cash flow problems are created when the Company's current bad debt expense exceeds the level set forth in the Company's currently approved base rates, which is the case today for PGW.

Courts have also held that when determining whether this doctrine applies, the focus is not properly directed towards the intent of the parties, but rather towards whether the defendant

¹⁴⁴ *J.F. Walker Company, Inc. v. Excalibur Oil Group, Inc.*, 792 A.2d 1269, 1273 (Pa. Super 2002).

has been unjustly enriched.¹⁴⁵ Such holdings directly speak to the nature of the new applicant's relationship to PGW before the new applicant's request for service. Specifically, during this period of prior service, PGW and the new applicant were not in privity of contract. Regardless, courts have found that privity is not necessary as long as a defendant was unjustly enriched and, as established above, when a new applicant has resided at the same service address during any period in which an arrearage is accumulated and unpaid, the new applicant has been unjustly enriched.

Courts have found unjust enrichment under similar circumstances in Pennsylvania when one accepts a benefit without paying for it.¹⁴⁶ Accordingly, PGW's proposal is fully supported in law, even if such strict legal support is unnecessary for a PUC regulation or rule.

Importantly, PGW's proposal is that such prior arrearages will only be assigned to customers when specific factual information exists. The commercial data base that PGW intends to use to make this match is widely available and the identifying data in it is considered to be accurate and reliable. In that instance, there can be no doubt that the customer received the benefit of utility service during that period of time.¹⁴⁷ Moreover, PGW indicated that the customers would have a right to file complaints with PGW and the Commission if the factual

¹⁴⁵ *Id.*; *Mitchell v. Moore*, 729 A.2d 1200, 1204 (Pa. Super 1999).

¹⁴⁶ For example, In *J.F. Walker Company, Inc. v. Excalibur Oil Group, Inc.*, a buyer originally contracted with seller #1 for the purchase of merchandise that was to be sold at buyer's gas stations. *Supra* at 1270. After seller #1 became insolvent, seller #2 became the successor in interest and seller #2 continued to sell merchandise to buyer without a contract between seller #2 and buyer. *Id.* Although buyer accepted all merchandise from seller #2, buyer eventually stopped paying seller #2 for the merchandise. *Id.* Based on these facts, the Pennsylvania Superior Court found that the buyer was unjustly enriched. *Id.* at 1273. Additionally, in *Chesney v. Stevens*, a tenant leased (on a month to month basis) an old dwelling for a sum which reflected the poor condition of the property. 644 A.2d 1240, 1241(Pa. Super 1994). During a seven year period, the tenant made substantial improvements to the dwelling and after completion of these improvements, the landlord gave the tenant a fifteen day notice to vacate the leased premises. *Id.* at 1242. Although the tenant and landlord never had an agreement for reimbursement of the improvements, the Pennsylvania Superior Court found that the landlord was unjustly enriched and affirmed the lower court's award for the increased value of the leased premises. *Id.* at 1242-45.

¹⁴⁷ PGW is not proposing to assign prior arrearages to a customer for periods when that customer did not reside at the subject premises. Accordingly, Mr. Geller's citation of *Baylor v. PECO*, (Action Alliance St. No. 1 at 19) is inapposite at best and misleading at worst. In that case, a daughter moved into the account premises to join her mother who was on the verge of termination of service and the utility attempted to make the daughter responsible for the mother's entire arrearage, including amounts for service prior to the daughter living at the residence. This is not PGW's proposal.

basis on which the Company was assigning the arrearage to the new applicant was incorrect.¹⁴⁸ Requiring applicants to take responsibility for charges that were accumulated during the time that they lived at the same location and enjoyed the benefits of the utility's service was affirmed as reasonable in the Responsible Utility Customer Protection Act.¹⁴⁹ Indeed, under the legislation, an applicant is not even entitled to receive service if the applicant can not prove that he/she did not previously reside at the location for which service is sought.¹⁵⁰

(5) The Modification Is Justified When Balanced Against The Consequences to PGW and All Its Customers If PGW Fails to Improve Collections.'

PGW's proposal would have a two-fold benefit: 1) it would permit PGW a workable and efficient procedure to attack a practice that robs the Company of a key weapon to increase collections and could be denying it as much as \$1.8 million per year. Just as important, a presumptive rule of this type would serve an important signal to customers to refrain from *engaging in this practice, so that the Company might be faced in the future with fewer and fewer attempts to circumvent customer responsibilities in this way.* Again, in light of the serious financial problems facing PGW, and the potential volume of instances of customers using this practice, PGW's presumptive rules change is fully justified.

e. Allow Each Customer Only One Payment Arrangement Unless There Is A Change In Circumstances Related To Income Level Which Places The Customer In A Lower BCS Income Level.
(Estimated Value: \$7.25 million)

(1) Background.

PGW's proposal is to establish clear rules for payment arrangements, both in terms of the number of payment arrangements a customer can obtain and the repaying agreements that are required. Here are the specifics of the proposal:

¹⁴⁸ Indeed, Mr. Gyory indicated that PGW, in the first instance, would review the complaint of a customer and, if the customer were able to show that he had already paid for the utility bills or had a contractual arrangement with the prior customer that obligated that customer to pay the bills, PGW would not attempt to assign the arrearages to the new applicant. Tr. 712-14.

¹⁴⁹ S.B. 689, Section 2807-D(C).

¹⁵⁰ *Id.*, Section 2808-D.

- Absent specific changed circumstances, customers would be entitled to only one payment arrangement after they fail to live up to their obligation to pay for their natural gas service.
- For income Level 4 customers (annual incomes above \$57,000 for a family of 4), the single payment arrangement would have a payback period restricted to a maximum timeline of twelve months and a payment amount of \$100 minimum. If that payment arrangement is broken, the customer would be required to pay the outstanding balance in full.
- For income Level 3 customers (annual income levels above \$28,275), a single payment arrangement with a minimal payment per month of \$100 over a maximum timeline of 24-months would be permitted; if the payment arrangement is broken, the customer will have one opportunity to cure the payment arrangement (i.e., to pay any past due amounts in order to make the payment arrangement current). If the customer is unable to cure the payment arrangement or the customer fails to stay current on the payment arrangement, service would be terminated without offering any further payment arrangements.
- Income Level 2 customers would be offered one payment arrangement, with a minimum payment per month of \$40. If the payment arrangement is broken the customer will be required to cure the payment arrangement, and would have additional opportunities to do so if customer was not able to maintain the payment arrangement.
- For income Level 1 customers, the proposal is the same except that the minimum payment arrangement would be \$15 per month.
- As noted, customers would only be permitted to enter into another payment arrangement if their income level drops from one income level to another.¹⁵¹

¹⁵¹ PGW Exh. CP-1, App. A at 11.

Importantly, PGW's proposal is different only in a degree from the established interpretation of Chapter 56 requirements articulated in the *Frayne* decision.¹⁵²

(2) Justification

Again, PGW's unique circumstances justify these presumptive rules regarding payment arrangements. Most compelling is the fact that of the over 54,000 payment arrangements that PGW will enter into this year, only 8%-9% will actually be honored to completion if historical patterns hold.¹⁵³ PGW is thus massively hemorrhaging from customers who take public utility service, fail to pay for it and then, when given a second chance to meet their obligation, fail to honor that second obligation. PGW's presumptive rules would establish "bright lines" which would limit the number of payment arrangements and allow PGW to process the tens of thousands of broken arrangements with which it is faced in a timely manner. This assures that the Company will either receive payment for the service that has been provided or has the ability to terminate the customer in a timely manner.

(3) Value to PGW

50,000 payment arrangements are broken annually. Assuming an average cure amount of \$125.00 (which is one missed payment of an average annual residential gas bill of \$1,500 (\$1,500 / 12 months)) for each of these broken payment arrangements, this equals \$6.25 million (50,000 x \$125). Additionally, reductions in accounts receivable carrying costs for level 3 and 4 accounts receivable balances can be anticipated in the amount of \$1 million which is based upon April 2004 level 3 and 4 accounts receivable balances of \$20.5 million multiplied by 4.8%.¹⁵⁴

(4) Opposing Party Arguments

The principal argument against PGW's proposal is that it does not adhere strictly enough to the *Frayne* decision and limits the discretion of the Commission to allow customers who have failed to pay to enter additional payment arrangement opportunities in a host of potential

¹⁵² *Mary Frayne v. PECO Energy Company*, Docket No. C-20029005, Opinion and Order (Sept. 10, 2003). S.B. 689 mandates rules very similar to those requested here. See, § 2805-D.

¹⁵³ See, PGW Exh. CP-1 at 23; PGW St. CP-1R at 21-23.

¹⁵⁴ PGW Exh. CP-1, App. A at 12.

“changed circumstances.”¹⁵⁵ Indeed, the Company asserts that under its present economic conditions, such unlimited potential free-rides simply cannot be justified and are not fair to other customers who must assume the burdens of uncollectible accounts. However, in an effort to respond to opposing arguments, PGW is willing to modify its proposal to permit customers to complain to the PUC to request a revised or additional payment agreement when application of the general rule would create extreme hardship (in contrast to PGW’s original proposal that exceptions be entertained only for billing or other errors).¹⁵⁶ Since in other respects the proposed rule is virtually identical to the rule that has already been established by the PUC in its recent general policy guidance, there is no reason that it should not be adopted.

(5) The Modification Is Justified When Balanced Against The Consequences to PGW and All Its Customers If PGW Fails to Improve Collections.’

This proposal merely establishes a bright line rule by which to apply BCS guidelines, potentially eliminating appeals and permitting PGW to fully implement these modified guidelines. Considering the total value of applying the rules in this way, the modifications are a relatively easy way in which to provide PGW with needed collections improvement with minimal change in the general rules.

f. Allow Friday Shutoffs. (Estimated Value: \$2.5 million)

(1) Background:

Currently both Chapter 56 and the Public Utility Code prohibit utilities from terminating a customer on Fridays, Saturdays, or Sundays.¹⁵⁷ This rule dates back to the late 1970s during which utility companies were almost never open on Saturdays and access to funds was also more difficult. Because the PUC has the legal discretion to modify sections of the Public Utility Code for PGW when such modifications are found to be in the public interest,¹⁵⁸ PGW’s proposal

¹⁵⁵ See, e.g., Action Alliance St. 1 at 22-23; OTS St. 4 at 25-26.

¹⁵⁶ See, PGW St. CP-1R. PGW believes that only one such modification should be permitted for each customer.

¹⁵⁷ 52 Pa. Code § 56.82; 66 Pa. C. S. § 1503(a).

¹⁵⁸ See, 66 Pa. C.S. § 2212(c).

presents a unique opportunity to revise this antiquated rule to help PGW and develop empirical evidence of the effect of Friday shutoffs to determine whether state-wide revision is appropriate.

(2) Justification.

PGW does not believe there is any justification whatsoever for failing to permit shutoffs on Fridays. PGW has committed to keeping its collections department open on Saturdays and to be in a position to restore service within the required time if a customer makes adequate arrangements to do so. No such "Friday Prohibition" rule exists in any other context, to PGW's knowledge. For example, oil or propane dealers are not prohibited from refusing to deliver their product (effectively terminating service) on any day of the week; there is no prohibition against eviction for non-payment from a rental home or apartment. In all of these instances, customers must bear the consequences of waiting until the very last minute to take action to respond to a non-payment problem.

(3) Value to PGW

Merely allowing a fifth day of on which termination can occur provides an additional 35 days per year for shutoffs between April 1st and December 1st. At an average collection rate per day of \$70,000, the estimated value of this one change is \$2.5 million.¹⁵⁹

(4) Opposing Party Arguments.

Incredibly, even this minor change was met with vehement opposition by virtually all of the parties commenting.¹⁶⁰ In essence, the theme was that a customer who is shutoff on a Friday might not be able to utilize the panoply of response mechanisms that a customer might wish to utilize on Saturday. They complained that terminated customers might not be able to do such

¹⁵⁹ PGW Exh. CP-1, App. A at 12-13. PGW did not include the cost of keeping its operation open to handle customer calls in response to the termination but the incremental cost is minimal. No additional employees or outside contractors would be needed and PGW would not necessarily have to pay overtime if it scheduled the employees for such actions.

¹⁶⁰ See, OTS St. 4 at 14-15; Action Alliance St. 1 at 30-31. OCA witness Colton did not express outright opposition but stated that it should not be granted unless PGW can "document that customers will have access to the full range of commercial and community resources" to respond to the termination, presumably on the day after the termination. OCA St. FCI-1 at 42. As detailed above, there is no basis for creating this requirement, which, if taken literally could potentially limit terminations at a host of times and circumstances.

things as file a complaint with the PUC, contact their doctor's office, contact a state agency or community based organization, or borrow money, all of which were assumed to be not doable on Saturday.¹⁶¹

First, there is no evidence that all of these response opportunities are actually unavailable on Saturdays. Many physicians are indeed available on Saturdays; all hospital emergency rooms are. Community organizations that deal with energy assistance certainly have reason to be available on the weekend, since Friday denials of service are not barred for non-PUC regulated entities. Some banks and financial companies are now open seven (7) days a week; all ATMs are so available.

But even more important, unstated by any of the opponents was the fact that a customer is only terminated for non-payment at least six (6) weeks after the customer first receives a bill showing an overdue amount.¹⁶² While some of the opponents would only grudgingly admit that a customer should be aware that an overdue utility bill could result in termination of their service,¹⁶³ the fact remains that customers have 52 days – almost two months – to respond to a overdue bill prior to the time that shutoff actually occurs. When they first receive the bill showing that they are overdue they can: 1) contact the Company to dispute or inquire about the bill; 2) contact the PUC after contacting the Company; 3) contact state or community based organizations to seek assistance in paying for the bill; 4) borrow money from a bank or a finance company or friends to pay for the overdue bill; or 5) all or a combination of the above. Further, all customers also receive a 10 day termination notice. Again, customers should be able to respond to the termination notice when given 10-12 days (counting the 48 hour notice) to do so. The arguments against this proposal amount to a claim that merely because some customer might wait until he/she is terminated to do anything about his/her overage and that the customer might turn to a response mechanism that might be closed on Saturday, PGW's request should be denied for all customers. This is patently unreasonable when one considers that this one change offers

¹⁶¹ See, e.g., OCA St. FCI-1 at 42-44.

¹⁶² PGW Cross Exam Exh. 2.

¹⁶³ See, Tr. 759-761.

the ability to collect an additional \$2.5 million at a time when it desperately needs additional cash flow and is having to look to remaining responsible customers to make up these differences.

(5) The Modification Is Justified When Balanced Against The Consequences to PGW and All Its Customers If PGW Fails to Improve Collections.’

In this instance, there should be no reasonable doubt that the benefits to PGW of allowing Friday shutoffs far outweighs the potential that some individual customer may wait until the last minute and not be able to respond fully. The arguments to the contrary really reflect more of the overall attitudes of the parties that no change in existing billing and collection rules should be permitted under any circumstances, regardless of how irresponsible a customer is, and with apparent indifference to whether such refusal means that PGW might not be able to continue to provide gas service to its customers.¹⁶⁴ They also reflect an outdated view of the propriety of weekend terminations. The more current view, as reflected in the Responsible Utility Customer Protection Act and overwhelmingly supported by the State House, would permit any utility to terminate service on any day of the week, so long as the utility makes it possible for the customer to reinstate service in the time required.¹⁶⁵

g. Eliminate 48-Hour Notice Requirement During Shutoff Process.
(Estimate Value: \$1 million)

(1) Background:

PGW’s proposal here is similar to the proposal for allowing Friday shutoffs. PGW wishes to eliminate the requirement, presently in Chapter 56, that, prior to actually terminating a customer, the utility attempt to make “personal contact” with the customer and, if personal contact does not occur, the utility is required to post a notice indicating that service will be terminated in 48 hours.¹⁶⁶ PGW would still be required to attempt to make personal contact but, if that attempt failed, it would nonetheless be permitted to terminate service.

(2) Justification.

¹⁶⁴ See, Tr. 738-739 (Mumford).

¹⁶⁵ S.B. 689, Section 2806-D(e).

¹⁶⁶ 52 Pa. Code § 56.95.

If PGW is permitted to dispense with one of the notices to customers prior to termination, (in which case it will attempt to make personal contact with the customer at the same time that termination occurs) the Company can expedite the termination process and save over \$1 million. The 48-notice requirement is an unnecessary and costly burden on PGW because, in most cases, it requires two field visits, one of the most costly activities that PGW can undertake.¹⁶⁷ Since the present rules do not require that the Company actually make physical contact with the customer, the notice is simply another hurdle over which the utility must jump before it can actually terminate service and stop providing free gas service to customers who may have no intention of ever paying.

(3) Value to PGW.

PGW estimated the direct value of this change would be some \$1 million. A work force of 58 full-time people currently commit 25% of their work-week to delivery of the 48 hour notice, the equivalent of 30,160 hours per year. At a full-time loaded cost rate of \$33 per hour, the cost avoidance equals \$995,280.

(4) Opposing Party Arguments.

The arguments of the opponents with respect to eliminating the 48-hour notice fall into two categories. First, they claim that eliminating this additional delay in termination cuts down on the time in which a customer may respond to a potential shut-off. While this is true, none of the opponents bothered to acknowledge that, even without the 48 hour notice, customers have some 50 days from the time that they receive their first overdue bill to take such responsive action to prevent termination by paying the arrearage or by disputing the charge.¹⁶⁸ The other argument advanced is that eliminating the personal contact requirement creates the potential that a customer could be terminated without ever knowing about the potential of termination.¹⁶⁹ But, existing Chapter 56 rules do not require personal contact be made – only the posting of a notice at the premises when such an attempt fails. The Commission wisely has already rejected any

¹⁶⁷ PGW St. CP-1R at 25. PGW customers have learned to refuse to answer when the PGW employee knocks to attempt to make contact the first time.

¹⁶⁸ PGW Cross Exh. CP-2.

¹⁶⁹ See, OTS St. 4 at 19-20.

requirement of actual personal contact before termination under these circumstances since there is no requirement in Chapter 56 or any place else that a customer must receive actual, in-person notice of the pending termination. PGW's change is just one of degree.

- (5) *The Modification Is Justified When Balanced Against The Consequences to PGW and All Its Customers If PGW Fails to Improve Collections.'*

In this instance the savings to the Company (and, ultimately, the customer) justifies the potential additional burden on customers of a slightly shorter period in which to respond to non-payment. Customers would still have 50 days in which to take action and avoid termination, plenty of time for a customer who is exercising personal responsibility.¹⁷⁰

- h. Waive the Administrative Rule Requiring 30 Day Maximum Period to Complete a Termination (During Non-CWIP Periods). (Estimated Value: \$1 million)

- (1) Background.

PGW is proposing that the Commission acknowledge that terminations completed within 60 days from the time that the initial termination notice is provided would nonetheless be viewed as compliant with PGW's adequate service requirements and Chapter 56. Currently, a BCS administrative interpretation of the Public Utility Code and Chapter 56 requires terminations to be effectuated within 30 days from the notice; i.e., termination must occur within the period or else the entire process must begin again, or be viewed as suspect.¹⁷¹

- (2) Justification.

BCS Witness Mumford pointed out that this rule was not within Chapter 56 and was subject to the utility's own determination as to what was appropriate.¹⁷² Nevertheless, PGW has received clear, informal direction in the past from BCS that terminations that take longer than 30 days would be suspect in terms of their reasonableness. The reasons for requesting this

¹⁷⁰ S.B. 689 would permit termination after 10 days, without a 48 hour notice, but increases the number of telephone (or personal) contact attempts from 2 to 3 (Section 2806-D(b)).

¹⁷¹ PGW Exh. CP-1 at 24.

¹⁷² OTS St. 4 at 31-33.

clarification of the rule is simple: of the more than 150,000 termination notices that have been sent out since April 1, almost one-third – 47,000 – had to be redone because PGW did not have the resources to permit it to complete them within the BCS’s mandated 30 day period.¹⁷³ PGW could not risk being sanctioned by BCS or having BCS subsequently rule that all 47,000 terminations were invalid at a time when it desperately needed to increase cash flow and collections. Therefore, it is in the process of repeating these terminations and gave customers additional time before they were terminated or had to pay their bill (and, in the process, provided additional gas service to customers, to the extent that any gas service was being used).

(3) Value to PGW.

A clear articulation that longer than 30 day terminations are acceptable would save PGW an average of \$1 million annually.¹⁷⁴ However, the indirect benefit includes amounts for the value of gas service that PGW could have to continue to provide to customers during the additional time that it takes PGW to reinitiate and complete the termination process. It will also prevent the erosion of PGW’s credibility – when a 30 day notice is sent and no shut-off occurs, but the customer then receives a second such notice, that customer and others soon learn that there is no good reason to pay attention to such a notice. That hurts PGW and it hurts the customer who fails to pay attention but may, in fact, be shut-off within the 30 day period.

(4) Opposing Party Arguments.

Uniquely, OCA witness Colton actually supported PGW’s request that the Commission acknowledge as valid terminations that take more than 30 days (and up to 60 days).¹⁷⁵ Mr. Mumford questioned why the Company has even asked for a waiver, since the 30 day rule is simply a BCS administrative guideline and this is certainly not a reason to reject the request.¹⁷⁶ True to form, however, Action Alliance witness Mr. Geller opposed the request, as he did every other proposal, claiming that “once the 30 day period encompassed by the termination notice has

¹⁷³ PGW St. CP-1R at 26-27.

¹⁷⁴ PGW Exh. CP-1, App. A at 14-15.

¹⁷⁵ OCA St. FCI-1 at 48-49.

¹⁷⁶ OTS St. 4 at 31.

passed, the customer's payment obligation will have changed to incorporate whatever payments have been received and whatever new charges have accrued. Unless a new termination notice is issued, there will be no timely definitively written statement to the customer providing the exact amount that must be paid in order to avoid termination."¹⁷⁷ Mr. Geller made these statements despite the fact that PGW witness Gyory stated quite plainly that "[s]hould the Commission eliminate [or clarify] this requirement, PGW would allow the customer to pay the amount originally noticed to avoid termination".¹⁷⁸ Accordingly, the Company's proposal already addressed Mr. Geller's concerns.

(5) The Modification Is Justified When Balanced Against The Consequences to PGW and All Its Customers If PGW Fails to Improve Collections.'

Again, the need to PGW to complete a massive collection process involving as many as 150,000 customers in a timely and efficient manner, and to increase collections from those customers, clearly outweighs any possible harm to customers. In this case, by assuring that customers can avoid termination merely by paying the amount on the termination notice, even if their amount owing is much greater at the time of the termination attempt, PGW has eliminated any negative effect, perceived or real. Again, PGW's request is consistent with the most recent legislative determinations; the Responsible Utility Customer Protection Act would make valid any termination that was completed within 60 days of the 10 day notice.¹⁷⁹

i. Service Restoration Timeline Change from 24-Hours to Up to 7 Days During Non-CWIP Periods. (April 1 – November 30).
(Estimated Value: N/A)

(1) Background.

PGW's proposal in this area is as follows: In instances in which PGW must physically dig up the customer service line to restore service, PGW is requesting that it be permitted to take up to 7 days to complete the task; and in all other periods it should be permitted 3 days, except where service has been terminated and the initial determination of the Commission is that the

¹⁷⁷ Action Alliance St. 1 at 28.

¹⁷⁸ PGW Exh. CP-1 App. A at 15; PGW St. CP-1R at 26; Tr. 671-72.

¹⁷⁹ S.B. 689 Section 2806-D(b).

termination was inappropriate or in violation of the PUC or PGW rules or in cases in which medical emergencies exist.¹⁸⁰ Chapter 56 requires that service be restored “by the end of the next business day.”¹⁸¹

(2) Justification.

PGW’s request in this regard stems from the massive number of terminations that it anticipates it will undertake by the end of the year (approximately 33,000).¹⁸² Historically, only about 10% of terminated customers do not reinstate service. Traditionally, many terminated customers wait until fall and the approach of cold weather before they seek to reinstate service. This means that the Company must reinstate service for a huge number of customers in a very short period of time. Compounding the problem is that PGW has a number of service lines that are not equipped with curb valves, meaning that to terminate service some form of dig-up must occur. Currently, a dig-up to terminate service costs about \$500; restoration of such service where a dig-up is necessary is a much longer and more complicated process (a curb valve is installed at this point, if necessary) and costs about \$2,500 to complete.¹⁸³ Allowing PGW greater time in which to complete service turn-on where dig-ups are necessary would mean that the Company will be able to terminate customers on a pace that will not unnecessarily slow their collections efforts. PGW will not go through with the termination unless it concludes that it has the physical capability to turn the service on within the time required by the PUC regulations.

(3) Value to PGW

This modification will reduce the daily occurrence of the re-prioritization of turn-on orders due to sudden surges of next day turn-on requests. Due to the huge number of turn-ons that the Company projects it will be required to undertake there is no way that the Company

¹⁸⁰ PGW Exh. CP-1, App. A at 16; This is more lenient than the requirements of S.B. 689, § 2807-D.

¹⁸¹ 52 Pa. Code §§ 56.115, 56.191(1).

¹⁸² PGW Exh. CP-1, App. A at 5.

¹⁸³ PGW St. CP-1R at 28.

could meet this standard without hiring scores of additional full time employees at an additional cost of hundreds of thousands of dollars (which the Company, of course, can not do).¹⁸⁴

(4) Opposing Party Arguments.

Mr. Mumford's main concern was that allowing a longer period of time, three to seven days, for customers facing a medical emergency could be life threatening. But Mr. Mumford failed to adequately comprehend that the extended service restoration period request only applied for periods outside of the winter moratorium, thereby eliminating most, if any, real concern. Moreover, PGW modified its proposal to agree to reinstate all services where customer's had medical emergencies or who had medical certificates within twenty-four hours and to give priority to reinstatements for seniors.¹⁸⁵

(5) The Modification Is Justified When Balanced Against The Consequences to PGW and All Its Customers If PGW Fails to Improve Collections.'

PGW's request is reasonable under the circumstances and is carefully crafted to avoid any undue harm to customers. In fact, PGW simply is not capable of restoring service on a twenty-four hour timeline to all customers that will potentially face such restoration considering the huge number of terminations with which it is faced – 35,000 to 40,000 – and the number of these reinstatements that will require physical dig-ups. Without this modification, PGW may well have to avoid terminating thousands of customers (in order to be able to manage the turn-on requirements within the rules). Therefore, it would be both reasonable and fair to recognize the Company's limitations and acknowledge its restoration timeline as necessary under the circumstances.

3. Conclusion

The package of proposed Chapter 56 waivers and administrative rule modifications, on balance, will result in minimally necessary revisions to existing rules or procedures, are appropriately directed only at customers who are not subject to protection from an ability to pay

¹⁸⁴ PGW Exh. CP-1, App. A at 16.

¹⁸⁵ PGW St. CP-1R at 27-28.

standpoint, and are crafted to be able to placed into effect on relatively short basis. Alternatives, such as a base rate increase, are far less desirable. These rules changes are far and away the most reasonable and sensible way in which to attempt to address PGW's acute cash working capital crisis and should be adopted in their entirety. PGW should be directed to file a compliance tariff setting forth the new rules which should be permitted to go into effect on one day's notice, subject to review and approval by the Commission after the new rules are implemented for a "pilot" period of two years.

III. SENIOR CITIZEN DISCOUNT

A. Background

PGW's proposal for a means tested SCD is also before the Commission, and should be approved. The Company, the City Administration and City Council made the policy decision that providing assistance to senior citizens via a discount on their gas bills was in the public interest and worthy of the support of PGW's non-senior customers. The General Assembly, in enacting the Gas Choice Act, expressly validated and maintained that policy by ensuring that those seniors already enjoying the discount as of the date of the Company's restructuring would continue to receive the discount.¹⁸⁶

The Legislature also recognized the reasonableness of a discount targeted only to senior citizens by empowering this Commission to approve such discounts for city natural gas distribution companies on a going forward basis.¹⁸⁷ After the Commission adopted the Company's initial proposal to close the program, Philadelphia City Council, the City Administration, PGW's management and governing board, and senior advocacy groups worked together to create a means tested SCD proposal that would afford assistance to needy seniors, without imposing a burdensome cost on the remainder of the Company's customers.¹⁸⁸ This proposal is now before the Commission, and it has the support (or non-opposition) of every party to this proceeding, except the OTS.

¹⁸⁶ 66 Pa. C.S. § 2212(r)(1).

¹⁸⁷ *Id.*

¹⁸⁸ P-00032061, PGW St. 1 at 5, 10.

The OTS's position on the issue of the SCD is curious, and has fluctuated in intensity and reasonableness. First, during the Restructuring Proceeding, the OTS attacked the SCD, advocating a proposal that did not even preserve the SCD for those customers grandfathered under Section 2212(r)(2) of the Code. Further, its position refused to recognize the authority given to Philadelphia City Council to determine the discount level received by those grandfathered customers.¹⁸⁹ Then, after PGW filed its Petition for the means tested SCD, the OTS essentially dropped out of the proceeding, failing to participate in the hearing on the proposal and clearing the way for the means tested SCD, as agreed to by the remaining parties, to be approved by the ALJ and recommended to the Commission. After the Commission remanded to the OALJ to develop more facts, the OTS has again taken up its position against the means tested discount, advocating that – despite the plain language of Section 2212(r)(1) – the PUC is not legally capable of approving a SCD because it constitutes *per se* discrimination.¹⁹⁰ As detailed below, this position is not well founded, and the Commission should embrace the near unanimity of the parties in their support of the means tested SCD.

Given the historic existence of the SCD in Philadelphia and the clear directive from the City and its elected representatives the Commission should approve PGW's means tested SCD proposal. The Commission's apparent main concern – that the SCD would add to PGW's financial burden – is misplaced, there is no material financial effect of the SCD on PGW's cash flow or earnings. Similarly, while the means tested SCD will increase the bills of non-senior customers, the overall annual effect is around \$5 per year or just .3% of the average heating customer's annual bill.

B. Answers to the PUC Remand Questions Provide Further Support For the Conclusion That PGW's Proposed Means Tested Senior Citizen Discount Should Be Approved As Just and Reasonable.

PGW has fully documented the need for and reasonableness of its proposed means tested SCD. In the SCD docket, P-00032061, testimony proffered by Cristina Coltro, PGW Manager of Universal Service Programs, and Dr. H. Gil Peach, a recognized expert in the universal service

¹⁸⁹ OTS St. 1 at 3-4.

¹⁹⁰ OTS St. 1 at 10-11.

field, explained: the unique characteristics of Philadelphia's senior citizen population; the details of the 20% discount for those senior households with incomes at 250% of Federal Poverty; the basis and appropriateness of utilizing 250% FPL as a cut-off point for the benefit; the mechanisms for verifying eligibility; the anticipated program participation levels and the costs of the program over a 15-20 year period; and that similar discounts are provided to seniors both in and outside the utility context.¹⁹¹ As noted, the OTS dropped out of that proceeding, and no party offered any testimony contrary to Ms. Coltro and Dr. Peach's findings or to the means tested proposal, generally.

Although the means tested SCD was unopposed and was recommended by the ALJ, the Commission remanded the matter to the ALJ for the development of a record on eight enumerated issues. PGW fully addressed those issues in this proceeding via the direct and oral rebuttal testimony of Ms. Coltro.¹⁹² The Company's responses showed that: other utilities offer assistance to customers who are above 150% FPL in special circumstances, such as LIURP programs that can reach to 200% FPL; the monthly cost for all of PGW's universal service programs for non-heating and heating customers, respectively, is \$4.25 and \$13.16; the annual incremental cost of the means tested program, updated for increases in gas costs, is still only \$365,421; and the Company anticipates substantially reduced program costs as participation levels are thinned due to its eligibility audit.¹⁹³ The average annual total cost of the means tested SCD is \$3.4 million.¹⁹⁴

Moreover, as noted by Ms. Coltro, no evidence exists that the incremental cost of a means tested SCD would be too great for the general body of customers to absorb or that it would contribute in any material way to the Company's cash receipts or cash working capital problems.¹⁹⁵ On the contrary, simply logic tells us that conversion from a program that is open

¹⁹¹ Docket P-00032061, PGW Sts. 1 and 2.

¹⁹² PGW St. CP-2; Tr. 598-612.

¹⁹³ PGW St. CP-2 at 4-9.

¹⁹⁴ OTS Exh. 1, Sch. 1, "16-Year Avg." corrected to reflect the fact that 2005 amount reflects the first three years of discount and, therefore, should be divided by 18 years. Tr. 642-43.

¹⁹⁵ *Id.* at 10.

to all seniors to a program that is open only to those seniors below 250% of the FPL will, over time, reduce the cost of the program and Ms. Coltro's uncontroverted testimony supports that concept. While under PGW's proposal, it will decrease the rates for additional seniors by 20%, it will recover this subsidy from remaining customers in its Universal Service Charge. The only effect this "wash" transaction could have on PGW's cash flow or earning is if there was a material effect on the Company's cash receipts or uncollectible expense. There is no evidence to conclude that there will be any such effect;¹⁹⁶ even if there was a demonstrated difference in the collections rates for two groups; i.e., seniors, as compared to all other firm customers, the difference would be small, considering the average annual incremental cost of the means tested program is under \$400,000 and the total annual average cost is only \$3.4 million through 2020.¹⁹⁷ Indeed, the SCD could actually enhance PGW's receipts as a percentage of amounts billed. Those customers receiving the 20% discount may be more likely to pay a higher percentage of their total bills, while the total bill payment percentage of the non-discounted customers would be largely unaffected given the *de minimis* increase in their bills stemming from the incremental increase each year in means tested discounts. Given the strong policy and factual support for the means tested SCD, and the near unanimity of support among the parties to this proceeding, the Commission should approve the discount.

C. The OTS's Opposition to the SCD is Not Well Founded.

The OTS's renewed opposition to the means tested SCD is not well founded, offering misplaced legal arguments, red herring cost analyses, and erroneous assertions about PGW's enrollment projections.¹⁹⁸ On each point, PGW effectively refuted the OTS's assertions.

1. Section 1304 of the Code Does Not Preclude The Commission From Approving A Means Tested SCD.

¹⁹⁶ *Id.* at 10-11. Tr. 641.

¹⁹⁷ For example, if there was evidence that seniors paid on average 90% of their bills, compared to the Company-wide average of 92%, the difference for the Company would be just 2% of \$3.4 million or \$60,000.

¹⁹⁸ The OTS admits that the programs administrative costs are reasonable, and that the means tested SCD would have no real impact on natural gas competition. OTS St. 1 at 12, 14.

An overarching argument by OTS is that the Commission cannot approve the means tested SCD because it is unlawfully discriminatory under Section 1304 of the Code.¹⁹⁹ The argument goes like this: Section 2212(r)(1) enables the PUC to approve an SCD so long as the rates and terms are just and reasonable; the proposed SCD treats needy seniors differently than more well off seniors and the residential class, in general, and thus violates Section 1304 of the Code; because the proposed SCD violates Section 1304 it cannot be just and reasonable; and therefore, the Commission cannot approve it under Section 2212(r)(1).²⁰⁰ Further, the OTS's Mr. Weakley admitted that this analysis would apply to any SCD on a going forward basis, as any such program would treat seniors differently from other customers.²⁰¹

Obviously, this argument is fatally flawed on many grounds. Most importantly, the OTS's use of Section 1304, which admittedly applies to every imaginable senior discount, literally writes Section 2212(r)(1) and the Commission's power to approve SCDs right out of the Public Utility Code. Second, contrary to the rules of statutory construction, the OTS's analysis impermissibly allows the specific provisions of Section 2212(r) to be trumped by the general prohibitions in Section 1304.²⁰² Third, there is nothing unreasonably discriminatory about a means tested SCD. Section 1304 does not preclude differences in rates or services between classes of customers where those differences are reasonable.²⁰³ By including a provision in the Gas Choice Act empowering the Commission to approve such differences between the rates of senior citizens and the general residential class, the General Assembly clearly found them to be reasonable and not unlawfully discriminatory. Moreover, the public utility regulation is replete with approved differences in the treatment based on income levels. Thus, the fundamental premise of OTS's position, that the means tested SCD violates Section 1304, is simply incorrect.

¹⁹⁹ OTS St. I at 10-11.

²⁰⁰ *Id.*

²⁰¹ Tr. 782-83.

²⁰² 1 Pa. C.S. § 1933; *Commonwealth v. Campbell*, 588 A.2d 75 (Pa. Cmwlth. 1991).

²⁰³ Tr. 780-81; *Carpenter v. Pa. P.U.C.*, 15 A.2d 473, 474 (Pa. Super. 1940) ("discrimination forbidden is one that is unreasonable and without factual basis").

2. The Means Tested SCD Does Not Impose Unreasonable Costs on PGW or its Firm Customers.

OTS also emphasizes the fact that the means tested SCD will cost customers \$60 million over a 16 year period.²⁰⁴ However, as PGW's Ms. Coltro observed, this figure, which was reached by simply adding the annual costs of the program (compared to grandfathering) over that period, is a red herring and is not meaningful in the analysis of whether the PUC should approve the Company's proposal.²⁰⁵ Any expense, accumulated over 16-18 years, is going to appear larger than if the expense is considered on an annual basis. Such a cumulative number certainly does not lead to the conclusion that the expenditure in the first instance is not worthwhile. For example, at today's costs, the cumulative cost to ratepayers of PGW's CRP program over 16 years would be roughly \$880 million.²⁰⁶ Yet, no party would assert that PGW's CRP should be dismantled for this reason.

The more probative statistic identified by Ms. Coltro is the cost that would have to be paid by non-participant customers in order to absorb the costs of the means tested SCD. This figure, developed by utilizing Mr. Weakley's own schedule,²⁰⁷ compares the cost that customers will pay over the next 17 years as a result of the grandfathered SCD with the cost that will be incurred for a combined grandfathered and means tested SCD.²⁰⁸ The average incremental cost of adding new participants is just \$360,000; the average *annual* cost over the period 2003-2020, is \$3.4 million per year, which translates to just \$1.88 per year for non-heaters and \$5.81 per year for heating customers.²⁰⁹ Certainly, these minimal annual costs are not so onerous as to justify a rejection of the strong policy consensus reached by the City government, the Company, senior advocates, and nearly every party to this proceeding.

²⁰⁴ OTS St. 1 at 21, Exh. 1, Schedule 1. The time period is actually 18 years. Tr. 642-643.

²⁰⁵ Tr. 609-610.

²⁰⁶ Tr. 610.

²⁰⁷ OTS Exh. 1, Schedule 2.

²⁰⁸ Tr. 610-11.

²⁰⁹ Tr. 611.

3. Objections to PGW's Enrollment Projections and the 250% FPL Eligibility Criterion.

Finally, the OTS challenges the Company's proposal based on its objections to PGW's enrollment projections and its use of 250% as the eligibility cut-off. The objection to the enrollment projections stems from the OTS's misguided assumption that the Company had failed to account for a spike in potential senior participants as the "baby boomers" reach age 65.²¹⁰ However, Ms. Coltro testified that the Company projections, which were derived from a study performed by Dr. Peach for the Restructuring Proceeding, had in fact accounted for the "boomer bulge," as well as other demographic trends such as "the shrinking City."²¹¹ The conclusion reached by Dr. Peach was that, despite the coming baby boomers, PGW's senior citizen population would remain stable through 2020.²¹² Moreover, the Commission cannot assume that every senior citizen will participate in the proposed SCD. In addition to excluding seniors with incomes above 250% FPL, many senior citizens with incomes at 150% FPL may choose to participate in CRP instead of the senior discount.²¹³ Also, the current participation figures, where only 77,000 out of a potential 127,000 eligible households participate, demonstrate that just because the SCD is available does not mean that every single eligible senior will apply for it.²¹⁴

Turning to the 250% eligibility criterion, OTS generally objects to this figure on the belief that it is too high and that non-seniors or families with roughly the same income levels will be asked to subsidize the discount.²¹⁵ However, the evidence reflects that the 250% cut-off for a senior program is reasonable, the product of a consensus by all of the stakeholders (including the elected representatives of those who will pay for the SCD), and is within the range of other

²¹⁰ OTS St. 1 at 22.

²¹¹ Tr. 611-12, 645-51; for the study, *see* PGW St. CP-2, Appendix A, PGW Exh. SCD/CC-4 at 6-12.

²¹² PGW St. CP-2, App. A, Exh. SCD/CC-4 at 12.

²¹³ P-00032061, PGW St. 1 at 6.

²¹⁴ *Id.* at 4; PGW Petition for Rescission and Amendment of Final Order at ¶ 3.

²¹⁵ OTS ST. 1 at 13.

eligibility limits for low income assistance programs.²¹⁶ The Commission can take note of the fact that many programs directed at helping seniors have higher income cutoffs than those for the general population.²¹⁷

Finally, as to the decision to assist needy seniors while not providing similar assistance to able-bodied, working persons and families with similar income levels, that is the policy decision that has been made by those persons' elected representatives and that the Commission is now being asked to approve as well. Yes, customers paying the relatively small additional cost (\$5.81 heating/\$1.88 non-heating per year) for the means tested SCD may have similar income levels, but such a fact, if true, does not negate the decision to assist the frequently more infirm and otherwise needy seniors. Unlike younger, working age citizens, seniors typically cannot work, and are often on fixed incomes.²¹⁸ Likewise, they are more frequently ill or infirm. For instance, 97,000 Philadelphia seniors have a disability, and are therefore more at risk to harm caused by insufficient heat.²¹⁹

All of these factors strongly support the Company's means tested proposal, and the nearly universally accepted policy decision underlying it. The Commission should, therefore, approve the means tested SCD.

D. Universal Service Programs

1. Background

The Commission's June 2nd Order initiated an investigation of the level of costs, cost effectiveness and management of PGW's universal service programs, noting the disparity between the costs and beneficiaries of PGW's programs and those of other gas utilities.²²⁰ However, the Company has shown and the evidence reflects that its universal service programs are effective, PUC-approved, and in line from a cost perspective with those of other natural gas

²¹⁶ P-00032061, PGW St. 1 at 10 and St. 2 at 5-10; PGW St. CP-2 at 5.

²¹⁷ P-00032061, PGW St. 1 at 10-11.

²¹⁸ P-00032061, PGW St. 1 at 12.

²¹⁹ *Id.*

²²⁰ Order at 5; Ordering ¶ 3.

distribution companies, even with the unique demographics in the Company's service territory. The minor criticisms of the programs and proposals for capping the programs or changing the customer funding responsibility have been shown to have no merit.

2. PGW's Universal Service Programs Are Consistent With PUC Policies and Were Approved in the Company's Restructuring Proceeding

The Company's universal service programs are the Customer Responsibility Program ("CRP") and the Conservation Works Program ("CWP"). Both of these programs are mandated by the PUC and operate pursuant to PUC regulations, but they existed in substantially the same form under the Philadelphia Gas Commission.²²¹ PGW's program generally resembles the programs of other utilities regulated by the PUC, and was thoroughly reviewed and evaluated by the PUC and various parties in PGW's Restructuring Proceeding before being approved by the Commission during that proceeding. Since that time, reports concerning on-going CRP operations have been submitted to the PUC.²²²

3. PGW's Universal Service Programs Are Cost Effective and Well Managed.

The main elements of the Company's program are identical to the PUC-mandated programs offered by other Pennsylvania utilities. Although the Commission's June 2nd Order noted the disparity between the universal service program of PGW and other Pennsylvania gas utilities, the Company's universal service program and its relation to PGW's broader operations cannot be evaluated without understanding the broader context in which its program operates.

²²¹ PGW St. CP-2 at 3. The CRP is a percentage of income plan open to all residential customers with a household income of 150% or less of the federal poverty standard, designed to ensure that a low-income customer's payment is sufficient to pay for the variable cost of providing the service (principally the cost of gas) and provide at least a minimum contribution to the Company's fixed costs. *Id.* at 13, Appendix B. The CWP, PGW's LIURP program, provides conservation and weatherization services to qualifying low-income heating customers. PGW contracts with the Energy Coordinating Agency, a respected non-profit organization, and the Honeywell DMC Services Corporation to do the actual weatherization work. *Id.* at 15.

²²² *Id.* at 3. Although the major CWP reports are not due to be filed with the PUC until April 2005, PGW has had outside professional evaluators conduct impact evaluations of the program as required under , the Company's prior tariff, and a copy of the most recent CWP evaluation was submitted to the PUC in the Company's Restructuring Proceeding. In addition, conservation and LIURP related reports were submitted to the PUC during the past few months. *Id.* at 15.

The size and cost of PGW's program is substantially larger than that of the other utilities because it is driven by the unique demographics and need of PGW's customer base:

- PGW serves only the City, not the suburbs.
- PGW has few large commercial or industrial customers.
- PGW has the largest low-income population in the state, including fully one half of the welfare recipients in the state.²²³

OTS witness Hummel agreed that the Company has a significantly higher number of low income households in its territory, noting that:

- One third of Pennsylvania's low income natural gas customers live in PGW's territory.
- Nearly half of the customers enrolled in CAPs are PGW's customers.
- PGW has more than twice as many low income customers as Columbia, the gas utility with the second highest number of low income households.²²⁴

It is clear that the level of poverty in Philadelphia and the lack of a growing, wealthy customer base, either commercial or residential, place extreme pressure on the universal service programs, on the Company, and on those customers who must provide the funds for the program.²²⁵

As one would expect, PGW's CRP is the largest gas customer assistance program in Pennsylvania. Due to its customer base, PGW has approximately 62,000 customers enrolled in the program at the present time, but that number fluctuates between the current number of participants and approximately 50,000. It has been estimated that approximately 90,000 PGW customers would qualify for this benefit if they applied.²²⁶ The Company's CWP serves about 3,300 customers a year.²²⁷

²²³ *Id.* at 12.

²²⁴ OTS St. No. 3 at 10.

²²⁵ PGW St. CP-2 at 12.

²²⁶ *Id.* at 14.

²²⁷ Tr. 608.

The Company's universal service program costs for 2003 were \$39.1 million.²²⁸ OTS witness Hummel recognized that PGW's total CRP costs are higher than the other gas utilities' CAP costs because of the high numbers of customers in the program.²²⁹ She also explained that an accurate review and comparison of the Company's universal service costs must exclude the \$20 million cost of the Company's non-means tested SCD program identified in the Commission's June 2nd Order because this program does not satisfy the statutory and regulatory definitions of universal service and low income customer.²³⁰ Thus, PGW's average CRP costs per participant (\$737) are comparable to the weighted average CAP participant cost of the other major Pennsylvania gas utilities (\$625).²³¹ For FY 2003, the Company's universal service program administrative costs were approximately \$3 million.²³² The estimated cost for FY 2004 is also \$3 million and includes the senior audit program. The Company's average administrative cost for CRP alone, \$50 per participant,²³³ is lower than the administrative costs of the gas CAP programs offered by the other top three Pennsylvania utilities, which range between \$62 and \$84 per participant,²³⁴ and, in fact, is lower than those of other major gas utilities in the state.²³⁵ Accordingly, the Company's universal service program is cost effective, especially in view of PGW's unique demographics and customer base.

²²⁸ OTS St. No. 3 at 12. The annual cost for the CWP is \$2 million, \$400,000 more than the amount suggested by the PUC's regulations (0.2% of gross revenues). PGW St. CP-2 at 15; Tr. 608.

²²⁹ OTS St. No. 3 at 15.

²³⁰ *Id.* at 2-6.

²³¹ *Id.* at 12-13.

²³² PGW St. CP-2 at 16. This figure includes the administrative costs of CRP for collections, intake, recertification, call center, system maintenance, special mailings, and labor associated with these efforts, as well as the cost of the LIHEAP outreach campaign and the CWP evaluation. *Id.*

²³³ \$3 million/60,000 average participation per year. Although there were 65,000 participants as of April 2004, the average for the year is expected at 60,000. *Id.*

²³⁴ *Id.* at 16, referencing "Report on 2002 Universal Service Programs & Collections Performance of the PUC."

²³⁵ Tr. 602.

Nonetheless, PGW strives to reduce its Universal Service Program administrative costs, including those for the CRP,²³⁶ and has streamlined and automated the CRP recertification process in the past several months. This has reduced the manual intervention previously employed for mailing recertification notices and monitoring the outcome of the process, and has allowed more customers to recertify via mail which reduced the overall time spent on customers at the Customer Service Centers. PGW continues to look at other ways to further reduce administrative costs for CRP intake and recertification. Currently, the Company is working with the Department of Public Welfare to identify means of expediting the CRP recertification process to allow a precise, yet simpler, recertification process for all CRP participants who also receive public assistance.²³⁷

The Company has also streamlined its CRP collections process and now has a fully automated CRP collections process that selects and issues the appropriate notices.²³⁸ The Company's current CRP collections process is also now more in line with the regular residential customer collection process and in line with BCS guidelines.²³⁹ In addition, PGW has an aggressive and successful LIHEAP outreach program. Receipt of LIHEAP grants helps to reduce net costs of the program.²⁴⁰

²³⁶ The basic management components of the operation of CRP involves applicants visiting one of PGW's Customer Service Centers to apply for CRP. The customer's appropriate data (such as social security numbers and proof of income for all members of the household) must be entered in the billing system to bill the account as CRP. All CRP participants are required to recertify each year by mail or in person, and the process involves up to three mail notices and one phone attempt to remind the customer to recertify. The necessary documentation and forms are stored as records in the billing system and updated with revised information. CRP training is offered frequently to all Customer Service Representatives, and program monitoring and evaluation are performed according to PUC guidelines, including quarterly and yearly PUC reporting requirements. PGW St. CP-2 at 14-15.

²³⁷ *Id.* at 16-17.

²³⁸ *Id.* at 17; Tr. 601. Collection activity occurs for all CRP customers who fall behind more than one payment, and the process is based on PUC guidelines and includes mail and field notices, as well as phone attempts. PGW St. CP-2 at 15.

²³⁹ Tr. 601.

²⁴⁰ PGW St. CP-2 at 17. While PGW is committed to continuing the CRP program, consistent with the Commission's universal service objectives, the Company intends to conduct a full review of the CRP program and propose a new design to the Commission. With the recent dramatic increase in the price of natural gas, the CRP customer payments – which remain as a percentage of the customer's income without regard to the price of gas – no longer meet the program goals of avoiding the costs of collection, shut-off and restoration, which benefit all customers. *Id.* at 13.

Accordingly, it is clear that the Company's universal service program is well managed, the minor criticisms of some parties notwithstanding.

4. The OSBA Argument to Cap Participation in the PGW CRP/CAP Program is Inconsistent With Commission Policies, Would Harm Low Income Customers Who Have Been Designated For Assistance and Would Harm PGW's Collections and Cash Flow.

OSBA witness Knecht's criticism of the Company's Universal Service Program, as part of its massive collections initiative, to encourage all eligible customers to enroll in CRP, and his labeling the plan a "stealth rate increase" are unwarranted. His proposals that participation in the Company's CRP be capped at 60,000 customers, and that only residential customers pay the cost of providing CRP to participants over 60,000, are also unfounded and should be rejected.

First of all, universal service programs under the Gas Choice Act are required to be "adequately funded and available," and the PUC has suggested that companies should ramp up program participation according to actual needs assessments.²⁴¹ The PUC regulations require that utilities provide "[t]he projected needs assessment for each program component and an explanation of how each program component responds to one or more identified needs."²⁴² As shown above, the record is clear that the customers need for CRP in PGW's territory is significant – exceeding by many times that found in other companies' territories. Attempting to encourage eligible, low income customers to utilize the CRP program is 100% consistent with the Commission's policies and regulations and the Public Utility Code.²⁴³ The OSBA's criticism is contrary to the Act and the regulations. The Gas Choice Act also requires that PGW not reduce benefits available to customers at the time the Commission assumed jurisdiction.²⁴⁴ CRP has always been an open program available to all those who complied with eligibility

²⁴¹ Tr. 604; *see*, 66 Pa. C.S. § 2203(8).

²⁴² 52 Pa. Code § 62.4(b)(3). "The needs assessment shall include the number of identified low-income customers and an estimate of low-income customers, the number of identified payment troubled, low-income customers, an estimate of payment troubled, low-income customers, the number of customers who still need LIURP services and the cost to serve that number, and the enrollment size of CAP to serve all eligible customers." *Id.*

²⁴³ Tr. 605; *see*, 66 Pa. C.S. § 2203(8), 52 Pa. Code § 62.3.

²⁴⁴ 66 Pa. C.S. § 2203(7).

requirements. Setting a maximum participation level would violate the requirements of the statute.

Second, reducing the CRP participation level is not a sound policy. Indeed, Mr. Knecht's proposal has the potential to have very serious adverse consequences which will hurt all customers including small business customers. Although it would reduce the burden of the Universal Service Charge initially (and therefore the bills of all other customers), bad debt would increase and cash receipts would decrease because low-income participants would not be able to afford the bills. Today those CRP customers are paying. There would be more customers gaming the system (through, for example, changing service names), there would be an increase in the number of shut-offs and social dislocation, and ultimately rates would go up dramatically – assuming that those customers remained on the system or were able to restore service.²⁴⁵

Third, in the face of a population of eligible customers estimated at 90,000, the OSBA's proposal to cap CRP participation at 60,000 is clearly inconsistent with Commission regulations and policy.²⁴⁶ Finally, the Commission has already heard and rejected the argument that commercial customers should not have to pay the universal service charge, and relitigating the issue is outside the scope of this proceeding.²⁴⁷ Accordingly, the OSBA's proposals should be rejected.

5. The OTS Argument to Increase CWP Per Customer Expenditures Would Substantially Decrease the Cost Effectiveness Of the CWP and Harm Qualifying Low Income Customers.

OTS witness Mick's criticism of the Company's CWP expenditure on a per customer basis compared to that of the other utilities in the state is misplaced. PGW's goal is to offer the services of its CWP to as many eligible customers as possible in a cost-effective manner, and to coordinate efforts of other conservation and weatherization services available in the City. Having offered this program to its low-income customers for over 14 years, PGW has learned to balance between the program goals of usage reduction and cost-effectiveness while maximizing

²⁴⁵ PGW St. CP-2 at 14.

²⁴⁶ Tr. 605.

²⁴⁷ Tr. 604.

the number of participants. The program evaluations recognize that the CWP program is not necessarily similar to those of the more traditional weatherization programs, but they also recognize that PGW's CWP program results are quite impressive.²⁴⁸

As stated above, the Company's CWP budget of \$2 million per year is \$400,000 more than the amount suggested by the Commission's guidelines, and that difference was even greater when the budget was established and gas costs were lower, thus lowering the Company's gross revenues. Approximately 3,300 customers per year are served with the current budget. If PGW were to spend \$2,800 per customer, as Mr. Mick suggests, only 700 customers per year would be able to receive CWP services and coordination with other weatherization programs would become less meaningful.²⁴⁹ This would clearly reduce the cost effectiveness of the CWP and harm qualifying low income customers. Accordingly, the OTS's criticism and proposal should be rejected. Notwithstanding, PGW agrees that a meeting with Mr. Mick and BCS staff would be a good opportunity to present the CWP program in a more detailed manner, and to assist them in understanding PGW's approach and why it is reasonable.²⁵⁰

E. PGW Collections Programs

1. Background

In response to arguments in the CRRC proceeding that PGW's collections process might have been flawed, the Commission's June 2nd Order initiated an investigation of the adequacy, cost effectiveness and management of PGW's collection practices.²⁵¹ While there may have been some merit to such arguments in the past, it is certainly not true now. Indeed, the

²⁴⁸ Mr. Mick's suggestion that PGW is not following PUC LIURP regulations for determining usage reduction measures to be installed is wrong. The Commission's regulations outline the program measure installations that may be applied to program participants. 52 Pa. Code § 58.14. PGW does apply the outlined measures, but not all of them at the same time to every single participant. Tr. 607; see, PGW St. CP-2, Appendix B (PGW St. No. 8, Docket No. M-00021612, Exhibit CC-3, pp. 4, 7-8, 16-17, 23, A-1 through A-3). The CWP program design emphasizes energy education and low-cost-effective measures to help participants reduce usage consumption, improve payment behavior, and become a more successful CRP participant. Tr. 607.

²⁴⁹ Tr. 608.

²⁵⁰ *Id.*

²⁵¹ Order at 4, Ordering ¶ 2.

Commission rejected the Company's CRRC proposal in part because the Company's collection rate has improved to near historical levels.²⁵² With no contrary sentiment from any party, the Company has shown and the evidence reflects that the Company's current collections program is adequate and reasonable, although insufficient to reach the levels of success dictated by the rating agencies.

PGW witness Gyory explained that the Company has been continuously working to improve its billing and collections programs since 1999 when its entire billing system collapsed, leaving it with very limited ability to conduct collections efforts. PGW's Billing, Collections and Customer Service ("BCCS") system went on-line in July 1999. The BCCS start-up revealed a number of serious programming and employee training problems that adversely impacted customer service and collections in several ways: not only was the Company without assurance that non-paying customers had actually received bills that were accurate, but the BCCS failure also robbed PGW of several collections capabilities and dramatically eroded customer confidence in PGW, which still affects every aspect of the Company's relationship with its customers and customer service representatives.²⁵³

Since that time, PGW has worked continuously to identify and correct the BCCS problems, and has completely recovered from the effects of that billing system failure.²⁵⁴ Other systems and capabilities were recently brought back, such as the on line systems that communicate customer payment history to credit bureaus. During this period, the Company also took steps to improve customer service in the Call Center and reduce the number of estimated bills. As the Commission is aware through regular reporting and discussions, PGW has corrected its poor past performance in its customer Call Center in the last few years and now

²⁵² Order entered July 8, 2004 at Docket Nos. R-00049157, P-00042090 at 28, 29.

²⁵³ PGW St. CP-1 at 3. These programming and employee training problems resulted in an initial backlog of 55,000 billing exceptions and over 70,000 estimated or unbilled accounts. *Id.*

²⁵⁴ The current level of billing exceptions was reduced to less than 300 per day in 2001, and has been reduced further to an average of 150 per day, within the norm in the industry. *Id.* at 4. OTS witness Mumford's unsupported assertion that PGW's ability to improve its collections beyond historic levels is due to the 1999 failure of PGW's customer billing system is clearly incorrect. OTS St. 4 at 5. Mr. Gyory's specific testimony contradicts Mr. Mumford's speculation.

regularly shows improved Call Center performance metrics which, on average, are consistent with those of other Pennsylvania utilities.²⁵⁵

Through an aggressive program to install automatic meter reading devices (“AMR”), PGW has reduced its number of estimated bills from 15% in 2001 to less than 1% in 2004. This has greatly improved the accuracy of the bills, which in turn has led to a reduction in billing accuracy complaints and an improved level of customer service. PGW plans to continue to cost-effectively increase the functionality of the BCCS to provide necessary management reports and timely support to the customer service and collections operations. These steps were all required precursors to the Company’s ability to implement and sustain enhanced collections activities.²⁵⁶

Finally, in April 2003 the Company’s collections operations were strengthened through a flexibility agreement negotiated with the PGW union employees which provides complete cross-functionality across all areas of Customer Affairs, permitting management to reassign employees between collections and customer service when needed. The agreement also permitted PGW to hire 30 new employees, at a greatly reduced starting salary, to assist in the collection effort. These new hires are assigned to a Noon to 8:30 PM work shift and, after normal work hours, they make dunning calls to all delinquent customers.²⁵⁷

As explained below, PGW’s current collections program and practices are adequate and reasonable.

2. PGW’s Collections Program is Reasonable

PGW’s current program has been designed with the substantial assistance of Accenture Consulting, the preeminent utility collections management consulting firm in the nation.²⁵⁸ In December 2003 Accenture was brought on board to provide major assistance in the development and implementation of a Collection Renewal Initiative (“CRI”), which included a major revision

²⁵⁵ PGW St. CP-1 at 3-4.

²⁵⁶ *Id.* at 4.

²⁵⁷ *Id.* at 4-5.

²⁵⁸ *Id.* at 5, 11. Accenture actively advises or participates in the management of utility collection efforts for scores of major energy utilities, both in Pennsylvania and around the country. *Id.* at 5.

of its collections practices.²⁵⁹ Each initiative is based upon a through review of industry best practices and literally thousands of hours of experience adapted to PGW's circumstances, and designed to produce a net benefit to the Company.²⁶⁰ PGW's longer term goal for the CRI is to accomplish substantial and sustainable improvements in receivable collections, while the financial objective of the CRI is to collect 92 percent of fiscal year billed revenues and to continue incremental percentage improvements.²⁶¹

The CRI is quite extensive and deals with every possible aspect of PGW's collections activities. The specific steps taken by the Company to carry out the goals and objectives of the CRI were accomplished by:

- Reviewing existing credit & collections processes and capabilities to identify potential gaps and opportunities to improve efficiency and/or reduce receivables;
- Developing a credit scoring model to guide credit & collections customer interactions (in progress); and
- Modifying existing plans and identifying goals for individual collections programs and opportunities to improve management controls.

All of these steps were designed and implemented jointly by PGW and Accenture.²⁶² PGW Exhibit CP/RG-2 summarizes the specific management plan for the CRI, which was also implemented at the recommendation of Accenture. In addition, Company personnel meet monthly with BCS, OCA and CLS to provide progress reports and other data and to answer questions about its collections practices and to receive suggestions on how to improve further; no other major utility conducts such meetings.²⁶³

²⁵⁹ *Id.* at 5. The CRI was initiated to address the decline in the Company's cash receipts. *Id.* The objectives of the CRI and the factors leading to the development of the CRI are explained at pages 5-6 of Mr. Gyory's direct testimony (*Id.* at 5-6).

²⁶⁰ *Id.* at 11-12. Each step is evaluated by PGW and Accenture after consideration of the costs and benefits of the action, based upon PGW experience and performance or, when that is not available, the experience of other comparable utilities. *Id.*

²⁶¹ *Id.* at 6. Mr. Gyory explained how the CRI was developed in three phases – "Review and Diagnosis," "Development" and "Renewal" – and provided a complete summary on Exhibit CP/RG-1 of the collections renewal process, including details on the progress of the plan when the documents were prepared. *Id.* at 7.

²⁶² *Id.* at 7-8.

²⁶³ *Id.* at 10.

At pages 8-10 of his direct testimony (PGW St. CP-1), Mr. Gyory describes the implementation results that the Company has experienced since launching the CRI:

- Individual collection office employee productivity has almost doubled since December 2003.
- Pay by phone collection of past due bills has increased from \$800,000 in January 2003 to over \$2.5 million in April 2004.
- PGW has strengthened the business processes associated with abstract companies to improve collection unpaid balances at the settlement table which, in association with the filing of Municipal Liens, has resulted in over \$8 million in collections this fiscal year.
- Commercial and Industrial Accounts – The Commercial Resource Center (“CRC”), which focuses on the high use customers, was improved. In addition to collection actions, the CRC personnel concentrate on making dunning calls, responding to billing inquires and, as a last resort, having the gas service shutoff for non payment.
- Written-Off Accounts – As an incentive to promote collections, the Company has assigned written-off accounts to outside collection agencies and changed the commission structure to a tiered rate so the more dollars they collect, the more money they will make.
- Slow Paying Accounts (Residential Accounts overdue less than 91 days) – The Company has 13 distinct dunning campaigns during which it attempts to contact every slow paying customer because, without PGW monitoring or intervention, a large number of these accounts will tend to become non-paying over time. PGW intervention includes increased bill collection efforts coordinated with the Call Center and field operations.
- Payment Agreements – PGW attempts to contact customers when they miss their first payment to place them on payment arrangements. Through an aggressive outbound calling campaign in January – March 2004, the Company was able to enroll an additional 11,000 customers on payment arrangements.²⁶⁴ As a result, as of the end of March 2004, over 52,000 delinquent customers were actively participating in payment agreements.
- CRP customers – A dunning campaign reminds the participants they must keep paying their bills in order to remain on the program. Of the over 62,000 participants, approximately 80 percent are remaining current with their bill

²⁶⁴ Over 150,000 delinquent customers were contacted during this time frame which resulted in an average weekly increase of over \$350,000 in payments over the phone. *Id.* at 9.

payments.

- Increasing the use of field collections – Beginning April 1, 2004, the Company’s field collection staff was augmented by 20 additional employees from the Field Services Department. These employees work in concert with the collection staff in collecting past due account balances and shutting off gas service. Field initiatives for this fiscal year have collected over \$11 million in delinquent collections.²⁶⁵

PGW has been able to implement the collections program effectively because the credit and collection modules in the BCCS are fully functional and allow the Company to move customers through the collections process as their accounts age. These efforts are so important that additional functionality, originally planned for the FY2005 budget, has been advanced and will be implemented in this fiscal year, including functionality which will enable PGW to automatically assess deposits on customers when they do not pay promptly. The Company is also adding functionality to automatically place written-off accounts with collection agencies and modifying payment arrangement functionality to permit PGW to collect more effectively. PGW will also be providing on-line payment capability through its website and will allow customers to receive their bill on-line and enroll in a program where payments are automatically deducted from their bank account.²⁶⁶

Although the Company is hopeful that the initiative will result in PGW collecting every dollar within its ability to collect, the Company is concerned that if current circumstances (i.e., high gas costs) continue and if such factors as the income levels of its customers continue to deteriorate, PGW’s unique operating environment will make reversing the current trend extremely difficult if not impossible. In spite of the fact that natural gas costs have increased significantly this year, the Company nonetheless has improved its collection rate by 4%. However, gas prices in FY 2005 are expected to increase still more – by about \$77 million – which would make it very difficult to continue that momentum at these higher prices.

Therefore, there are no guarantees that without additional tools, such as the Company’s requested Chapter 56 waivers, the Company will be able to achieve the required collection rates

²⁶⁵ Additionally, during April 2004, approximately 2,000 customers were terminated when they did not respond to PGW collection efforts. *Id.* at 10.

²⁶⁶ *Id.*

to maintain financial viability in the near-term. OCA witness Colton acknowledged that PGW's CRI has resulted in an improvement in collections, but he argued that the Chapter 56 waivers should not be granted because "[t]here has been insufficient time, however, to allow the Collections Initiative to fully work."²⁶⁷ Although the Commission denied the Company's CRRC proposal due in part to the success of the Company's CRI, the OCA's suggestion that the Company be further penalized by the success of its CRI should be rejected.

PGW has shown that its current collection process and practices are reasonable, although there is no guarantee that the recent success of its CRI will maintain the Company's collection rate at historical levels without the Company's requested Chapter 56 waivers.

F. Compliance Tariff Issues

1. Introduction

The PUC's June 2, 2004 Order incorporated into this consolidated docket two issues left unresolved from PGW's Restructuring Proceeding: 1) Whether PGW may include in its tariff a "Residential Field Charge," a \$10 charge that PGW traditionally imposed on customers who require PGW to undertake a field visit 48 hours prior to termination. The charge was designed to cover the costs of these extra visits. 2) Whether PGW properly included in its tariff a provision which conditioned service for a new applicant on his/her payment (via an otherwise required payment arrangement) of any outstanding amounts reflected in liens or judgments that had previously been obtained and were related to past due amounts accumulated within four years. Both tariff provisions had been approved in the PUC's initial Restructuring Order but then removed in its "compliance" Order, even though no party had challenged them in their comments. After PGW appealed the PUC's Order challenging their removal, PGW and the Commission agreed to ask that the record be returned to the Commission from Commonwealth Court to permit the PUC to review the reasonableness of these two provisions and to determine whether they should be permitted to remain in its tariff. PGW presented testimony demonstrating the reasonableness of both provisions and no party challenged or took issue with PGW's testimony or explanations of why these two provisions should be reinstated. It should be noted that both provisions will make a positive contribution to PGW's collections activities. The

²⁶⁷ OCA St. No. FCI-1 at 6.

Residential Field Visit Charge was producing billings of over \$1.5 million per year before PGW removed it per PUC order, and the ability to require repayment of previously obtained liens and judgments as a condition of establishing service will have an obvious positive effect on collections levels and cash flow. They should be approved.

2. Residential Visit Charge The Company's Field Visit Charge Was Shown to be Reasonable and a Reasonable Means Of Adding to PGW's Cash Flow and Was Not Opposed By Any Witness.

In the PUC's October 10, 2003 Order, the Commission stated with regard to the Residential Field Charge: "The costs of field visits are recovered through late payment charges, and the Company is permitted to assess a reconnection fee. PGW shall not collect an additional charge for field visits that are part of the collection process."²⁶⁸ Unfortunately, the Commission's conclusion that the costs of field visits are recovered from late payment charges and reconnection fees is incorrect. The Residential Field Charge, the late payment charges and charges related to restoration of service are three distinct charges with three separate sources of cost causation.²⁶⁹ Late payment charges offset the losses the Company incurs from uncollectibles as well as the carrying costs of short-term debt.²⁷⁰ Reconnection fees recover the costs associated with reconnecting customers after termination.²⁷¹ The cost of reconnecting a customer amounts to hundreds of dollars and the fees do not come close to recovering the costs.²⁷² On the other hand, the Residential Field Charge covers the cost associated with pre-termination (and, therefore, pre-restoration) collection activities of the field collection unit which includes the salaries of approximately 40 field collectors, transportation costs and overhead.²⁷³

²⁶⁸ *Compliance Tariffs of Philadelphia Gas Works in response to the Commission Restructuring Order as modified on reconsideration, Docket No. M-00021612, Order (Oct. 10, 2003).*

²⁶⁹ PGW St. CP-1 at 15.

²⁷⁰ PGW St. CP-1 at 15.

²⁷¹ PGW St. CP-1 at 15.

²⁷² PGW St. CP-1 at 15.

²⁷³ PGW St. CP-1 at 15.

The reasonableness of the Residential Field Charge is further established by its inclusion in the Company's pre-restructuring tariff and its inclusion as part of the Company's total available revenue in the Company's 2002 base rate case. Before the Company came under the authority of the PUC, Section 14.2 of the pre-restructuring tariff not only provided for a Residential Field Charge, it also provided for late payment charges and fees relating to the restoration of service.²⁷⁴ Additionally, in the Company's 2002 base rate case, the PUC approved the Company's overall rate structure including the Residential Field Charge.²⁷⁵ As a result of this approval, the annual revenue collected from the Residential Field Charge, amounting to \$600,000, annually, at that time, was counted as part of the Company's total available revenue and base rates were set at a lower level than they otherwise would have based upon the total available revenue (In FY 2003, PGW collected some \$1.5 million from this charge before the PUC ordered it stopped).²⁷⁶ If the Commission adheres to its position in its October 10, 2003 Order, PGW's base rates will be deficient and PGW will lose a significant revenue source.²⁷⁷ Accordingly, the Company would have to be permitted to increase its delivery charge so it can maintain the same level of *pro forma* revenue the PUC authorized in the last base rate proceeding.²⁷⁸

Finally, the Residential Field Charge was not opposed by any witness presented during this proceeding. In fact, before the Commission issued its October 10, 2003 Order, the Charge was not specifically opposed by any of the parties during the restructuring proceeding and remained in subsequently filed compliance tariffs during this proceeding (CEPA did raise an issue regarding the way in which the Field Charge was to be applied).²⁷⁹ The Charge also

²⁷⁴ PGW St. CP-1 at 16.

²⁷⁵ PGW St. CP-1 at 16; *Pa. P.U.C. v. PGW*, R-00017034.

²⁷⁶ PGW St. CP-1 at 16.

²⁷⁷ PGW St. CP-1 at 17.

²⁷⁸ PGW St. CP-1 at 17.

²⁷⁹ PGW St. CP-1 at 16.

survived both the ALJ's Recommended Decision and the Commission's Final Order without comment.²⁸⁰

3. Requiring Applicants to Make Payment Arrangements For Arrearages Subject to Liens and Judgments For Amounts 4 Years Old or Less
 - a. PGW's Proposed Provision Regarding Liens and Judgments is a Reasonable Means of Making Customers Pay Past Due Amounts and will help the Company's Cash Flow.

In the PUC's October 10, 2003 Order, the Commission stated with regard to the Payment Arrangements For Arrearages Subject to Liens and Judgments:

2.4.C.6. – This section allows PGW to reject an application from a customer who fails to enter into payment agreement for an outstanding lien or judgment. This is contrary to Commission case history and policy that requires a company to keep court-ordered liens and judgments separate from the customer's utility billing. PGW should collect lien and judgment amounts through the legal process, and thus this provision shall be deleted from the tariff.²⁸¹

Traditionally, PGW obtains judgments²⁸² and liens²⁸³ by taking legal action against customers who have failed to remit past due amounts and/or whose service has been terminated in accordance with its tariff and legal requirements.

PGW has used the lien and judgment program successfully as a means to secure payment at the point in time that title to a liened property is changed (e.g. a sale or refinancing of a

²⁸⁰ *Pa. PUC v. PGW*, Docket No. M-00021612, Recommended Decision (Feb. 14, 2003); *Pa. PUC v. PGW*, Docket No. M-00021612, Opinion and Order (Mar. 31, 2003).

²⁸¹ *Compliance Tariffs of Philadelphia Gas Works in response to the Commission Restructuring Order as modified on reconsideration*, Docket No. M-00021612, Order (Oct. 10, 2003).

²⁸² PGW files civil lawsuits against customers who have failed to remit past due balances that exceed \$300. If the lawsuit is resolved in the Company's favor, it is at this point that PGW obtains a civil judgment for the past due amount. The civil judgment process is employed against customers who do not own the property for which gas service was provided. PGW St. CP-1 at 14.

²⁸³ PGW, as a collection of assets wholly owned by the City of Philadelphia, is permitted to avail itself of the Municipal Claim and Tax Lien Law. 53 Pa.C.S.A. § 7101 et. seq. Pursuant to this law, the past due balances of PGW customers are classified as municipal claims. *Id.* Municipal claims are declared to be a lien on a customer's property when the claim is filed with the Prothonotary's Office. 53 Pa.C.S.A. § 7106. The lien process is employed against customers who own the property for which gas service was provided. PGW St. CP-1 at 13-14.

property) or when a customer desires to clear a judgment from his or her credit history.²⁸⁴ PGW, as a matter of policy, does not want to have property seized for many reasons as follows: 1) PGW does not want to force customers from their homes or force the loss of personal property; 2) executing liens and judgments is a costly procedure thereby resulting in additional costs and often less of a payment than can be secured through a payment plan due to lack of assets on which to execute; and 3) restructured tariff Section 2.4.C.6. fosters a possibility that the customer will enter a payment plan whereas execution on a lien or judgment absolutely forecloses that possibility.²⁸⁵ As a result of arranging payment plans, PGW gains the opportunity to collect accounts receivable without the costly process of seizing property, thereby, increasing cash flow.

b. PGW's Proposed Tariff Provision Regarding Liens and Judgments Will Not Require The PUC to Adjudicate Disputes About The Legitimacy Of Those Liens Or Judgments.

The apparent reason for the PUC's rejection of this provision was a belief that, by permitting PGW to require payment of such liens and judgments (in accordance with otherwise applicable PUC Chapter 56 rules) the Commission would be put in the position of "enforcing" or adjudicating the legality of such items. The Commission will not have the burden of adjudicating disputes about the legitimacy of liens or judgments because it does not have jurisdiction over a lien or a judgment. For example, the Commission will not have the authority to hear complaints from the customer that the amount of the judgment is not really owing or that the lien should not have been entered.²⁸⁶ While the amount of arrearage will have already been resolved (through a customer's right to challenge the establishment of the lien or the lawsuit that preceded the judgment), all other Chapter 56 rules would be adhered to. PGW would adhere to the same payment arrangement parameters that would apply to any other prior arrearage and

²⁸⁴ PGW St. CP-1 at 13.

²⁸⁵ PGW St. CP-1 at 13.

²⁸⁶ *Ford v. Duquesne Light Company*, 1995 Pa. PUC LEXIS 49, ** 10-17. This precedent is based on the fact that the Commission lacks jurisdiction over a civil judgment, and, thus, a PUC requirement that the utility enter into a payment plan with a former customer to pay off the judgment would actually violate the utility's rights to exercise its civil remedies. *Id.*; Accord, *Homol v. Columbia Gas of Pennsylvania, Inc.*, 1992 Pa. PUC LEXIS 104, *5 (BCS decision requiring the utility to accept a payment plan for past-due utility charges for a person who is no longer a customer would interfere with Columbia's right to pursue a civil action for the collection of the debt).

PGW will only insist on the payment of amounts that are four years old or less.²⁸⁷ Once the payment arrangement is arrived at (and as long as the agreement is not broken), PGW will not seek to enforce the judgment or lien on its own.²⁸⁸ If the customer wishes to pay off the amount associated with the judgment or lien prior to the time that the payment arrangement would require (because, for example, he/she needs to clear the lien to sell the property) PGW would accept the payment.²⁸⁹ Such additional policies further reduce the possibility of adjudicatory burden. Therefore, the PUC will not be drawn into any disputes outside its purview. There is absolutely no reason, therefore, for the PUC to deny PGW this valuable collection tool. The alternative will be that PGW will be forced to enforce the liens causing the real property of the customer to be taken and sold (clearly not a desirable result).

IV. CONCLUSION

For all of the foregoing reasons, PGW respectfully requests that the Commission issue an Order:

- (a) approving PGW's Petition for Limited Waiver or Modification of PUC Chapter 56 Rules and Administrative Interpretations, and, pursuant to Section 2212(c) and (h)(1), waiving or modifying any provision of the Chapter 56 of the Commission's regulations and the Public Utility Code that is necessary to implement the waivers and modifications in PGW's Petition;
- (b) approving the waivers/modifications as a pilot for an initial two year period during which time the PUC will monitor and review the reasons for effectiveness.
- (c) directing PGW to file a report, within 60 days from the date of the Order, analyzing whether the OCA's EFT and budget billing proposals would be feasible and would reasonably be expected to generate additional cash flow;
- (d) approving PGW's means tested Senior Citizen Discount program;

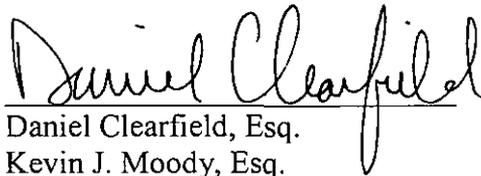
²⁸⁷ PGW St. CP-1 at 14.

²⁸⁸ PGW St. CP-1 at 14.

²⁸⁹ PGW St. CP-1 at 14.

- (e) approving PGW's residential field visit charge and the judgment and lien provisions in its proposed Restructuring Proceeding Compliance Tariff;
- (f) finding that PGW's universal service programs are in compliance with Commission regulations and policies and consistent from a cost perspective with the programs of other natural gas distribution companies;
- (g) directing PGW to include a review of its CRP administrative costs in its planned evaluation of its CRP program;
- (h) directing PGW and BCS to meet to discuss the Company's Conservation Works Program;
- (i) finding that PGW's collections practices are reasonable;
- (j) directing PGW to file a tariff supplement, to be effective on one day's notice, implementing the approved waivers, the means tested SCD, and its proposed residential field visit and judgment and lien tariff provisions within 15 days of the Order, with the Commission subsequently to issue a compliance order after comment by the parties;
- (k) denying the positions of the other parties consistent with this Order; and
- (l) granting any other relief in the public interest.

Respectfully submitted,



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BULLETIN: Adverse Regulatory Decision for Philadelphia Gas Works Detracts From Credit Quality

Jeanny Silva, New York (1) 212-438-1776

NEW YORK (Standard & Poor's) July 9, 2004--Standard & Poor's Ratings Services said that the Pennsylvania Public Utilities Commission's (PUC) decision yesterday to reject Philadelphia Gas Works' (PGW) request to establish a special surcharge to help defray the cost of its uncollectible billings is another unfavorable development for PGW's credit quality. The investment-grade rating on PGW's senior revenue bonds (BBB-/Negative) remains tenuous. Still, the PUC's decision in and of itself does not have an immediate impact on the ratings on PGW. However, it highlights the difficulty of PGW's financial situation, which could lead to lower ratings in the near term. The ratings on PGW have historically benefited from a supportive relationship with the PUC. The PUC's recent

decision points to the potential for a less supportive relationship going forward. Should the regulatory environment affect the company's ability to access short-term or long-term financing or lead to gas suppliers placing additional liquidity demands on PGW, the ratings could be lowered. High debt levels, slim financial margins, and weak collection rates that are exacerbated by high gas prices remain the primary drivers for the company. The outlook on PGW is negative.

For a complete list of ratings, please click the hyperlink provided here

<http://www2.standardandpoors.com/NASApp/cs/ContentServer?pagename=sp/Page/FixedIncomeRatingActionsPg>

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PROPOSED FINDINGS OF FACT

1. PGW is in a severe financial crisis, which threatens to cripple the Company and its ability to provide safe, adequate and reliable service to its customers. PGW St. No. CRRC-1.

2. PGW's financial crisis has resulted in the downgrading of its debt by the major bond rating services, Standard and Poor's and Fitch's:

(a) In April of this year, Standard and Poor's downgraded PGW's bonds to the lowest available investment grade rating, a level just above junk bond status, and stated that further downgrades to junk bond status will happen absent material improvement in the near term in the Company's cash margins and liquidity;

(b) Fitch's has also downgraded Company bonds to a level just above junk status; and

(c) In June of this year, Moody's placed PGW bonds on its Watchlist and announced a review in 90 days.

PGW St. No. CRRC-5, Exh. TEK-1 and 2.

3. The downgrade was made *despite the knowledge* that PGW had already *inter alia*: instituted a Collections Initiative that was projected to put collections back to historic levels; secured a promise by the City of Philadelphia to forgive \$18 million payment in lieu of taxes for a five year period and to defer a \$45 million working capital line of credit for an additional two years; and requested a Cash Receipts Reconciliation Clause (CRRC) from the Commission. PGW St. CRRC-5, Exh. TEK-1.

4. A downgrade of PGW's debt from investment grade status to junk bond status would produce devastating results both for the Company and for its customers. PGW St. CRRC at 7-9, PGW St. No. CRRC-1 at 9; CRRC Tr. at 360, 447.

5. If PGW's debt is reduced from investment grade to junk bond status, PGW's cost of financing and insuring currently planned and future bond offerings will increase substantially, to the detriment of PGW's customers, who ultimately must bear this additional expense. CRRC Tr. at 356.

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6. In the past, the Commission has determined that a downgrade of PGW's debt below investment grade, to junk status would be so costly that it warranted rare and extraordinary relief from the Commission. *Petition of Philadelphia Gas Works for Extraordinary Rate Relief Pursuant to 66 Pa. C.S. § 1308(e)*, R-00017034F0002, Opinion and Order (April 12, 2002).

7. PGW's financial outlook has only deteriorated since the release of the agencies' statements. PGW Main Brief (MB) at 14.

8. PGW is in the midst of preparing to issue an additional long term bond this Fall. However, PGW bond insurers have deemed the company too financially insecure to justify insuring more than \$50 million of its upcoming \$150 million bond issuance. Therefore, PGW and its customers will have to insure the remaining \$100 million at a lower investment grade and pay up to an additional \$40 million in the process over the next 20 years, or the Company will have to limit the issuance to \$50 million and it and its customers will go without needed capital improvements. PGW St. CP-1R at 2-3.

9. On July 8, 2004, the Commission rejected PGW's Petition to establish a CRRC. Order at 10.

10. The rating agencies are carefully monitoring PGW's progress and have issued bleak forecasts in light of recent events. After the Commission's denial of PGW's CRRC proposal, Standard and Poors issued a statement indicating that a "less supportive relationship" with the PUC could be a factor in lowering PGW ratings in the near term. PGW's bonds stand on the verge of being downgraded to junk status. S&P Bulletin: "Adverse Regulatory Decision for Philadelphia Gas Works Detracts From Credit Quality." July 9, 2004 (Attached as Appendix A hereto).

11. PGW's Petition requesting the Waiver or Modification of nine Chapter 56 collections rules remains its last basis for improving collections and receipts in the necessary time period.

12. S&P has scheduled an annual review for PGW, with results to be announced in February of 2005. The review will be based upon information gathered in the few months prior to that date. CRRC Tr. 391.

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13. PGW needs to make material improvements in its collections and cash margins in the next 4-6 months.
14. Moody's has indicated that it will take action within the next 90 days in regard to PGW's rating. Without positive action by the Commission in response to PGW's Petition for Waiver, it is likely that its bonds will be lowered to junk status. PGW MB at 16.
15. The few alternatives offered by other parties to address PGW's collection problems and financial crisis are inadequate.
16. Mandatory electronic fund transfer (EFT) payment by higher income customers on payment plans and mandatory budget billing for residential customers are not viable or will not produce sufficient cash flow in enough time to obviate the need for the requested waivers. *See* OCA St. FCI-1 at 7; Tr. 795-797.
17. The EFT proposal is untested in public utility collections, cannot be implemented until the next spring, and is unlikely to produce sufficient cash flow to offset the current financial crisis. Tr. 792, 795-797; PGW St. CP-1R at 7.
18. The budget billing proposal would take at least a year to implement. People on budget billing do not have superior payment practices. PGW St. CP-1R at 9-10.
19. While, PGW's Collections Initiative has produced near historic results, it has not satisfied the rating agencies, as all of the aforementioned negative reports were issued after the Initiative was implemented. PGW St. CP-1R at 6; *See. e.g.*, OCA Answer to Petition for Waiver at 3.
20. The Collections Initiative, undertaken with the nationally renowned Accenture, has included increases in overtime to permit additional collections, reminder calls to customers who have fallen behind in their bill, electronic transfer of information to credit bureaus regarding the payment status of customers and filing liens and collections actions on past due accounts. PGW St. CP-1 at 4-5.
21. Even with its Collections Initiative, PGW's collections efforts are projected to produce collections and uncollectible levels that only approximate, at best, its historic experience - 92%.

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There is no guarantee that the improved performance will continue, especially as PGW has historically seen a drop in its collections during the summer months. PGW St. CP-1R at 6.

22. PGW was not under PUC jurisdiction at the time the Chapter 56 rules 1970s.

23. Recently, the Pennsylvania House of Representatives overwhelmingly demonstrated their support for new collections approaches by passing the Responsibility Utility Customer Protection Act (164-36), a bill that would make numerous changes to collections and terminations procedures. The bills track changes and even exceed the relief requested by PGW in its Petition for Waiver. S.B. 689 (PN 1786).

24. Representatives of the Philadelphia region supported the bill by more than a 2 to 1 margin. PGW MB at 21.

25. A key policy finding of the Responsibility Utility Customer Protection Act is that Chapter 56 has "not successfully managed the issue of bill payment." S.B. 689 at Section 2801-D(1).

26. The Act would make changes to deposit rules, termination procedures, the winter moratorium, payment plan requirements, restoration requirements, responsibility for bills, Commission complaint procedures and thereby supersede numerous existing Chapter 56 rules. S.B. 689.

27. Given the overwhelmingly high margins of support for the Responsibility Utility Customer Protection Act, it presents the Commission with a reliable gauge of current policy balance between customer and utility interests.

28. PGW has advanced nine waiver proposals, designed to make material improvement in the Company's collections and to alert customers of its serious commitment to collect from those who can pay for the service that they use.

29. The proposed waivers will raise additional cash in the next 4-6 months by improving collections and reducing costs. PGW Exh. CP-1 at 4.

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30. The waiver proposal is projected to improve PGW collections by approximately \$30 million. PGW Exh. CP-1 at 4.
31. The proposal modifies existing procedures and Chapter 56 rules only to the extent necessary to achieve the desired result and maintain consistency with the general goals of Chapter 56: assuring adequate provision of residential service, restricting unreasonable termination or refusal to provide service and to providing functional alternatives to termination. 52 Pa. Code § 56.1.
32. The proposals maintain a customer's right to seek review from the PUC, assuring that PGW's implementation of its modified rules will be subject to independent review and revision. PGW MB at 22.
33. The proposals would allow only customers eligible for CRP and LIHEAP, those earning 150% of the Federal Poverty Level or below, to be viewed as unable to pay, in keeping with the PUC's standards of determining eligibility to its low income assistance program. PGW MB at 23.
34. Requiring individual waiver mechanisms and separate legal rulings for each affected consumer would be infeasible given the volume of PGW's payment troubled customers. PGW currently has some 250,000 payment troubled customers of which 150,000 are in arrears. PGW St. CP-1R at 12-13.
35. The first requested modification would permit PGW to require payment of the full balance and related charges to restore level 3 and 4 customers who have been shut off for non-payment and has an estimated value of \$4.2 million. PGW Exh. CP-1, App. A at 5.
36. The present Chapter 56 rule allows a customer to pay outstanding charges on an amortized basis. This request is consistent with the policy determinations of SB. 689. 52 Pa. Code § 56.191; S.B. 689 at Section 2807-D(C).
37. Individual waiver mechanisms are inadequate to manage the volume of PGW customers. Of the 150,000 customers in arrears, about 54,000 are estimated to enter into payment

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arrangements. However, less than 10% of customers given payment arrangements honor the agreement. PGW St. CP-1R at 27; Tr. at 685; PGW Exh. CP-1, App. A at 6.

38. Under the existing rules, a significant number of upper income customers will break their agreements, be terminated and rather than being required to pay their full balance as a condition of reinstatement, they will be given the chance to repay the outstanding arrearage over a period of months. PGW Cross Exam Exh. CP-3.

39. The second proposed modification would waive the winter moratorium shutoff ban, for level 3 and 4 customers, is consistent with SB. 689, and has an estimated value of \$1 million. PGW Exh. CP-1, App. A at 5-7; S.B. 689 at Section 2802-D.

40. Without a new rule governing shutoffs for upper income level customers, PGW will have no ability to enforce any type of payment requirements for a full four months even though one-quarter of its delinquent accounts have incomes that exceed protected levels. PGW Exhibit CP-1, App. A at 6.

41. The third proposed waiver request would require a flat turn-on deposit for all new or restored customers, and refuse service until such deposit is paid in full, and has an estimated value of \$7.6 million. PGW Exh. CP-1, App. A at 7.

42. If this proposal had been in place since the beginning of this fiscal year, PGW would have a potential pool of \$4.6 million that could have been applied against customer non-payment or slow payment. PGW St. CP-1R at 17.

43. Low income customers would not be affected by this proposal and customers that honor their obligation lose nothing, and have their deposit plus interest returned after twelve months. PGW MB at 35-36.

44. SB. 689 would permit all utilities to demand a deposit from any new applicant and to hold it for 24 months or until 12 consecutive months of on-time, full payments are made. S.B. 689 at Section 2804-D(C).

45. The fourth PGW waiver request would require all applicants to establish positive identification and require applicants who are identified as previously residing at the service

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location to be held responsible for any previous arrearage during the time that they resided there, and has an estimated value of \$1.8 million. PGW Exh. CP-1, App. A at 10-11.

46. Chapter 56 already permits such an application when the PUC determines that the applicant is "legally obligated to pay for the service." 52 Pa. Code § 56.35; Tr. 756.

47. Furthermore, the new rule would be less severe than policies allowed under SB 689. S.B. 689, § 2807-D(C).

48. The fifth PGW waiver request allows each customer only one payment arrangement unless there is a change in financial status, placing the customer in a lower BCS income level and has an estimated income level of \$7.25 million. PGW Exh. CP-1, App. A at 12.

49. The number of payment arrangements broken annually by PGW customers is 50,000. PGW Exh. CP-1, App. A at 11.

50. The sixth waiver request, which allows Friday shutoffs, has an estimated value of \$2.5 million. PGW Exh. CP-1, App. A at 13.

51. S.B. 689 would permit termination on any day of the week. S.B. 389 at Section 2806-D(E).

52. PGW customers should be aware of their non-payment and potential consequence of the same from date first missed bill is due. Tr. 759-60. The customer again noticed with the receipt of an overdue bill approximately 30 days later. Tr. 760-61. Customers also receive a ten day written notice and PGW attempts personal contact 72 hours before termination. Tr. 761; PGW Cross Exh. CP-2. Throughout this entire period a delinquent customer can contact the Company, complain to the PUC, obtain a medical certificate, or otherwise make arrangements for their unpaid bill.

53. The seventh PGW proposal would eliminate the 48-hour notice requirement during the shutoff process and has an estimated value of \$1 million. PGW MB at 48-49.

54. From the date of a customer's first bill that goes unpaid through timely termination, the customer receives service from PGW for 82 days. Tr. 804-05, PGW Cross Exh. CP-2.

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55. Customers would still have 50 days to avoid termination after they receive initial notice of deficiency. PGW Cross Exh. CP-2.
56. PGW's collections/termination timeline is typical of the time experienced by other utilities. Tr. 803-804.
57. The eighth PGW request would waive the administrative rule requiring 30 day maximum periods to complete a termination, has an estimated value of \$1 million, and is less severe than the requirements imposed by S.B. 689. S.B. 689, § 2807-D(B); PGW Exh. CP-1, App. A at 15.
58. PGW's ninth request is that the service restoration timeline change from 24 hours to up to 7 days during non-cwip periods. This requirement is in conformity with S.B. 689. S.B. 689, § 2807-D.
59. The consequence from a lack of near term, material improvement in PGW's collections outweighs any minimal benefit of exact compliance with the Chapter 56 collection rules, and any inconvenience to customers from waivers.
60. The evidence demonstrates that PGW's Waiver proposal will produce positive cash flow and collections results. PGW Exh. CP-1 at 4.
61. Without the waiver proposal, the Company has projected the need to file a base rate case that is likely to justify \$70-\$90 million in additional rate relief. CRRC Record PGW St. 1-R at 5.
62. PGW forecasts an end of fiscal year cash of only \$1-\$6 million, as opposed to the \$60 million that its financial expert testified is needed. PGW CRRC-1 at 3.
63. PGW has submitted a means tested senior citizen discount (SCD) proposal that is supported by the elected City representatives of the Company's customers, the Mayor and City Council, senior advocacy groups, including Action Alliance, and every party in this proceeding except for the OTS. *See* P-00032061; PGW St. 1 at 5,10.
64. The average additional yearly cost over the 16 year period that a non-heating and heating customer would have to pay due to the means tested SCD, respectively, is \$1.88 and \$5.81. Tr. at 611.

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65. No evidence exists that the incremental costs of a means tested SCD would be too great for the general body of customers to absorb or that it would contribute in any material way to the Company's cash receipt problems. PGW St. CP-2 at 10.

66. PGW's enrollment projections for the means tested *senior citizen* discount account for demographic trends and are reasonable.

67. The 250% FPL eligibility criterion is reasonable in the senior citizen context.

68. Senior citizens are typically on fixed incomes and are more likely to be infirm or disabled.

69. PGW has shown and the evidence reflects that its universal service programs are effective, PUC-approved, and in line from a cost perspective with those of other NGDCs, even with the unique demographics of PGW's service area. Order at 5.

70. PGW's universal service programs are consistent with PUC policies and were approved in the Company's restructuring proceeding. PGW St. CP-2 at 3.

71. The size and cost of PGW's program is *substantially* larger than that of other utilities because it is driven by the unique demographics and need of PGW's customer base. One third of Pennsylvania's low income natural gas customers live in PGW territory. Nearly one half of the customers enrolled in CAP are PGW's customers. PGW has more than twice as many low income customers as Columbia, the gas utility with the second highest number of low income households. Tr. 602; OTS St. 3 at 10.

72. It is clear that the level of poverty in Philadelphia and the lack of a growing, wealthy customer base, either commercial or residential, place extreme pressure on the universal service programs, on the Company, and on those customers who must provide the funds for the program. PGW St. CP-2 at 12.

73. PGW's average CRP costs per participant (\$737) are comparable to the weighted average CAP participant cost of the other major Pennsylvania gas utilities (\$625). OTS St. No. 3 at 13.

APPENDIX B

74. PGW has streamlined and automatéd the CRP recertification process in the past several months. The Company has also streamlined its CRP collections process and now has a fully automated CRP collections process that selects and issues the appropriate notices. The Company's current CRP collections process is also now more in line with the regular residential customer collection process and in line with BCS guidelines. In addition, PGW has an aggressive and successful LIHEAP outreach program. Receipt of LIHEAP grants helps to reduce net costs of the program. PGW St. CP-2 at 13-17.

75. Capping participation in the PGW CRP/CAP program is inconsistent with Commission policies, would harm low income customers who have been designated for assistance and would harm PGW's collections and cash flow. Tr. 604-6005; PGW St. CP-2 at 14; *See* Pa.C.S. § 2203(8).

76. Increasing CWP Per customer expenditures would substantially decrease the cost effectiveness of the CWP and harm qualifying low income customers. Tr. 607-608.

77. The Company's current collections program is adequate and reasonable, although insufficient to reach the levels of success dictated by the rating agencies.

78. In December 2003, Accenture was brought on board to provide major assistance in the development and implementation of a Collection Renewal Initiative ("CRI"), which included a major revision of its collections practices. Vast improvements have been made as a result of these efforts. PGW St. CP-1 at 5.

79. The costs of field visits are not recovered from late payment charges or reconnection fees. PGW St. CP-1 at 15-16.

80. The Residential Field Charge, the late payment charges and charges related to restoration of service are three distinct charges with three separate sources of cost causation. Late payment charges offset the losses the Company incurs from uncollectibles as well as the carrying costs of short-term debt. Reconnection fees recover the costs associated with reconnecting customers after termination. The cost of reconnecting a customer amounts to hundreds of dollars and the fees do not come close to recovering the costs. The Residential Field Charge covers the cost associated with pre-termination (and, therefore, pre-restoration) collection activities of the field

APPENDIX B

collection unit which includes the salaries of approximately 40 field collectors, transportation costs and overhead. PGW St. CP-1 at 15-16.

81. The reasonableness of the Residential Field Charge is further established by its inclusion in the Company's pre-restructuring tariff and its inclusion as part of the Company's total available revenue in the Company's 2002 base rate case. PGW St. CP-1 at 16.

82. The Residential Field Charge was not opposed by any witness presented during this proceeding.

83. PGW's proposed provision regarding liens and judgments is a reasonable means of making customers pay past due amounts and will help the Company's cash flow. PGW St. CP-1 at 13.

84. PGW's proposed tariff provision regarding liens and judgments will not require the PUC to adjudicate disputes about the legitimacy of those liens or judgments.

PROPOSED CONCLUSIONS OF LAW

1. The standard by which PGW's waiver requests should be judged, as outlined in the Commission's June 2nd Order, balances consumer protection rights with PGW's financial integrity. Order at 5, n.2.

2. The Commission has full authority to grant PGW's Petition for Waiver. Under Section 2212(c) of the Public Utility Code, the Commission is empowered to "suspend or waive the application to [PGW] of any provision of this title, including any provision of this chapter other than this section." The Commission has the ability to waive Section 1501's adequacy of service requirements in their entirety. The standard for granting such waiver or modification is whether the proposal would be in the public interest, which requires a balancing test as articulated by the Commission in its June 2nd Order. 66 Pa. C.S. § 2212(c).

3. In accord with Section 2212(h)(1), the Commission is tasked with examining the costs and benefits of compliance with Public Utility Code and PUC rules and regulations as PGW transitions to gas choice. Upon request by PGW, the Commission has authority to waive the

APPENDIX B

application to PGW of any of its rules, regulations or orders if it determines that the costs of compliance would not be prudent. 66 Pa. C.S. § 2212(h)(1).

4. Section 56.222, which contains provisions for making typical Chapter 56 waiver requests, is inapplicable to this proceeding, as it pertains to "temporary exemptions in exceptional cases" upon the application of a person or utility showing "unreasonable hardship." The limited waiver requests in the context of requests in the context of specific customer service scenarios impacting specific individuals, and not a comprehensive modification of the rule's for a utility's entire customer base. PGW does not need to make any showing of "unreasonable hardship." 52 Pa. Code § 56.222..

5. Section 2206 of the Code is no bar to Commission's power to grant the waivers as requested. Section 2206(a) is aimed at the actions and tariffs of NGDCs, and was not intended to bar Chapter 56 waivers. 66 Pa. C.S. § 2206.

6. Section 2212(c) of the Code empowers the Commission to waive "any provision" of the chapter, including Section 2206. 66 Pa. C.S. §§ 2206 and 2212.

7. All customers have an obligation to pay charges for the utility service they receive, both in full and on time. *Mary Frayne v. PECO Energy Company*, Docket No. C-20029005, Opinion and Order (Dec. 23, 2003).

8. Upon application of a balancing test to PGW's first waiver request, PGW's need to improve collections justifies requiring balances to be paid in full. Consumers are adequately protected by the proposal's applicability to only level 3 and 4 consumers.

9. In regard to the second waiver request, PGW's desperate need to add cash flow and increase collections, especially in winter, outweighs the effects of the limited change in the existing procedure. Consumers are adequately protected by the proposal's applicability to only level 3 and 4 consumers.

10. Upon application of a balancing test to PGW's third waiver request, the need to improve PGW collections and cash working capital outweighs any reduction in existing consumer rights. Given that deposits are regularly required in other commercial transactions and that low income

APPENDIX B

customers who are eligible for CRP would not be subject to the deposit requirements, the impact of the modification upon consumer rights is minimal.

11. . In order to establish a claim for quantum meruit or unjust enrichment, a plaintiff must prove: 1) a benefit was conferred on the defendant by the plaintiff; 2) appreciation of such benefit by the defendant; and 3) acceptance and retention of such benefit under circumstances that would create an inequity if the defendant retained the benefit without payment. *See J.F. Walker Company, Inc. v. Excalibur Oil Group, Inc.*, 792 A.2d 1269, 1273 (Pa.Super 2002).

12. The elements of unjust enrichment are satisfied when applied to the instant situation. First, PGW conferred a benefit on the new applicant, who resided at the service address during the period gas service was provided under the first customer's name. Likewise, a benefit is conferred on the first customer, as he will continue to receive gas service despite termination or the threat thereof. Second, both the customer and applicant enjoy the benefit conferred, and appreciation of the gas service is clearly demonstrated by the new applicant's attempt to restore/continue the gas service. Finally, an inequity occurs when customers who have received the benefit of gas service do not pay for gas service.

13. Upon application of a balancing test to PGW's fourth waiver request, the serious financial problems facing PGW and the potential volume of consumers that switch household registration in order to avoid arrearage, PGW's presumptive rules are fully justified.

14. PGW's fifth waiver proposal that allows each customer only one payment arrangement unless there is a change in financial status, placing the customer in a lower BCS income level, is justified after balancing PGW's severe financial circumstances, the minimal modification and its great potential value, and the consumer safeguards established for each customer according their level of income.

15. The sixth waiver request, which allows Friday shutoffs, is fully justified, given the minor impact on consumers and the substantial benefit to PGW.

16. The seventh PGW proposal, eliminating the 48-hour notice requirement during the shutoff process, is justified when balanced with consumer protection and PGW's need. Under the current rules, there is not requirement that a customer must receive actual, in-person notice of

APPENDIX B

the pending termination. Therefore, the savings to the Company (and ultimately to the consumer) justifies the burden of shortening the response period for nonpayment by 48 hours.

17. The eighth PGW request to waive the administrative rule requiring 30 day maximum periods to complete a termination is justified when balanced against PGW's need to improve collections. The need to complete the massive collections process involving as many as 150,000 customers in timely and efficient manner clearly outweighs any possible and incidental harm to customers.

18. PGW's request that the service restoration timeline change from 24 hours to up to 7 days during non-cwip periods is carefully crafted to avoid any undue harm to customers and is justified when balanced against PGW's need to improve collections.

19. The package of proposed Chapter 56 waivers and administrative rule modifications on balance will result in minimally necessary revisions to existing rules or procedure, are appropriately directed only at customers who are not subject to protection from an ability to pay standpoint, and are justified when balanced against PGW's need to improve collections.

20. Section 1304 of the Code does not preclude the Commission from approving a means tested SCD. Such an interpretation writes the Commission's power to approve SCDs and Section 2212(r)(1) out of the Public Utility Code and is contrary to the rules of statutory construction. 66 Pa.C.S. §§ 2212(r)(1) and 1304.

21. There is nothing unreasonably discriminatory about a means tested SCD. 66 Pa.C.S. § 1304.

22. The Commission's decision to allow the requested waivers is a policy decision. 66 Pa.C.S. §§ 2212(c) and (h)(1).

23. Section 1304 only precludes unreasonable differences in rates between classes of customers. 66 Pa.C.S. § 1304.

24. PGW's Universal Service Programs, including its CRP and CWP programs, are compliant with Public Utility Code, Commission regulations and Commission policies.

APPENDIX B

25. PGW's collections practices are compliant with Public Utility Code, Commission regulations and Commission policies.
26. Capping participation in PGW's CRP program below the level of eligible customers is inconsistent with 2203(8) of the Public Utility Code.
27. The Commission has already adjudicated the issue of the application of PGW's Universal Service charge to all firm customers. *See* Restructuring Order, Docket No. M-00021612, March 31, 2003, Opinion and Order at 62-64.
28. OSBA's proposals to cap CRP participation and/or limit CRP cost allocation only to residential class customers exceed scope of PUC's June 2nd Order and this investigation.

APPENDIX B

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

RECOMMENDED ORDER

THEREFORE,

IT IS RECOMMENDED (Subject to Commission Review and Approval):

1. That PGW's Petition for Limited Waiver or Modification of PUC Chapter 56 Rules and Administrative Interpretations shall be approved. Pursuant to Section 2212(c) and (h)(1) of the Public Utility Code, Chapter 56 of the Commission's regulations and the Public Utility Code is hereby waived or modified as is necessary to implement the waivers and modifications set forth in PGW's Petition.
2. That PGW's Petition is approved as a pilot for an initial two year period, during which time the PUC will monitor and review the revisions for effectiveness.
3. That PGW shall file a report, within 60 days from the date of the Commission's Order adopting this Recommended Decision, analyzing whether the OCA's EFT and budget billing proposals would be feasible and would reasonably be expected to generate additional cash flow.
4. That PGW's means tested Senior Citizen Discount program shall be approved.
5. That PGW's residential field visit charge and the judgment and lien provisions in its proposed Restructuring Proceeding Compliance Tariff are approved.
6. That PGW's universal service programs are found to be in compliance with Commission regulations and policies and consistent, from a cost perspective, with the programs of other natural gas distribution companies.
7. That PGW shall include a review of its CRP administrative costs in its planned evaluation of its CRP program in 2005.

APPENDIX B

8. That PGW and BCS shall meet to discuss the Company's Conservation Works Program.

9. That PGW's collections practices are found to be reasonable.

10. That, within 15 days of the Commission's Order adopting this Recommended Decision, PGW shall file a tariff supplement, to be effective on one day's notice, implementing the approved waivers, the means tested SCD, and its proposed residential field visit and judgment and lien provisions. After comment by the parties and reply comments by PGW, the Commission will issue a compliance order.

11. That the positions of all other parties to this proceeding are denied consistent with this Order.

CHARLES E. RAINEY, JR.
Administrative Law Judge

Date: _____

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).

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ORIGINAL

July 16, 2004

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PA. PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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Filed by Federal Express

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

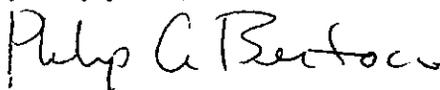
Dear Secretary McNulty:

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 nine (9) copies of Action Alliance,
et al.'s Main Brief.

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

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06

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

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

ACTION ALLIANCE, et al. MAIN BRIEF

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JUL 16 2004

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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JUL 21 2004

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I. INTRODUCTION

This case was opened under the heading "Investigation into Financial and Collections Issues Regarding the Philadelphia Gas Works" pursuant to the Commission's Opinion and Order issued June 2, 2004 (hereinafter "June 2, 2004 Order"). In that Order, the Commission noted that PGW continued to "face challenges regarding its financial condition and its collections process."¹ Declaring that the current situation required a "comprehensive approach," the Commission stated that it wished to initiate an investigation into the "adequacy, cost effectiveness and management of PGW's collection practices" and the "level of PGW's universal service costs as well as the cost effectiveness and management of these programs." The Commission also declared its intent to subsume under this "comprehensive approach" four different matters then pending before the Commission which all impacted in one way or other on the Company's financial condition.

These four matters were:

- (1) PGW's Fiscal Year 2004-2005 Gas Cost Rate proceeding, at Docket No. R-00049157;
- (2) Petition of the Philadelphia Gas Works to Establish a Cash Receipts Reconciliation Clause, at Docket No. P-00040290 (hereinafter "CRRC Petition");
- (3) Petition for Rescission and Amendment of Philadelphia Gas Works, at Docket Nos. P-00032061, M - 00021612 and C-20030297) (hereinafter "Senior Citizen Discount Petition");
- (4) Remand from Commonwealth Court of PGW's appeal regarding the Commission's decisions in its October 10, 2003 Compliance Order concerning the Liens and Judgements and the residential Field Charge, at Docket No. M - 00021612.

In addition, the Commission gave notice to PGW that if it believed that its collections efforts have been "impeded by protections contained in the Commission's regulations," it should promptly file a petition seeking waiver to regulations. The Commission stated that this Petition

¹ June 2, 2004 Order, at 3.

would also be considered as part of this proceeding.²

On June 16, 2004, PGW filed its Petition of Philadelphia Gas Works for Limited Waiver or Modification of PUC Chapter 56 Rules and Administrative Interpretations (hereinafter “Waiver Petition”).

The June 2, 2004 Order envisaged that the Commission would issue three separate Orders at different times addressing the matters contained within the Financial and Collections Investigation. There would be a decision on the Gas Cost Rate filing within the time frame necessary to comply with the statutory deadline. The Commission would issue a decision on the CRRC Petition at its July 8, 2004 Public Meeting. There would be discovery and hearings on the remaining issues, including the Chapter 56 Waiver Petition, on a schedule that would result in a Recommended Decision by ALJ Rainey by September 3, 2004,¹ with a final decision by the Commission to be issued on September 30, 2004.

Since the issuance of the June 2, 2004 Order, ALJ Rainey has issued a Recommended Decision dated June 15, 2004 concerning the Gas Cost Rate filing. On July 8, 2004, the Commission issued an Opinion and Order regarding the CRRC Petition. This Main Brief addresses the remaining issues subsumed under this Financial and Collections Investigation.

II. SUMMARY OF ARGUMENT³

Chapter 56 Waiver Petition. Action Alliance requests that the Commission deny this

² Id. at 4-5.

³ This Main Brief is filed on behalf of three Philadelphia low income consumer advocacy and membership organizations, Action Alliance of Senior Citizens of Greater Philadelphia, Association of Community Organizations for Reform Now (ACORN), and Tenants’ Action Group (TAG)(hereinafter collectively “Action Alliance”). The Statement of the Case of the Office of Consumer Advocate is incorporated herein by reference.

Petition because PGW has failed to carry its burden of proof. In inviting PGW to file a Waiver Petition, the Commission stated that PGW must demonstrate, inter alia, how each specific waiver “adequately balances consumer protections rights with PGW’s financial integrity.” June 2, 2004 Order, at 5 n. 2. PGW has utterly failed to make the demonstration required by the Commission. PGW does not even claim to have made an attempt to show in quantitative terms how a specific waiver would enhance its collections – while describing the nature of incremental harm to customers from such waivers. Rather, at a time when its collections ratio is at historical levels, it nonetheless attempts to justify the need for the waivers by reference to generalized exaggerations concerning its financial condition which the Commission itself rejected in its July 8, 2004 CRRC Order. Although PGW has not even seriously sought to demonstrate that its own waiver proposals will result in increased collections by December 1, 2004, it rejects as useless the reminders by consumer parties that the company has only recently begun its Collections Renewal Initiative under Chapter 56, that it is not using all the tools currently provided under Chapter 56, and that it is systematically discounting the effectiveness of measures currently available under Chapter 56.

In its assessment of harms to customers, the company demonstrates an astonishing lack of understanding of the purpose and value of existing legal and regulatory consumer protection standards. In addition, while recognizing that many of its customers have difficulty paying their gas bills in full and on time, it has advanced waiver proposals based on the premise that the proper way to deal even with customers trying in good faith to meet their obligations, is to shut them off, and force them to endure long periods without necessary service for heating, hot water and cooking.

Liens and Judgments/Field Collection Charge. With regard to Liens and Judgments, Action Alliance requests that the Commission allow PGW to require that applicants pay outstanding liens and judgments as a condition of service, but only on the condition that PGW's Tariff Section 2.4.C.6 be amended to contain the limitation that payment or agreement to pay such charges is required only for charges for service which were incurred within 4 years prior to the date of application for service.

With regard to the residential Field Charge, Action Alliance requests that the Commission maintain the ruling contained in the October 10, 2003 Compliance Order. In the event that the Commission determines that a Field Charge is permissible, the Field Charge should be applicable only on the same terms as under PGW's pre-Restructuring Tariff, which permitted such a charge only where there had been one actual personal contact by telephone or in person at the account premises prior to the date of termination.

Senior Citizen Discount. Action Alliance requests that the Commission accept the additional information which has been supplied by PGW, which demonstrates that the incremental cost of the modified Senior Citizen Discount program will not have an adverse effect on other customers. Action Alliance also requests that the Commission approve as just and reasonable a modified Senior Citizen Discount which has been formulated by the Governing Body of the City. In light of the time which has elapsed since the filing of PGW's Senior Citizen Discount Petition, Action Alliance also requests that persons who have applied for the Senior Citizen Discount since September 1, 2003 be granted the discount retroactively to the date of application.

Adequacy, Cost Effectiveness and Management of PGW's Collection Practices. In

the time between June 2, 2004 and evidentiary hearings on July 6, 2004, there was not time for the parties to conduct a thorough investigation of the adequacy, cost effectiveness and management of PGW's collection programs. By its own admission, PGW's collection practices have been traditionally subpar, resulting in an 87% collections ratio in FY2003. They have been the subject of a Collections Renewal Initiative, which, without the necessity for a single Chapter 56 waiver, has likely assisted PGW to restore its collections ratio to the current 92% historical level. As PGW continues with this Renewal Initiative, and devotes increased attention and resources to collections, PGW's collections ratio can be expected to improve further. PGW has recently begun to report customers to credit reporting agencies, which if properly publicized, is likely to result in more prompt payment from many Level 3 and Level 4 customers. PGW is altering its systems to permit it to place a customer who breaches a payment agreement on a collections path (termination notice) after one missed payment, rather than two. It is also altering its information systems to enable it to demand deposits as permitted by Chapter 56 from customers who pay late two months in a row, or three times in any one year. Although at the present time, it has not initiated a credit scoring system, based on a limited Chapter 56 waiver, it should be encouraged to pursue this practice, subject to appropriate consumer protections.

Level of Universal Service Costs, Cost Effectiveness, and Program Management. In the time between June 2, 2004 and the evidentiary hearings on July 6, 2004, there was not adequate time for the parties to thoroughly investigate these issues. However, in the recent Restructuring Proceeding, the parties did have the opportunity to review PGW's Customer Responsibility Program (CRP), the low income Conservation Works Program (CWP) and the Senior Citizen Discount program. PGW's CRP program and the CWP program were approved

by the Commission as consistent with the Commission's universal service guidelines and standards. Action Alliance does not see the need for further review of CRP and CWP at this time.

III. ARGUMENT

A. THE COMMISSION SHOULD REJECT PGW'S CHAPTER 56 WAIVER PETITION BECAUSE PGW HAS NOT DEMONSTRATED THAT ANY CHAPTER 56 PROVISION CAUSES IT UNREASONABLE HARDSHIP AND BECAUSE THE WAIVERS WOULD CAUSE UNDUE HARM TO CUSTOMERS.

PGW's Chapter 56 Waiver Petition represents not a request to temporarily modify a few isolated provisions in Chapter 56, but rather a massive dismantlement of a whole structure of interconnected consumer protections which have constituted the standards and billing practices for residential gas, electric and water service for decades.

1. Standards for Granting Chapter 56 Waivers

In its June 2, 2004 Order initiating this Investigation, the Commission correctly identified the applicable standards. Consistent with 52 Pa. Code § 56.222, the utility must demonstrate "unreasonable hardship" resulting from compliance with a particular Chapter 56 section.⁴ The Commission further reminded PGW that under 52 Pa. Code § 5.43, the company must:

set forth clearly and concisely the interest of the petitioner in the subject matter, the specific regulation, amendment, waiver or repeal requested, and shall cite by appropriate reference the statutory provision or other authority involved. The petition shall set forth the purpose of, and the facts claimed to constitute the grounds requiring the regulation,

⁴ Section 56.222 states in pertinent part: "If unreasonable hardship to a person or 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..." 52 Pa. Code § 56.222. Where PGW seeks to obtain waivers of Chapter 56, even when proceeding under Gas Choice Act Section 2212(c), it must satisfy the requirements of 52 Pa. Code § 56.222 and 52 Pa. Code § 5.43.

amendment; waiver or repeal.⁵

As the Commission has further elaborated, in support of each Chapter 56 waiver request, PGW must show “unreasonable hardship” and “explain in such a petition how the alternative standard or procedure adequately balances consumer protection rights with PGW’s financial integrity.”⁶ In a subsequent Order (issued on July 8, 2004 in response to PGW’s Motion to Certify the Waiver Petition of concurrent disposition with the CRRC Petition)(hereinafter “July 8, 2004 Procedural Order”), the Commission further indicated that the Waiver Petition involved “important questions of material fact” that required development on the record. The Commission further stated that those questions of fact “include, but are not limited to, the estimated cost savings resulting from waivers and the potential impact on customer service and consumer protections.” July 8, 2004 Procedural Order, at 4. Finally, in the July 8, 2004 Opinion and Order concerning the Petition of the Philadelphia Gas Works to Establish a Cash Receipts Reconciliation Clause (hereinafter “CRRC Order”), the Commission declared the need for PGW to provide a greater level of quantitative precision than mere “estimates” in support of measures involving the balancing of PGW’s financial integrity against customer protections.⁷

2. PGW Has Failed to Demonstrate “Unreasonable Hardship” Resulting From Compliance with Chapter 56 Provisions.

⁵ In its July 8, 2004 Procedural Order, the Commission rejects PGW’s claim that Section 2212(h) is authority for the Waiver Petition, observing that this provision applied to the Restructuring Proceeding alone, which has been completed, and which has been reopened on remand from the Commonwealth Court only to address two narrow issues.

⁶ June 2, 2004 Order at 5 n.2.

⁷ Pa. P.U.C. v. Philadelphia Gas Works. Petition of the Philadelphia Gas Works to Establish a Cash Receipts Reconciliation Clause, Docket Nos. R-00049157, P-00042090 (Opinion and Order, July 8, 2004) at 19.

The primary justification offered by PGW for the requested Chapter 56 waivers is the alleged need to give the rating agencies confidence by the fall of this year that PGW has been given “authority to put in place steps that will result in a material improvement in its collections and cash working capital” in order to prevent PGW’s bond rating from being reduced to “junk” status.⁸ As PGW states, the Waiver Petition is justified by the same allegedly “dire financial circumstances” that supposedly would have justified approval of the CRRC.⁹ Paragraphs 1 through 19 of PGW’s Waiver Petition repeat the same allegations of impending late FY2004 and early FY2005 financial crisis, with bond rating downgrades which were contained in the CRRC Petition. Only one new element is added. If the Commission declines to grant the CRRC Petition, then according to PGW, it is even more imperative that the Commission grant the requested Chapter 56 waivers as “the only viable way in which to materially increase working capital and collections beyond historic levels,” provide the means for PGW to collect \$30 million more annually in cash working capital than at the 92% level, and “sending an important signal to both the investment community and to customers who might have tried to delay or avoid payment in the past.”¹⁰

In support of this Petition, PGW offered no new financial testimony from either its CEO or from its chief financial officer, and did not strengthen its position in support of its exaggerated claims of financial crisis and rating agency demands that were presented in the CRRC proceeding. At the same time, PGW reaffirmed that its collections ratio for FY2004 was at or

⁸ Waiver Petition at 1.

⁹ Id.

¹⁰ Id. at 15.

about the historical level of 92%, with many collections improvements not involving Chapter 56 waivers in the process of implementation.¹¹

After an exhaustive review of the testimony and exhibits regarding the CRRC Petition, the Commission concluded that PGW's financial outlook was "not as desperate as it seemed at the time the [CRRC] Petition was filed."¹² Expressing its expectation that PGW would continue its intensified focus on collections beyond this year to accomplish further improvement, the Commission commended PGW for improving its collections ratio to the historic 92% level. It concluded that with regard to the CRRC, PGW has not carried its burden of proof and has not shown that its current financial condition warrants actions that would depart from adherence to Pennsylvania ratemaking law and principles."¹³

Thus, with regard to the Waiver Petition, as with the CRRC Petition, arguments based on the premise of near term financial disaster linked to the view that the rating agencies require assurance of immediate collections performance above the historical 92% level should be rejected. Even if the Commission determines that a different balance is to be struck when consumer protections, as opposed to ratemaking law and principles, are on the scales, the result of the CRRC proceeding suggests that claims based on an immediate cash crisis or the need to reassure bond rating agencies should be discounted. Rather, the Commission should focus on the supposed dollar savings to be expected from any particular waiver, and on the level of potential

¹¹ PGW St. CP-1R. at 6; PGW Exhibit CP-1, Appendix A, at 1-2. See also PGW St. CP-1 at 5-10 and Exhibit CP/RG-1, Exhibit CP/RG-2.

¹² CRRC Opinion and Order (July 8, 2004) at 11.

¹³ Id.

harm to customers that might flow from such particular waiver. Or as the Commission put it, it must scrutinize the “estimated cost savings resulting from waivers and the potential impact on customer service and consumer protections.”¹⁴

With this focus, Action Alliance submits that PGW has not come close to providing justification for any of its proposed waivers. Indeed, PGW does not even claim that its calculation of the “savings” resulting from its proposed waivers are reasonably accurate. PGW criticizes Action Alliance witness Geller for pointing out that certain calculations do not take account of the amount likely to be collected from deposits, or upfront payments in payment agreements even absent the waivers,¹⁵ that other calculations do not take account of lost sales due to prolonged periods when some customers will be unable to obtain service,¹⁶ and that still other calculations do not recognize the time likely to be spent processing BCS informal complaints arising from PGW actions which offend fundamental contract principles.¹⁷ In a damaging admission, PGW concedes that “[o]ur requests are not materially related to these exact value calculations. They were provided to give the Commission a general concept of the value of each proposal. There should be no question that they each will make some positive improvement in

¹⁴ July 8, 2004 Procedural Order at 4.

¹⁵ Action Alliance, et al. St. No. 1 at 13 (outstanding balances required from Level 3 and 4 customers terminated for non-payment); Action Alliance, et al. St. No. 1 at 27 (outstanding balances not paid during Dec. 1 - April 1 period which are subsequently paid).

¹⁶ Id. at 17 (flat \$250 deposit for all new heating customers and customers who have been terminated for non-payment and are seeking service restoration).

¹⁷ Id. at 21 (adjudications involving persons “presumed” by PGW to be responsible for service provided to an account in another person’s name).

PGW's situation."¹⁸

Moreover, it has become clear that PGW's waiver proposals have been formulated without reference to any systematic data collection concerning the problems its waiver proposal attempt to address. OCA witness Colton, who has performed extensive detailed and innovative collections analyses in many utility contexts,¹⁹ testifies:

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

OCA St. FCI-1 at 16. This conclusion is further confirmed by evidence produced during OCA's cross-examination of PGW witness Gyory during the hearings. Many of PGW's waiver proposals attempt to impose more stringent terms on customers seeking to make or alter payment arrangements. Yet except for gross information concerning the overall numbers of customers under payment agreements since October, 2003, PGW was unable to provide OCA witness Colton with detailed data, broken out on a monthly basis by such categories as Income Level, initial, pre-payment agreement arrears, dollar amounts subject to payment agreements, dollar amounts subject to broken payment agreements, and time span of compliance with payment

¹⁸ PGW St. CP-1R at 6 n. 6.

¹⁹ See generally OCA St. No. 1, Appendix A in Appendices Accompanying the Direct Testimony of Roger Colton.

agreements.²⁰

The Office of Trial Staff (OTS) reaches the same conclusion concerning the inadequacy of the evidence PGW has submitted in support of particular waivers. OTS witness Mumford stresses that PGW has not submitted adequate data to demonstrate that specific Chapter 56 regulations are what has prevented the utility from collection at its historical 92% collections rate, or from improving collections about that rate. OTS St. No. 4 at 4-5.

3. Each Chapter 56 Waiver Would Cause Serious Harm to Customers: The Waivers Unreasonably and Unfairly Impair Access to Utility Service, Ability to Maintain Service, and the Ability to Obtain Restoration of Service after Termination.

PGW euphemistically characterizes its Waiver Petition²¹ as a request “for limited waiver or modification of PUC Chapter 56 rules and administrative interpretations.” Pet. at 1. However, rather than making limited modifications, the set of alternatives PGW proposes would effectively rewrite Chapter 56, altering virtually every single interaction that a PGW customer would have with the sole entity that provides gas service in Philadelphia. While each of the requests reduces consumer rights on its own, the cumulative effect of the waivers is more than the sum of the parts, creating a framework in which consumers, including many low-income consumers, will face significant financial barriers to obtaining service, be given little opportunity to enter into payment agreements that reflect the realities of their circumstances so that they can maintain service, lose service more rapidly, and again face barriers to restoration of service,

²⁰ OCA Cross Examination Exhibit FCI-1 (PGW Responses to OCA Interrogatories I-9, I-10, I-19, I-20, I-21, I-22, I-23, I-24, I-25).

²¹ Hereinafter “Pet.”

including being held liable for arrearages in someone else's name.²²

A fundamental starting point in analyzing PGW's proposals and understanding their impact on individual customers is the issue of ability to pay. As Action Alliance and OCA witnesses explained in detail in their written testimony, PGW's assumption that Level 3 customers whose incomes range from 151% to 300% of the federal poverty level (FPL) have an unquestionable ability to pay is faulty.²³ In reality, customers with household incomes between 150% FPL (the low end of Level 3) and 250% FPL, experience poverty yet do not qualify for public assistance or energy assistance via LIHEAP, live paycheck to paycheck, do not have savings to draw from when faced with sudden medical expenses, home or car repairs, and have difficulty paying their bills.²⁴ There is a sound and critical reason why BCS divides customers with household incomes above 150% FPL into two levels, instead of lumping them all into one as many of PGW's waiver requests do: Level 3 customers have a lesser ability to pay, even if they have not been singled out as those for whom a CAP program is necessary.

In addition, PGW witness Gil Peach has estimated that only two-thirds of PGW

²² See OCA St. No. FCI-1 at 17-18 (discussing "synergistic impacts that the package of requests as a whole will have on PGW customers").

²³ Action Alliance, et al. St. No. 1 at 9-10; OCA St. No. FCI-1 at 18-19, 22-25.

²⁴ See Action Alliance, et al. St. No. 1 at 9-10; OCA St. No. FCI-1 at 18-19, 22-25. Of particular relevance is the PathwaysPA self-sufficiency standard cited by OCA witness Colton. See OCA St. No. FCI-1 at 23. Colton explained that self-sufficiency standards are often used as a benchmark of how much income is needed to fully cover household costs. *Id.* & n.1. According to PathwaysPA, the self-sufficiency standard for a three-person Pennsylvania household in 2001 was a monthly wage of \$3,156, nearly 260% of the 2001 FPL. *Id.* The standard for a four-person household was a monthly wage of \$3,567, or more than 240% of the 2001 FPL. *Id.* Thus, in order to afford admittedly high gas bills and other basic expenses in Philadelphia, a typical household would need to be at least around 250% FPL.

customers who are income-eligible for CRP currently participate in the program.²⁵ Thus, Level 1 and Level 2 customers who are not on CRP are also affected by many of these proposals, and are not protected simply by virtue of their CRP eligibility.

Although PGW asserts that few of the proposed changes affect Level 1 and 2 customers, Pet., App. A at 3, in practice, seven of the nine waiver requests²⁶ apply to all income categories. Thus, the waiver requests must be considered in light of the financial reality of all of these lower-income customers.

In addition, although PGW is seeking waiver of specific provisions of Chapter 56, the waiver requests should be considered not just in light of the formal standards for waiver set forth above, and customers' ability to pay, but also in light of the stated purposes of Chapter 56. Specifically, Chapter 56 was designed to "establish[] and enforce[] uniform, fair and equitable residential utility service standards governing eligibility criteria, credit and deposit practices, and account billing, termination and customer complaint procedures."²⁷ The further purpose of Chapter 56 regulations is to restrict unreasonable termination of or refusal to provide utility service.²⁸ Thus, at issue is not just whether PGW's proposals to modify individual provisions of Chapter 56 are warranted, but whether these proposals together represent an acceptable

²⁵ See PGW St. No. CRRC-4 at 5 (testimony filed in PGW's CRRC proceeding). The reasons for non-enrollment in CRP are not just failure to apply; customers with large households, while income eligible for CRP, may have a gross income which is so high that bills calculated as a percentage of their income would be higher than the non-discounted bill for actual usage.

²⁶ Although there are nine specific waiver requests in the Petition and Appendix A, Appendix B has thirteen proposed revisions.

²⁷ 52 Pa. Code § 56.1.

²⁸ Id.

divergence from the intent and purpose of Chapter 56, particularly for a company that has not even completed its first full year under these regulations. *Action Alliance, et al. St. No. 1* at 5-6.

**a. Waiver Request A/Proposals Four and Thirteen from Appendix B:
Requiring payment of full balance and related charges for Level 3 and 4
customers who have been shut off for non-payment²⁹**

PGW seeks to amend § 56.191, which allows a customer to have service restored after paying or agreeing to pay outstanding charges and a reasonable reconnection fee. Specifically, § 56.191 currently allows the outstanding charges and reconnection fee to be amortized over a “reasonable period of time,” taking into account factors such as the size of the unpaid balance, the ability of the ratepayer to pay, the payment history of the ratepayer, and the length of time over which the bill accumulated.³⁰ The proposed waiver would amend § 56.191 to add a section stating that Level 3 and 4 customers would unconditionally have to pay all outstanding charges plus the reconnection fee before getting service restored. *Pet., App. A* at 4-5; *App. B* at B-8.

PGW’s assertion that the customers affected by this proposal will be protected from undue hardship because, “by definition,” they should have the ability to pay, is incorrect. *Pet., App. A* at 4-5. As *Action Alliance* witness Geller explained, there is no “‘definition’ which attributes the ability to fully afford the cost of gas service to any household with income” above 150% FPL. *Action Alliance, et al. St. No. 1* at 10. To the contrary, as discussed earlier, the BCS Income Level Guidelines have long recognized that there is a difference between Level 3 and Level 4 income, and that Level 3 customers do not have the ability to pay an outstanding balance

²⁹ The waiver requests discussed in this section are listed in the order stated in the *Petition and Appendix A, Statement of Randall Gyory (“App. A”)*, and reference the related revision proposals in *Appendix B (“App. B”)*.

³⁰ 52 Pa. Code § 56.191(1).

in full in order to be restored. Id. Geller further testified that numerous programs for low-income individuals set income eligibility above 150% FPL, reflecting economic need within the Level 3 range, id., and OCA witness Colton explained that Pennsylvania households can only afford all of their expenses at around 250% FPL, see OCA St. No. FCI-1 at 23 & n.1.

Under this proposal, lower income Level 3 customers who are already having a hard time making ends meet, as evidenced by the termination of their gas service, a basic necessity for heating, cooking, and bathing, would be asked to pay over half of their monthly income upfront in order to get restored.³¹ Action Alliance, et al. St. No. 1 at 12. This does not even include additional reconnection and excavation charges, or the flat upfront deposit fee that could be as high as \$500 under a separate waiver request. Thus, as Geller concluded, “many households will have extreme difficulty obtaining anything approaching prompt restoration of service, and will likely experience weeks without service.”³² Id.

Imposing such hardship on customers forced to go without service is unwarranted

³¹ A two-person household at the bottom of Level 3 has a gross monthly income of \$1,562. Under this waiver request, the household that was terminated with a balance of \$620 would have to pay at least \$870 (including the \$250 deposit fee requested under Waiver C), or 56% of the gross monthly income, in order to get restored. See Action Alliance, et al. St. No. 1 at 12.

³² PGW’s contention that this burden is alleviated by customers’ ability to file a complaint with the PUC to challenge the amount requested, Pet., App. A at 5, is not accurate. Simply affirming the actual amount of an outstanding balance does not make it any easier for a customer to secure the full amount of funds needed to reconnect.

PGW also suggested in rebuttal testimony that it would be willing to modify its proposal to allow customers to “file an informal appeal with BCS if the customer could show ‘extraordinary hardship’ or some other tough standard.” PGW St. CP-1R at 13. The “tough standard” has not been articulated in any meaningful way. In any event, such a standard would still be too inflexible to provide appropriate relief for households experiencing undeniable financial difficulty due to circumstances beyond their control.

because PGW does not need a waiver to charge significant, upfront restoration amounts, pursuant to existing BCS restoration guidelines. Action Alliance, et al. St. No. 1 at 13.³³ In addition, PGW is already permitted to request full payment of arrearages for restoration, in appropriate cases.³⁴ Yet PGW wishes to go even further. This requested waiver would unreasonably jeopardize health and safety.

b. Waiver Request B/Proposal Ten from Appendix B: Waiving winter “moratorium” termination procedure for Level 3 and 4 customers

PGW seeks a waiver of the winter termination procedure contained in § 56.100, which currently permits utilities to terminate service from December 1 through March 31 after following the customary termination process and submitting a written request to the Commission.³⁵ Under PGW’s proposal, the company would be able to terminate service to Level 3 and Level 4 customers under 60 years of age and not medically certified without submitting a written request to the Commission.³⁶ Pet., App. A at 5-6; App. B at B-7.

³³ As Action Alliance witness Geller noted, current BCS Guidelines would require the same two-person household at the bottom of Level 3 (\$1562 per month) to pay 40-55% of the arrearage upfront and to make a payment agreement for \$100 month to pay the balance. See Action Alliance, et al. St. No. 1 at 13. This amount, plus a \$250 deposit, would be between \$498 and \$591, or 32% to 38% of the household’s monthly gross income. Id.

³⁴ See Mary Frayne v. PECO Energy, PUC Docket No. C-20029005 (Dec. 23, 2003) at 6; 52 Pa. Code § 56.191(2) (where a customer has defaulted on two payment arrangements, or an informal complaint decision, or a formal complaint order, the utility is allowed to request full payment of outstanding charges).

³⁵ 52 Pa. Code § 56.100(1) and (2).

³⁶ It should be noted that, although PGW’s description of this waiver request in the Petition and Appendix A indicates that the request is as described in the text, which would only eliminate § 56.100(2), PGW’s proposed revision in Appendix B appears to replace all of § 56.100 with the paragraph set forth on page B-7 of the Appendix. This would effectively eliminate all of the subsections, including, inter alia, the requirement that the utility contact

PGW claims that this proposed change would permit it to terminate service to customers “with a generally recognized ability to pay,” and that it would “increase collections and [] send a signal to customers that the moratorium cannot be used as a shield to avoid paying their gas bill.” Pet., App. A at 5-6. PGW further claims that the current rules that permit winter shut-off on a case-by-case basis are so “cumbersome that the net practical effect for all Pennsylvania utilities is that no (or hardly any) residential customers are terminated in the winter.” Id. at 6.

First, for all of the reasons previously stated regarding the financial plight of lower-income Level 3 customers, PGW is again mistaken that these customers always have an ability to pay. If this waiver request is granted, and PGW’s other waiver requests are granted, these households may lose service in the winter, and then be forced to go a dangerously long period of time without service before they can make a full arrearage and security deposit payment in order to obtain service again.

In spite of the very real danger of the loss of life due to hypothermia or fires caused by unsafe alternative heating sources, see Action Alliance, et al. St. No. 1, App. A (newspaper articles), PGW proposes to do away with procedures that would protect vulnerable low-income households, including those with young children. As Action Alliance witness Geller testified:

terminated customers 90 days before December 1 to try to arrange for restoration, and the winter survey requirement. See 52 Pa. Code § 56.100(1)-(5).

To the extent that the proposed revisions in Appendix B differ from the description of the waiver request elsewhere in the record, Action Alliance submits that these additional revisions in Appendix B should be disallowed. Moreover, PGW should not be permitted to waive important regulations such as the requirement to try to get heat service restored prior to the winter heating season, and the winter survey, which provides critical information to the company and the Commission as to how many households are without gas service. See OCA Cross Examination Exhibit No. FCI-2.

Mildly stated, this waiver request, if granted, would unnecessarily place thousands of individuals in potential jeopardy for health, safety, and their life. In addition, the potential unnecessary damage to the housing stock and plumbing which could result from having a significant number of unheated homes in winter is simply contrary to the principles of sound public social and economic policy.

Action Alliance, et al. St. No. 1 at 25.

PGW discusses the justification in shutting off customers at the higher end of Level 3 and in Level 4 whose incomes are above \$40,000, but its proposed revision makes no income-based distinction within that group. Compare App. A at 6-7 with App. B at B-7. In fact, no one-person or two-person Level 3 household makes over \$40,000. Regardless, this waiver would apply to all Level 3 customers.

PGW deems the existing winter termination procedures “cumbersome” and “particularly ineffective” for PGW, even though, by its own admission, it has never once attempted to utilize the winter termination procedures. July 6 Hearing Transcript (“Tr.”) at 664. PGW did not even try to utilize the winter termination procedures after the Commission clarified in Mary Frayne v. PECO Energy Company, PUC Docket No. C-20029005 (Sept. 10, 2003), that it would process utilities’ requests for winter termination within ten days of receiving such requests.

PGW does not need a waiver request to “send a signal” to customers that they cannot use the “moratorium” as a way to avoid paying their bills. Instead, as Action Alliance witness Geller suggested, PGW could effectively send such a message by selecting several appropriate cases in which individuals who are clearly able to pay refuse to do so, getting Commission authorization to proceed with termination of their service, and publicizing the fact that terminations can and will take place during the winter. Action Alliance, et al. St. No. 1 at 26.

Action Alliance submits that the potentially lifesaving customer protections associated

with § 56.100 outweigh the undemonstrated financial benefit to the company if the protections were waived.

c. Waiver Request C/Proposal Two from Appendix B: Requiring a flat turn-on deposit for all new/restored customers and refusal of service until deposit is paid in full

Although PGW does not cite all relevant provisions of Chapter 56 in its proposed revision to Section 56.32, PGW seeks to waive the existing provisions pertaining to deposits, which currently allow utilities to charge non-credit worthy applicants and payment-troubled or terminated customers a deposit equal to an average bill for two months, potentially payable in three separate installments.³⁷ PGW seeks a waiver which would require that, in order to obtain service,³⁸ heating customers would have to pay a flat turn-on deposit of \$250, and non-heating customers would have to pay a flat fee of \$100. Pet., App. B at B-2. The proposal would further require the same amount of full deposits for customers restoring service during the period from May 1 to September 30. Id. For customers restoring service after termination during the period from October 1 - April 30, a double deposit would apply, requiring heating customers to pay \$500 upfront, and non-heating customers to pay \$200 upfront. Id. This proposal would not apply to CRP customers, but it would apply to Level 1 and 2 customers not enrolled in CRP. Id.

This waiver request harms customers in two critical ways. First, it would impede and potentially deny lower-income customers' access to utility service both at initiation of service

³⁷ See 52 Pa. Code § 56.32 (credit standards and deposits for applicants), 56.38 (payment period for applicants), 56.41 (deposits for existing ratepayers), 56.42 (payment period for existing ratepayers), and 56.51 (amount of deposits for applicants and existing ratepayers).

³⁸ PGW clarified in rebuttal testimony that the deposit requirement would not apply to customers transferring service from one address to another. PGW St. CP-1R at 16 n.3.

and at restoration following termination.

For low-income customers seeking service for the first time, the fixed, upfront fees of \$100-\$250 will be a barrier to service. The current BCS Income Guidelines do not require deposits from Level 1 and 2 customers because the Commission recognizes that these deposits are unaffordable. Action Alliance, et al. St. No. 1 at 16. In addition, for those customers who may be charged security deposits, existing regulations have the important safety valve that the deposit may be made in three separate installments, with 50% payable when the utility determines that a deposit is required, 25% payable thirty days after the determination, and 25% payable 60 days after the determination.³⁹

As noted by Action Alliance witness Geller, a Level 2 two-person household at 125% FPL would have to pay \$250 out of a total monthly income of \$1,301, or 19% of the total monthly income, just to get service turned on. Action Alliance, et al. St. No. 1 at 16. This is a significant dedication of funds for non-CRP households who are generally recognized to have difficulty affording utility service. Even for customers in the lower-Level 3 range, PGW's dismissive assertion that if "a customer cannot remit a deposit to secure service it is highly questionable that he/she will be able to pay their bills at all," PGW St. CP-1R at 17, is illogical. A lower-income household may well be able with careful budgeting to pay each month's expenses, but nonetheless be unable to make a double utility payment in one month.

Requiring customers who have been terminated to post lump sum deposits rather than paying in three monthly installments will also create barriers to service restoration, especially deposits as high as \$500 for households seeking restoration after termination from October 1

³⁹ 52 Pa. Code § 56.38.

through April 30. Without regard for customers' need for winter service for heat, PGW would impose higher barriers to service during the cold weather months than during other times of the year. For example, the same Level 2 household at 125% FPL would have to pay almost 40% of the household's monthly income to get reconnected during this time period. A lower-income Level 3 household would have to pay outstanding charges and reconnection fees in full, plus the \$500 double deposit, making restoration during the winter essentially financially impossible, and jeopardizing health and safety.⁴⁰

The second harm that the mandatory, upfront deposit would cause is that it unfairly burdens customers who pose no credit risk. These customers would be forced to effectively loan PGW the deposit amount even though, as PGW admits, its problems are caused by a totally separate group of late paying customers. Pet., App. A at 8-9.

Deposits are intended to provide a utility with protection against known risk; they are not intended to provide additional upfront cash to a utility. Action Alliance, et al. St. No. 1 at 15; OCA St. No. FCI-1 at 31-32. As OCA witness Colton explained, alternatives such as credit scoring provide the appropriate individualized assessment of an applicant's credit risk. OCA St. No. FCI-1 at 34. Thus, the overbroad nature of this request is unfair to credit-worthy customers.

Moreover, PGW has not demonstrated that it faces some kind of hardship in fully utilizing the existing Chapter 56 deposit provisions to increase revenue. For example, PGW has not to date required late payers to post deposits, even though it is permitted to do so under

⁴⁰ PGW offered in rebuttal testimony to amend its proposal to permit customers to "complain to the PUC if the deposit requirement would cause extreme hardship under their unique circumstances." PGW St. CP-1R at 17. This vague standard would be too stringent to make a meaningful difference.

§ 56.41. Action Alliance, et al. St. No. 1 at 17.

In sum, this waiver request would create a severe impediment to customer access to service, particularly in the winter when it will endanger public health and safety. This burden on customers is not warranted, as PGW has not shown unreasonable hardship in utilizing the existing credit provisions in Chapter 56.

d. Waiver Request D/Proposals Three and Six from Appendix B: Requiring new applicants to establish positive identification and requiring applicants who are identified as previously residing at that location to be held responsible for any previous arrearage while the applicant resided there

PGW seeks to waive § 56.35, which provides that a utility may not require as a condition of residential service that an applicant for service pay or arrange to pay “for residential service previously furnished under an account in the name of a person other than the applicant” unless a “court, a district justice or an administrative agency” has made a determination that the applicant is “legally obligated” to pay for the utility service which had been previously provided. Section 56.35 further specifies by way of illustration that this provision protects, *inter alia*, a “separated spouse” or a “cotenant” from being held presumptively responsible for a bill in the name of the other spouse, or of another co-tenant.

In PGW’s proposal, if unspecified “systems software” available to PGW indicates that the applicant had resided at the account address during the period for which the unpaid bill accrued, the applicant would as a condition of service be required to pay for that gas service provided under an account in the name of another person. The only limitation on liability would be that the applicant would not be required to pay for arrearages which accrued during times when the applicant did not reside at the account premises. See Pet. App. A at 9-10, App. B at B-

2, B-3. In determining whether the applicant was a prior resident at the account premises, the burden would be on the applicant to provide positive identification including proof of prior address in a “form to be determined by” PGW. Pet., App. B at B-2, B-3.

Contrary to PGW’s claims, this proposal impermissibly turns long-standing hornbook contract law on its head. Under that law, a non-party to an express contract may not be held liable under that contract.⁴¹ That is the law reflected in § 56.35, where a utility may not hold an applicant responsible for service supplied and billed to another customer, unless there has been judicial or administrative determination that the circumstances are such that the normal rules of contractual liability may should be set aside. There can be no doubt that a PGW customer has an express contractual relationship with PGW. In its own Tariff, PGW expressly recognizes that residential natural gas service is contractual in nature.⁴² Thus, under existing § 56.35, if PGW believes that an applicant should be held liable for service provided in the name of another, it must seek an administrative or judicial determination. While that process is pending before BCS, a Commission ALJ, or a court, the company must grant the application for service without

⁴¹ As OTS witness Mumford testified, there are numerous policy concerns associated with this waiver request – which was considered and rejected relatively recently by the Independent Regulatory Review Commission (IRRC), including privacy concerns, allowing utilities the unprecedented advantage of independently determining that one party is responsible for a debt that accrued under an account in another party’s name, the possible impacts on customer living arrangements and the impact on volume of consumer complaints to the Commission arising from the perceived injustice of conditioning service on assumption of a bill incurred in the name of another person. OTS St. No. 4 at 12. In this proceeding, Action Alliance has focused particularly on the impact of the proposed waiver on customer access to utility service and upon the violence which the waiver would do to well-settled contract law.

⁴² PGW Gas Tariff - Pa. P.U.C. No. 2, Original Pg. No. 18 (“2.2. STANDARD SERVICE CONTRACT. Any application for Gas Service, upon acceptance by the Company, constitutes a contract between the Company and the customer”).

requiring payment or agreement to pay for gas service provided to another person's account.

PGW's proposal would refuse service to an applicant on the grounds that the applicant is liable for the unpaid bill of the prior customer of record, on the basis of the mere fact that the applicant resided or even may have resided in premises where gas service was being provided in the name of another resident. Even if the customer of record has left the account premises, the applicant can be refused service unless or until the applicant pays or agrees to pay for the outstanding bill. This proposal would impose an unreasonable hardship on applicants, who *without the normal protections afforded by contract law, would be arbitrarily denied access to life necessary utility service.*

Consider the situation of an applicant with good credit who would ultimately be determined not to be liable for the bill of the prior customer of record – either on the grounds that the applicant, contrary to PGW's information, did not reside at the account premises prior to application for service, or resided at the premises but had no legal liability for the gas service being provided. If service is still on at the account premises, that applicant would be obligated to apply for service immediately, or run the risk of termination of service on 48 hours notice as a user without contract. To avoid termination, a Level 3 or Level 4 applicant would have to pay a substantial up front payment under BCS Income Level Guidelines (probably 50% or more of the outstanding balance) and agree to pay the amortized outstanding balance.⁴³ If service has already been terminated, or if the customer of record had broken a prior payment agreement, a Level 3 or

⁴³ In the summer period, under the BCS Income Level Guidelines, a Level 3 applicant could be required either to pay the catch-up amount from a prior agreement or 40-55% of the outstanding balance and a slightly lower amount in the winter. A Level 4 applicant could be required either to pay the catch-up amount from a prior agreement or 75% of the outstanding balance and a slightly lower amount in the winter.

Level 4 applicant would have to pay the full outstanding balance in order to obtain service, at an account for which the applicant had no liability. Without making these payments, there would be no way to maintain or obtain essential gas service.⁴⁴ It is well and good to say that such an applicant may file an Informal Complaint with the Commission. However, in the meantime, unless the applicant is able to pay the substantial sums demanded by PGW for an account for which the applicant has no liability, the applicant will be without natural gas service. As Action Alliance witness Geller observed, PGW's waiver proposal reverses a fundamental principle of contract law imbedded in Chapter 56 regulations to protect the innocent against overreaching by the provider of a monopoly service.⁴⁵

In Pennsylvania, a utility's claim concerning the liability of an applicant for utility service furnished under an account in the name of another party must be resolved under the same principles of contract law as would be applicable in any commercial transaction.⁴⁶ The Public Utility Code does not contain any statutory provision which confers on the Commission the authority to enlarge by regulation or waiver of regulation the contractual rights of utilities acting as creditors. Under contract law, a credit card company is not authorized to hold credit card holder A responsible for sums unpaid by credit card holder B; this is true even if card holder B is card holder A's co-tenant or spouse and even if card holder A used items purchased by card holder B. Similarly, the Commission may not overturn contract law to confer the authority for

⁴⁴ In addition, of course, if PGW's waiver requests concerning deposits is granted, the applicant would be required to pay an additional \$250-\$500 depending on time of year. See discussion above of Waiver Request C/Proposal Two from Appendix B.

⁴⁵ Action Alliance, et al. St. No. 1 at 4, 18, 19.

⁴⁶ Gardiner v. Philadelphia Gas Works, 413 Pa. 415, 197 A.2d 612 (1964).

PGW without due process of law to hold an applicant liable for service provided in the name of another person. In recognition that there may be circumstances in which the express contract has been subsequently altered to render the applicant contractually liable, or that there may be actions by the applicant supporting a claim by the utility for unjust enrichment or even fraud, the Commission's formal and informal complaint procedures provide a vehicle for the utility to obtain an adjudication of its rights.⁴⁷

PGW claims that it is reasonable to require an applicant who previously resided at the account premises for which an outstanding balance exists to assume the debt as a condition of service. While PGW concedes that there may be rare circumstances where the applicant has "legitimately taken over the service from someone in the household for which they had no responsibility," the company claims that such an occurrence is "extremely unlikely." Pet. at 22. However, Action Alliance submits that cases where liability maybe transferred to an applicant are relatively few, and that PGW's estimate of the probabilities is based on a misunderstanding of the law.

As both OCA witness Colton and Action Alliance witness Geller indicated, under existing law, the mere fact that a person co-habits with a utility customer does not in itself make that person liable for utility service consumed but not paid for by the utility customer.⁴⁸ The applicant may not be considered to have been "unjustly enriched" just because the applicant

⁴⁷ Ruth Rothstein v. PECO Energy Company, Docket No. 00992782, 94 Pa. P.U.C. 178, 2000 WL 1408194 (April 14, 2000).

⁴⁸ Action Alliance, et al. St. No. 1, at 18. As OCA witness Colton testified, the proposal violates a "host of tenets regarding ... contract law." OCA St. No. FCI-1 at 36; see also OCA St. No. FCI-1, Appendix H and I.

received the benefit of the gas service while co-habiting with the customer. Under the doctrine of “unjust enrichment,” the utility must show that the applicant not merely received the benefit, but had done “something misleading or otherwise improper in connection with the contract.”⁴⁹

Finally, PGW has not demonstrated that this radical change, which would cause so much hardship to innocent applicants, would enhance legitimate company collections. First, consider the claim that in 2003, there were approximately 2400 situations where an application for service was made by a resident at the service address after termination of service for non-payment of an account in the name of another person. Pet., App. A at 10. This is based on an absolutely unsupported, bald assumption by PGW that of the 4800 occasions when service was terminated at a particular address for non-payment, followed by application for service by a person not a customer of record, the new applicant in 50% of these cases had been co-habiting at the account premises. Id. Second, the claim value is based on the mistaken belief that prior residence at the account premises would usually result in liability, when such is not the case. As Action Alliance witness Geller testified, no justification has been provided for assuming that 2400 is a valid number for the former residents, and that even a substantial number of these persons would be determined by a Commission or a Court to be liable for gas service provided to an account in the name of another person. Action Alliance, et al. St. No. 1 at 20.

The need to reverse the presumption contained in § 56.35 and in contract law has not been demonstrated. Such a reversal is beyond the authority delegated to the Commission under

⁴⁹ Roman Mosaic and Tile Co., Inc. v. Vollrath, 226 Pa. Super. 215, 313 A.2d 305 (1973). In addition, the “unjust enrichment” doctrine is generally inapplicable when goods are provided pursuant to an express contract. Schott v. Westinghouse Elec. Corp., 436 Pa. 279, 290, 259 A.2d 443, 448 (1969).

the Public Utility Code.

- e. **Waiver Request E/Proposals Six⁵⁰ and Nine from Appendix B: Allowing each customer only one payment arrangement unless there is a change in circumstances related to income level which places the customer in a lower BCS level**

PGW seeks to waive the provision in § 56.97 that would permit a customer to enter into a reasonable payment agreement to prevent termination. Pet., App. A at 11-12 & n.3; App. B at B-6, B-7. PGW proposes instead to allow each customer only one payment agreement unless the customer experiences a change in circumstances that changes the customer's BCS income level.

Id. After breaking a payment agreement, Level 4 customers would have to pay the entire outstanding balance in full. Id. Level 3 customers would have the opportunity to cure the default once before having to pay the entire outstanding balance. Id. Level 1 and Level 2 customers would have the opportunity to cure any default on the payment agreement. Id.

According to Appendix B, Level 3 and 4 customers would be assigned payment agreements with a minimum payment of \$100 per month, and maximum repayment period of 24 months for Level 3 and 12 months for Level 4.⁵¹ Pet., App. B at B7. Level 1 minimum payments

⁵⁰ Although not specified in the Petition or Appendix A, Proposal Six as it appears in Appendix B would allow PGW to terminate service for nonpayment of a deposit based on a delinquent account arising out of a make-up bill, and for nonpayment of a delinquent account when the amount of the deposit held by the utility is within \$25 of the account balance. See Pet., App. B at B-4.

These provisions, which are not explained or supported anywhere in the record, should be disallowed. Action Alliance submits that, to the extent that Appendix B differs from the waivers described in the Petition and Appendix A, those revisions should be deleted. There should not be any stealth revisions to Chapter 56.

⁵¹ In what appears to be a typographical error, Appendix A states that Level 3 customers would have a 12-month repayment period, as opposed to a 24-month repayment period.

would be \$15 per month and Level 2 payments would be \$40 per month. Id.

PGW claims that this waiver is necessary to limit the change in circumstances established in Frayne. Pet., App. A at 11. The standard enunciated in Frayne was that payment agreements could be renegotiated whenever there is a material change in circumstances.⁵²

As Action Alliance witness Geller pointed out, PGW is seeking a waiver of the Commission policy articulated in Frayne before giving this standard a chance, and not offering additional payment agreements absent a change in circumstance. Action Alliance et al, St. No. 1 at 22-24. In addition, PGW is not currently using the tools permitted in Frayne, such as placing customers who default on payment agreements on the termination path after one missed payment.⁵³

Instead of waiting to see the fruits of applying Frayne, PGW's proposal seeks to unreasonably limit change of circumstance only to changes of income which would change the BCS income level, unfairly setting the BCS income level as the arbitrary magic line to cross in getting an additional payment agreement. The inflexible nature of this waiver proposal does not permit consideration of the myriad circumstances that materially affect the ability of a household to pay on a payment agreement, such as medical expenses, the addition of a family member, and home and car repairs. Action Alliance, et al., St. No. 1 at 23.

Level 3 customers would be particularly negatively affected by this proposal, because they would have only one chance to cure a broken payment agreement. After that, they would

⁵² Frayne, PUC Docket No. C-20029005 (Sept. 10, 2003) at 6.

⁵³ Frayne, PUC Docket No. C-20029005 (Sept. 10, 2003) at 6 (if a utility need not offer more than one payment arrangement, presumably the utility can place the delinquent customer on the termination path immediately); Action Alliance, et al. St. No. 1 at 24.

have to pay the entire outstanding balance, even if they were genuinely experiencing the kinds of material changes in circumstances that made them unable to keep up their payment agreements.⁵⁴ OCA witness Colton explained in great detail the instability and unpredictability of lower-income customers' financial condition, which make it difficult for the working poor to maintain payment agreements. See OCA St. No. FCI-1 at 38-40.

Customers who have legitimate, material changes in circumstances nullifying their ability to pay an existing payment arrangement and desiring to continue making payments albeit at a lower monthly level will be denied this opportunity. As a result, they are likely to be terminated, and subjected to a lengthy period of time without service.

f. Waiver Request F/Proposal Five from Appendix B: Allowing Friday shut-offs

PGW seeks to waive the restriction in § 56.82 against Friday terminations. Pet., App. A at 12-13; App. B at B-3, B-4.⁵⁵ PGW claims the waiver is justified because the prohibition on Friday shut-offs was established when banks were not open on weekends and there were no ATMs, but now customers may obtain funds seven days a week, which means that there will be

⁵⁴ PGW conceded in rebuttal testimony that it would be willing to modify its original proposal to allow customers to appeal their payment agreements to BCS one time "in the face of extraordinary circumstances," and BCS could modify the payment agreement to lengthen the repayment period. PGW St. CP-1R at 22. However, like PGW's other "concessions," this standard is too vague, and does too little to alleviate the harm caused by the extremely rigid payment agreement structure proposed.

⁵⁵ Although PGW does not mention Section 1503 of the Public Utility Code, in order to grant PGW's waiver request, the Commission would also have to waive this section of the statute, which prohibits Friday shut-offs. 66 Pa. C.S. § 1503.

no effect on consumer protections.⁵⁶ Pet., App. A at 13.

Again, PGW's statements reflect a misunderstanding about the reality facing lower income customers who do not have sufficient funds to keep them out of termination status. If it were as simple as withdrawing funds from a bank or ATM, 99% of these customers would not be in termination status in the first place. Instead, the concern expressed in § 56.82 and the Public Utility Code has more to do with availability, or lack thereof, of resources to which to turn for relief from a Friday shut-off. For example, OCA witness Colton testified that one-third of households experiencing a termination seek energy assistance to get restored, and referenced a recent National Regulatory Research Institute (NRRRI) study reporting that "community advocacy organizations, social service agencies, and state government are among those entities to whom a consumer would turn for assistance." OCA St. No. FCI-1 at 43. In Philadelphia, a low-income customer seeking assistance in paying a utility bill would typically seek LIHEAP during the winter heating season, a grant from the Utility Emergency Services Fund (UESF), or another type of assistance at a local Neighborhood Energy Center. None of these assistance agencies are open on the weekends. See Action Alliance, et al. St. No. 1 at 30.

In addition, if there is a dispute about the termination or the amount of money required to restore service, customers often turn to the Commission's BCS. The BCS phone intake lines do not operate on weekends either. Finally, most doctors' offices are closed on weekends, making it almost impossible to obtain a medical certification in cases of medical emergency, even where

⁵⁶ PGW also claims that no other businesses are restricted to certain days on which it can terminate service, Pet., App. A at 13, ignoring PECO and the Philadelphia Water Department in this geographic area, as well as other public utilities throughout the state that are not permitted to terminate service on Fridays. PGW is in denial that it is a regulated utility and provides life essential service.

there is an answering service. Id.

The potential harm to customers of allowing Friday shut-offs outweighs the undemonstrated financial value to the company.

**g. Waiver Request G/Proposals Seven and Eight from Appendix B:
Eliminating 48-hour contact and notice during the shut-off process**

PGW proposes to waive the provisions in § 56.94 and § 56.95 that currently require a utility employee to attempt to make personal contact with a responsible person at the ratepayer's residence immediately prior to termination, and, if no contact can be made, to conspicuously post a termination notice stating that service may be disconnected after 48 hours. Pet., App. A at 13-14; App. B at B-4, B-5. Instead, after attempting to make personal contact 72 hours before termination, pursuant to § 56.93,⁵⁷ PGW could proceed to terminate service. Id. PGW claims that there is no effect on consumer protections because there are several other notices and contacts that a customer receives prior to termination. Pet., App. A at 13-14.

As Action Alliance witness Geller testified, the policy objective behind this contact and notice requirement recognizes the seriousness of service termination, and the need for face to face contact and communication with the customer or a responsible adult at the residence "at the most critical point in the relationship between the company and a payment troubled customer: the moment of intended shut-off." Action Alliance, et al. St. No. 1 at 29. As OTS witness Mumford explained, "[p]ersonal contact is considered a critical component in the safety net of protections

⁵⁷ Section 56.93 defines "personal contact" as contact in person, by phone, to another designated person or entity, or by contacting the Commission in writing if the other options are unavailable. See 52 Pa. Code § 56.93. OTS witness Mumford clarified that § 56.93 only requires personal contact *attempts*, which may consist of a field visit or two phone call attempts at different times of day, which may not result in actual contact. OTS St. No. 4 at 18-19.

found in Chapter 56,” yet this proposal would make it much more likely that termination could occur without any personal contact whatsoever. OTS St. No. 4 at 19-20.

PGW’s assertions in support of this proposal imply that it believes the 48-hour contact and posting requirement is redundant and without value to the company. See Pet., App. A at 14. However, PGW’s estimates for Waiver Request F (permission to terminate on Fridays) indicate that when representatives go to customers’ residences to terminate service, a transaction often takes place involving a payment or payment arrangement preventing termination, to the tune of \$70,000 per collection day. Id. at 13. Thus, as Geller summed up, this waiver request “would eliminate the most significant opportunity for PGW to achieve all three goals of Chapter 56, i.e., promote payments, resolve differences, and avoid loss of service.” Action Alliance St. No. 1 at 29.

h. Waiver Request H: Extending the 30-day maximum for the shut-off process to 60 days

PGW seeks to modify BCS informal guidelines which consider 10-day termination notices to be valid only for 30 days from the date of issuance. Pet., App. A at 14. OTS witness Mumford explained that BCS currently advises utilities that the termination process should generally be completed within 30 days from the date the termination notice is issued, based on the intent of the termination procedures in Chapter 56, but the regulations do not actually set a specific maximum number of days in which the notification requirements must be completed. OTS St. No. 4 at 31. PGW seeks to extend the validity of its shut-off notices for up to 60 days. Pet., App. A at 15.

The justification for this measure appears to be that PGW does not have the resources to

complete termination after it sends out termination notices. Id.; see also PGW St. CP-1R at 27. However, PGW has not explained why collections would be more effective due to a 60-day termination period. As noted earlier, PGW is seeking to waive the prohibition on Friday shut-offs on the basis that it could collect an additional \$70,000 each collection day, raising the inference that when personal contact at the point of termination occurs, revenue flows to the company. See Pet., App. A at 13. Restarting the collection notice and contact procedures after 30 days would lead PGW to have more contact with payment troubled customers, presumably garnering more money for the company.

PGW also claims that allowing the termination process to extend to 60 days “eliminates the perception that PGW is not serious about termination.” Id. To the contrary, many of the expert witnesses indicated that allowing a termination notice to extend to 60 days would only increase the perception among the customer base that PGW is not serious about termination. See OTS St. No. 4 at 33-34; OCA St. No. FCI-1 at 53; Action Alliance, et al. St. No. 1 at 28.

Finally, even though PGW wisely seeks to avert a more problematic issue regarding the changing nature of what a customer must pay in order to prevent shut-off over the course of 60 days by stating that customers would only have to pay the originally noticed amount, Pet., App. A at 15, Action Alliance witness Geller explained why this would not eliminate confusion and mixed messages:

Some customers, when they receive a Termination Notice, send the utility some money (but less than the required amount), in the belief that the payment will demonstrate good faith and avoid termination. Once customers receive another bill, indicating receipt of the payment, but with no mention of continuing termination proceedings, they are likely to conclude that those proceedings have been withdrawn or discontinued. Instead of continuing to marshal their resources to avoid termination by PGW, they may spend potentially available funds on other necessities

that they would have reserved for PGW if they had believed that termination was still imminent.

Action Alliance, et al. St. No. 1 at 28.

Therefore, extending the validity of termination notices to 60 days would decrease the company's contacts with customers and concomitantly decrease opportunities for revenue gain, increase customers' perception that PGW is not serious about collections and termination, and lead to confusion and complaints about the amounts required to prevent shut-off, harming both the utility and customers.

i. Waiver Request I/Proposals Twelve and Thirteen from Appendix B: Changing the service restoration timeline from 24 hours to up to seven days during non-CWIP periods (April 1 through November 30)

In conjunction with this waiver request, PGW initially sought, in part, to waive the provision of § 56.115 which requires utilities to restore service by the end of the next working day where a physician certifies that there is an emergency medical condition in the household. Pet., App. B at B-7 (Proposal Twelve). However, PGW conceded in rebuttal testimony that it was willing to amend its proposal to commit to restore service within 24 hours where medical certificates are involved. PGW St. CP-1R at 28. Action Alliance submits that PGW's concession that it would restore service within 24 hours in cases of medical emergency is critical. PGW should have expressly withdrawn Proposal Twelve from Appendix B.

PGW currently seeks to waive the provision of § 56.191 that requires utilities to reconnect service by the end of the first full working day after receiving full payment, payment of a default under a payment agreement, or assurance that unauthorized use will cease. Pet., App. B at B-8. According to Appendix B, PGW would amend these provisions to allow it up to seven

days to restore service from April 1 to November 30. Id. However, according to the Petition, Appendix A, and its rebuttal testimony, PGW is proposing a range of time periods for restoration: up to seven days for physical dig-ups, up to three days for other terminations, and 24 hours for terminations deemed inappropriate by the Commission.⁵⁸ Pet. at 16; App. A at 16; PGW St. CP-1R at 27.

The justification for this waiver is according to PGW that too many restorations require field visits and digging up service lines, which is “virtually impossible” to do within 24 hours. Pet., App. A at 16. In addition, PGW anticipates having to undertake a huge number of turn-ons, which it claims it could not accomplish within 24 hours without hiring more full-time employees. Id. at 15-16. PGW acknowledges that this request negatively impacts consumer protections, but it states that the waiver would authorize practices already in place.⁵⁹ Id.

The negative impact on consumer protection is obvious, as customers will be forced to wait three to seven days in most cases before restoration of a life essential service. Most of the expert witnesses agreed that a seven day restoration period is unreasonable, and jeopardizes health and safety, particularly during the cold weather months, which start several weeks before November 30 and continue several weeks after April 1. OCA St. No. FCI-1 at 55; OTS St. No. 4

⁵⁸ Again, Action Alliance submits that any portions of Appendix B which do not match the descriptions of the waivers in the Petition and Appendix A should be disallowed. Alternatively, PGW should amend Proposal Thirteen in Appendix B to reflect its stated intent to restore service within seven days for physical dig-ups, within three days for other terminations, and within 24 hours for terminations deemed inappropriate by the Commission.

⁵⁹ PGW also indicated that it would “prioritize” restoration for households with seniors and young children. Pet., App. A at 16. Such “prioritization” is insufficient, because under the guise of concern for vulnerable customers, the policy would consign many households to cold homes, cold food and cold water even after the household has met PGW’s financial demands.

at 28-29; Action Alliance, et al. St. No. 1 at 31.

4. Conclusion

For the foregoing reasons, PGW's proposed Chapter 56 waivers and proposed revisions to Chapter 56 should be denied. If the waivers are granted, important consumer protections relating to obtaining, maintaining, and restoring gas service, a basic necessity of life, will be eviscerated. Incalculable harm will be suffered by lower income and low-income customers. Such customers will be denied the opportunity to enter into and maintain affordable payment arrangements. They will be terminated more often and more rapidly without adequate opportunity to avoid termination. Many will suffer termination for service for which they should not be held liable. Once terminated, even in cold weather, due to circumstances beyond their control, they will be forced to go long stretches without service while they attempt to amass the sums necessary to pay unaffordable upfront deposits and outstanding balances. Even after meeting PGW's financial demands, they will be required to endure longer than reasonable waiting periods before restoration of service.

PGW has requested these Chapter 56 waivers within only a few months of the time when it came fully under Chapter 56, when it began its Collections Renewal Initiative, and without having utilized Chapter 56 tools in significant areas: sending termination notices to customers when they miss one payment on a payment agreement; utilizing appropriately the Commission's winter termination procedures; utilizing the limitations on payment agreements articulated in the Commission's Frayne decision; seeking deposits from customers who pay late twice in a row or three times in one year. Action Alliance, et al. St. No. 1 at 5-6, 24. Rather than develop and use these tools, the PGW has instead undertaken to dismantle a structure of interconnected consumer

protections which has been carefully calibrated to balance the utility's interests and the customers' interests, with grave implications for public health and safety.

B. LIENS AND JUDGMENTS; FIELD CHARGE

1. Introduction

In its Restructuring Filing, PGW submitted a detailed Gas Service Tariff containing approximately 40 pages of customer service regulations which were alleged to be consistent with Chapter 56. With relatively minor changes, these customer service regulations were filed on August 29, 2003 to be effective September 1, 2003 with the explanation that this "Tariff is filed in Compliance with the Final Order of the PA PUC at M - 00021061, entered March 31, 2003 and the PUC Order on Reconsideration, entered June 30, 2003" (hereinafter "First Compliance Tariff" or "Tariff").

On October 10, 2003, the Commission issued an Order allowing the First Compliance Tariff to remain in effect, subject to certain amendments and deletions. Deletions concerning the requirement that Applicants for service pay or arrange to pay outstanding liens or judgments held by PGW against them and concerning the \$10 residential Field Charge are the subject of this section.

On November 10, 2003 PGW filed in the Commonwealth Court a Petition for Review from this Order, in which the company challenged the legal and evidentiary grounds for these two deletions.⁶⁰ On March 24, 2004, the Commonwealth Court granted a Joint Application for

⁶⁰ Philadelphia Gas Works and Philadelphia Facilities Management Corporation v. Pa. P.U.C., Commonwealth Court, No. 2463 C.D. 2003.

Remand on these two issues. By Secretarial Letter dated May 14, 2004, the Commission gave notice to the parties in PGW's restructuring that evidentiary hearings would be duly scheduled. On June 2, 2004, in the Order initiating the current Investigation into Financial and Collections Issues Regarding the Philadelphia Gas Works, the Commission specified that the liens and judgment issues and residential Field Charge issues should be included in this Investigation.⁶¹

2. Liens and Judgments

PGW's First Compliance Tariff, effective September 1, 2003, contained the following Section 2.4.C.6 in the Section listing valid reasons for rejection of an application for service:

2.4.C. Other Reasons for Rejecting an Application. PGW may also reject an application for Gas Service for any of the following reasons:

....

2.4.C.6. The Applicant fails to enter into a payment agreement for an outstanding lien or judgment of record in favor of PGW and against the Applicant.⁶²

In its October 10, 2003 Order, the Commission ordered that Section 2.4.C.6 be deleted from PGW's Tariff:

2.4.C.6. -- This section allows PGW to reject an application from a customer who fails to enter into payment agreement for an outstanding lien or judgment. This is contrary to Commission case history and policy that requires a company to keep court-ordered liens and judgments separate from the customer's utility billing. PGW should collect lien and judgment amounts through the legal process, and thus this provision shall be deleted from the tariff.⁶³

⁶¹ Investigation into Financial and Collections Issues Regarding the Philadelphia Gas Works, Opinion and Order, June 2, 2004, at 4.

⁶² PGW Gas Service Tariff - Pa.P.U.C. No. 2. Original Page 18.

⁶³ Compliance Tariffs of Philadelphia Gas Works in Response to the Commission Restructuring Order as Modified on Reconsideration, Pa. P.U.C. Docket No. M - 00021612 (Order, October 10, 2003) at 5.

Throughout the Restructuring Proceeding, Action Alliance opposed Section 2.4.C.6 as inconsistent with Chapter 56.35 to the extent that the provision as written would require applicants for service to pay or arrange to pay an outstanding lien or judgment. The plain language of Section 2.4.C.6 indicates that this requirement is unqualified. The requirement would apply universally – without any regard to whether the amounts included in the lien or judgment all accrued or were incurred less than four years prior to the date of application.⁶⁴

In any circumstance where based on Section 2.4.C.6, PGW would require an applicant to pay or arrange to pay as a condition of obtaining service a lien or judgment containing amounts that accrued or were incurred more than four years prior to the application date, it would be violating 52 Pa. Code § 56.35. That Section states in pertinent part:

A utility may require, as a condition of the furnishing of residential service to an applicant, the payment of any outstanding residential account with the utility which accrued within the past 4 years for which the applicant is legally responsible and for which the applicant was billed properly. However, any such outstanding residential account with the utility may be amortized over a reasonable period of time....This section does not affect the creditor rights and remedies of a utility otherwise permitted by law.

In the July 6 hearings, PGW witness Gyory conceded on cross-examination that Tariff Section 2.4.C.6 contained an undisclosed “exception,” and a material one at that. Tr. 714. As also stated in prefiled testimony, in order to comply with § 56.35, the utility would not require an applicant to pay or arrange to pay as a condition of service an amount contained in a lien or judgment for service which accrued more than 4 years prior to the date of application for service. PGW St. CP-1 at 14.

On redirect, Gyory further stated that he believed that the Tariff contained a “general”

⁶⁴ OCA St. 4 at 28, 29 (Alexander) in the Restructuring Case, Docket No. M - 00021612.

provision which limited PGW's ability to require applicants to pay for arrearages for service provided more than four years previously which had been reduced to liens or judgments. Tr. 717. However, PGW's Tariff contains no such "general" provision. Section 2.4.C.4 provides a "specific" provision in situations not involving liens or judgments that authorizes PGW to reject an application for service when the applicant "fails to enter into a payment agreement for any outstanding account with PGW which accrued within the past four years for which the Applicant is legally responsible and for which the Applicant was billed properly." However, the fact that there is a separate provision for liens or judgments clearly implies that rules applicable when there is no lien or judgment are different.

Action Alliance therefore continues to contend that Section 2.4.C.6 should be amended to indicate explicitly that only an applicant for service may be required to pay or arrange to pay outstanding judgments or liens only to the extent that the liens or judgments represent unpaid service provided within the four years prior to the application date. Otherwise, Section 2.4.C.6 is not consistent with § 56.35.

Subject to this qualification, Action Alliance supports PGW's contention that the Compliance Order was in error when it required PGW to strike Section 2.4.C.6 in its entirety -- thereby creating a situation where PGW may not require an applicant to pay or arrange to pay for past arrearages reduced to judgments or liens, even when the gas service on which the judgments or liens are based was provided within 4 years of the application date. It is assumed that PGW does not seek to require payment for judgments or liens entered in a name other than the applicant. In such cases, there is no reason why an applicant for service with liens or judgments for recent service provided less than 4 years previously should not be required to pay or arrange

to pay, just like the applicant who has arrearages but from the same time frame.

As the only municipally owned utility under PUC jurisdiction, PGW is the only utility under PUC jurisdiction which may claim the authority to utilize the Municipal Claim and Tax Lien Law, 53 Pa. C.S. § 7101 et seq. Where the customer is the homeowner, the ability to lien the premises which received the unpaid gas service may be viewed as a functional alternative to termination. As PGW witness Gyory testified, a municipal lien stays on premises until PGW orders that it be release or satisfied. Liens may be satisfied at the time a property is sold, at the time a secured home improvement loan is taken out, or at the time a mortgage is refinanced.⁶⁵ According to PGW, the company has been able to collect \$8 million through the municipal liens process in FY2004. PGW ST. CP-1 at 8. Although Action Alliance believes that PGW's lien process is subject to improvement, the ability to utilize municipal claims procedures existed prior to the Gas Choice Act, and should not be unduly restricted under PGW's Restructuring Plan. Indeed, Gas Choice Act Section 2212(n) expressly provides that nothing in the Act "shall abrogate the power of ...[PGW] to collect delinquent receivables through the imposition of liens pursuant to...the Municipal Claim and Tax Lien Law, or otherwise." 66 Pa.C.S. §2212(n).

In general terms, court case history does not seem to require an absolute, "either/or" separation of collection activity associated with liens and judgments and collection activity associated with applications for service by persons whose persons and/or property is subject to liens and judgments for unpaid gas bills incurred within the past four years. In Gasparro v. Pa. Public Utility Commission, 814 A.2d 1282 (Pa. Cmwlth. 2003), the Commonwealth Court provided a legal framework for analysis which does not require the absolute choice of remedies

⁶⁵ Tr. 717 (line 22) - 718 (line 2).

that the Compliance Order requires. In that case, the customer had a state court judgment entered against him for unpaid utility service, which appears to have been provided several years earlier. Notwithstanding the judgment, he was receiving service at the time that he filed a Formal Complaint seeking a payment agreement and resolution of a high bill complaint. The Commonwealth Court upheld the Commission's decision that it did not have jurisdiction over the judgment amount, and therefore could not require the utility to provide a payment agreement for the judgment amount. At the same time, the Court made further observations which suggest where it envisaged the dividing line between the state court system and the Commission to run on this issue. For instance, with regard to the customer's claim that the outstanding balance on which the default judgment had been based on charges derived from estimated meter readings, it noted that this claim could have been raised with the Commission prior to the entry of the default judgment, which unless opened by order of the state court, cut off Commission jurisdiction. Id., at 1285.

3. Residential Field Charge.

Section 5.14 of PGW's First Compliance Tariff provides for assessment of a \$10 "Field Charge: "[w]hen PGW makes a field visit a the service address, pursuant to the Company's rules regarding Termination of Service (Section 5.3), PGW will assess a field charge of \$10."⁶⁶

In its Compliance Order, the Commission disallowed this charge stating: "the costs of field visits are recovered through late payment charges, and the Company is permitted to assess a reconnection fee. PGW shall not collect an additional charge for field visits that are part of the

⁶⁶ PGW Gas Tariff - Pa.P.U.C. No. 2, Original Page No. 36.

collection process.”⁶⁷

The Commission’s disallowance of the Field Charge was based squarely upon Chapter 56 and long standing Commission policy. As explained in the Bureau of Consumer Services Investigation of Uncollectible Balances, Final Report to the Pennsylvania Public Utility Commission, February, 1992, Chapter 56 provides just two individualized “charges” applicable to customers who pay late or who are terminated. There is the late payment charge and there is the reconnection charge. The “late payment charge,” assessable at the rate of 1.5% per month with a total annual rate not to exceed 18%, is not a “finance charge.” Rather, the

purpose of the charges is to compensate companies for the cost of collections and for other costs the companies incur when payment for service are made late. Therefore, the rate is not tied to current interest rates but to the costs of collection.⁶⁸

In other words, under Chapter 56, the late payment charge compensates the utilities for carrying cost for short-term debt when customers pay late, as well as for other pre-termination collection costs.

In contrast, PGW claims that the Company’s individualized charges associated with collections are divided into three kinds: (1) late payment charges which are associated with “uncollectibles as well as the carrying costs of short-term debt”; (2) reconnection fees associated with costs of reconnecting customers after termination; (3) Field Charges, associated with pre-termination collection activities. PGW St. CP-1, at 15. From this description, it is apparent that

⁶⁷ Compliance Tariffs of Philadelphia Gas Works in Response to the Commission Restructuring Order as Modified on Reconsideration, Pa. P.U.C. Docket No. M - 00021612 (Order, October 10, 2003) at 7.

⁶⁸ Bureau of Consumer Services Investigation of Uncollectible Balances, Final Report to the Pennsylvania Public Utility Commission, February, 1992, at 94.

PGW recovers through the late payment charges both for pre-termination activities and for carrying cost of short-term debt. Through the Field Charge, PGW seeks to levy an additional charge, not allowed by Chapter 56, which would recover a second time for the expenses already covered by the late payment charge. For this reason, the Commission should disallow the residential Field Charge.

Even if the Commission should decide to allow PGW to levy a \$10 Field Charge until the next base rate case, it should limit the applicability of the charge to what was provided in PGW's pre-Restructuring Tariff. The Restructuring Proceeding was not supposed to provide opportunities for utilities to expand the scope of existing individualized charges. However, in this case, that is exactly what PGW has attempted to do.

As Action Alliance contended in PGW's Restructuring Proceeding, the "Field Charge" or the "Field Collection Charge" under PGW's prior Tariff was more limited. Under prior Tariff Section 4.28, the historical Field Charge could be levied "[w]hen PGW makes a field visit at the service address, pursuant to Regulations 4.24 or 4.25, PGW will assess a field collection charge ... This charge shall only apply in the event that actual personal contact has been previously made, either by telephone or by a prior field visit."⁶⁹ The Proposed Tariff significantly broadens the circumstances under which the Field Charge may be assessed, because it has eliminated the limitation to situations where actual personal contact had previously occurred. The rationale for the Field Charge under the prior Tariff was that even after the customer had been actually contacted and given the opportunity to make an agreement, the customer had failed to act,

⁶⁹ PGW Tariff Gas - Pa. P.U.C. No. 1, Original Page 39 (emphasis added). Sections 4.24 and Sections 4.25 address personal contact requirements at least 72 hours prior to termination and immediately prior to termination. PGW Tariff Gas - Pa. P.U.C. No. 1, Original Pages 37, 38.

thereby necessitating a field visit.

PGW's proposed Field Charge would also be levied under a broader range of circumstances than in the UGI Tariff, upon which PGW apparently relies.⁷⁰ There, the charge may only be levied when the customer who is the subject of the field visit actually makes sufficient payment to avoid termination. A person unable to come up with the amounts necessary to avoid termination should not be additionally punished through an additional charge. Such a charge will constitute an added barrier to making an agreement necessary to obtain restoration of service.

For these reasons, the Commission should uphold its prior decision disallowing the Field Charge. If the Commission decides to allow a Field Charge, it should restrict the scope of the charge to the scope that existed under the terms of PGW's pre-restructuring Tariff.

C. MODIFIED SENIOR CITIZEN DISCOUNT

1. Introduction

On May 18, 2004, the Commission issued an Opinion and Order in the proceeding considering the Petition for Rescission and Amendment of Philadelphia Gas Works (hereinafter "Senior Citizen Discount Petition" or "SCD" Petition).⁷¹ Upon consideration of a Stipulation

⁷⁰ OCA St. 4, at 27 (Alexander), in the Restructuring Case, M - 00021612.

⁷¹ The full caption is Pennsylvania Public Utility Commission v. Philadelphia Gas Works, Docket No. M - 00021612; Petition for Rescission and Amendment of Philadelphia Gas Works, P-00032061; Edward Morrison v. Philadelphia Gas Works, C-20030297. The roots of this proceeding are in PGW's Restructuring Filing (M - 00021612). The Petition represents PGW's efforts to implement actions by the City of Philadelphia's Governing Body to gain approval pursuant to 66 Pa. C.S. § 2212(r) for a means-tested Senior Citizen Discount for PGW customers applying for such discount after September 1, 2003. Edward Morrison is a PGW customer who turned 65 just after September 1, 2003, and who would be prevented from receiving a Senior Citizen Discount if the instant SCD Petition is denied. The Petition is entitled

and Settlement seeking approval of a means-tested Senior Citizen Discount for PGW customers making application after September 1, 2003, and an affirmative recommendation of approval by Administrative Law Judge Allison Turner, the Commission determined that the Petition should be remanded for further development of the record with regard to the costs of the SCD, its impact on customers and its impact on PGW.

2. The Record Establishes that the Incremental Burden of the Modified Senior Citizen Discount on PGW Ratepayers is De Minimis

The Commission posed nine questions mostly directed to the anticipated costs of the Modified Senior Citizen Discount which were to be developed on the record. PGW subsequently responded to those questions in the Direct Testimony and Exhibits of Cristina Coltro at PGW St. CP-2 and Exhibits CC/CP-1 and CC/CP-2. Action Alliance submits that those answers were accurate, were more fully developed during the July 6, 2004 hearing, and were not seriously controverted by any party.

Action Alliance recognizes the Commission's concerns about the overall level of PGW's rates. However, as PGW itself testifies, the incremental impact on the rates paid by PGW's non-SCD customers attributable to the means-tested SCD is very small over the full span of the next fifteen years. Additionally, and perhaps more important, given the recognition of PGW's pressing current need to hold the line on rates as it improves its collections, the incremental impact on rates in the next five years is infinitesimal. As PGW states, the incremental \$365,000

a Petition for Rescission and Amendment, because at the time that the Governing Body of the City enacted the ordinances upon which the SCD Petition is based, the Commission had already approved PGW's Restructuring Filing, which contained provisions discontinuing the Senior Citizen Discount for customers applying or becoming eligible after September 1, 2003. Rescission or Amendment of this aspect of the Commission's March 31, 2003 Restructuring Order therefore became necessary.

per year to be collected through the USC arising from the means tested SCD is not a “material” amount. PGW St. CP-2 at 10. On a per Mcf basis, the difference between the cost of the existing grandfathered SCD and the existing grandfathered program plus the means-tested program is \$0.02/Mcf in FY2005 and FY2006 and \$0.03/Mcf in FY2007 and \$.04/Mcf in FY2008. OTS Exhibit No. 1, Schedule 2; Tr. 639 (PGW endorses OTS Exhibit No. 1, Schedule 2).

3. The Modified Senior Citizen Discount Should Be Approved as “Just and Reasonable”

On remand, OTS, which had withdrawn from the Senior Citizen Discount proceeding and therefore was not in a position to oppose or support the Stipulation and Settlement, now opines that the means-tested Senior Citizen Discount is not just and reasonable and is unreasonably discriminatory, in violation of 66 Pa. C.S. § 1304. OTS St. No. 1 at 10-11. OTS further suggests that PGW’s CRP program provides an alternative adequate support for low income senior citizen customers, and opposes a program in which age is one of the criteria for providing a discount.⁷²

Action Alliance has maintained throughout this proceeding that the proposed SCD should be approved as “just and reasonable” and consistent with the Public Utility Code, which bars only unreasonable discrimination in rates. In light of OTS’s opposition to the SCD, it may be useful to the Commission for Action Alliance to include in this Brief a general discussion of applicable law on this issue. This discussion virtually replicates parts of the Statement of CEPA et al. in Support of Unopposed Stipulation and Settlement Regarding the Philadelphia Gas

⁷² In asserting that CRP provides adequate support for low income seniors, OTS ignores testimony of record that because of the structure of the CRP program, many seniors with incomes below 150% of the Federal Poverty Guidelines would not receive any discounts on the CRP program. See CEPA et al. St. No. 1 at 12-14, in the Senior Citizen Discount proceeding.

Works' Petition for Rescission and Amendment Seeking Approval of a Means-Tested Senior Citizen Discount Program, which was filed on January 19, 2004 in the Senior Citizen Discount proceeding at Docket Nos. M - 00021612 and Docket P-00032061.

Contrary to OTS's view, the Gas Choice Act Section 2212(r)(1) provides that a Senior Citizen Discount for PGW customers may be approved by the Commission so long as it is "just and reasonable." 66 Pa. C.S. § 2212(r)(1). Such a discount, to be made available to seniors who are not included among the customers grandfathered under Gas Choice Act Section 2212(r)(2), must be authorized by ordinance of the Governing Body of the City of Philadelphia.. The Gas Choice Act specifically authorizes the Commission to approve such a modified Senior Citizen Discount so long as it is "just and reasonable."

In requiring that the Commission measure a modified SCD against the "just and reasonable" standard, the General Assembly selected the broadest standard applicable to utility rates. The "just and reasonable" standard is at bottom a balancing standard, in which a regulatory authority must balance the interests of the utility against the interests of customers.⁷³

In specifying the "just and reasonable" standard, the General Assembly also signaled that a senior citizen discount program maintained by a municipally owned gas utility is permissible and certainly not *per se* illegal. Whether such a discount is legal depends upon the balancing of

⁷³ Duquesne Light Co. v. Barasch, 488 U.S. 299, 102 S.Ct. 609, 620 (1989) ("The Constitution within broad limits leaves the States free to decide what rate setting methodology best meets their needs in balancing the interest of the utility and the public."); accord Public Advocate v. Philadelphia Gas Com'n, ___ Pa. ___, 674 A.2d 1056, 1061 (1996).

interests required by application of the “just and reasonable” standard.⁷⁴ In acknowledging that a municipally owned utility may choose to treat senior citizen residential customers in a manner different from non-senior residential customers, the Legislature further recognized that this balancing of interests could not be reduced merely to cost of service terms. To the contrary, while the rate implications of the modified SCD for other customers are not irrelevant, the test requires a qualitative assessment of the financial and social needs and social circumstances of PGW’s senior citizen customer population, relative to those of other residential customers.

Such qualitative assessments which factor social policy concerns into the balancing process have long been recognized as part of the “just and reasonable” determination, so long as there is an adequate record basis for them. U.S. Steel Corp. v. Pa. Public Utility Com’n, 390 A.2d 865, 871 (Pa. Cmwlth. 1978) (general rate increase providing for no increase in residential rates for first 500 kWh monthly justified on grounds that “there is no reason why in times of stringency the utility might not propose, and the Commission might not approve, rates for residential users less than the rates which an allocation of large increases in necessary revenues by a strict application of cost of service studies would suggest”). In the same vein, the Supreme Court of Hawaii stressed the relevance of such assessments in an opinion rejecting a proposed declining block rate, when it stated:

In addition to conservation of energy and optimization of the efficient use of facilities and resources, a public utility’s rate structure should encourage equitable rates to all its

⁷⁴ Significantly, the General Assembly did not alter the rights of the approximately 80,000 senior citizen customers of PGW receiving the discount as of September 2003, but rather provided for the grandfathering of this customer population. In so doing, the General Assembly recognized that at least in the context of a municipal utility with an unusually large number of senior citizen residential customers at lower income levels, a discount provided on the basis of age could be just and reasonable.

consumers including the poor and the elderly. Reactions to demands that the increasing energy burden borne by the poor and the elderly be alleviated range from sympathy to scorn for “social rate making.” Our laws, however, recognize that the poor and the elderly are deserving of special protection. See, e.g., HRS § 346-52 (aged and needy eligible for public assistance); § 346-71 (general assistance available to needy persons); §359-51 et seq. (housing for elderly persons); § 431-522 to 431-529 (extended health insurance for elderly).

There has always been a great measure of public policy that enters into the designing of rates.

In re Hawaii Electric Light Co., 60 Haw. 625, 647, 594 P.2d 612, 626 (1979) (emphases added).⁷⁵

In applying the “just and reasonable” standard to the SCD, the Commission should draw on examples in other jurisdictions, which have performed this type of balancing in the senior citizen discount context.⁷⁶

Moreover, in applying the “just and reasonable” standard in this matter, which involves a municipally owned utility, the Commission should give greater weight to qualitative policy factors than might be appropriate in the context of an investor owned utility. Such policy considerations go to the mission of the utility. For the municipally owned PGW, the provision of public utility service in such a manner as to maximize the health, safety and public welfare is a

⁷⁵ Some Pennsylvania state laws providing discounts to seniors are: Pharmaceutical Assistance Contract for the Elderly (PACE), 72 P.S. §§ 3761-501 et seq. (prescription medicine); Senior Citizens Rebate and Assistance Act, 72 P.S. §§ 4751-1 et seq. (rent and property tax rebates); 7 P.S. § 6020-134 (free cashing of government checks by financial institutions); Pennsylvania Rural and Intercity Transportation Assistance Act, 72 P.S. §§ 3761-901 et seq. (transportation services).

⁷⁶ In other states, public utility commissions have recognized that in determining whether a senior citizen discount is permissible, a commission may consider “age and income of the members of the class and the importance of the service to them.” American Hoechst Corp. v. Dep’t of Public Utilities, 379 Mass. 408, 413, 399 N.E.2d 1, 4 (1980); accord Consumers Power Co., 25 PUR 4th 167 (Mich. PSC 1978). See subsequent cases upholding the justness and reasonableness of senior citizen discounts against continuing challenges, e.g., Consumers Power Co., 151 PUR 4th 374 (Mich. PSC 1994); Consumers Power Co., 167 PUR 4th 124 (Mich. PSC 1996).

paramount goal, relatively more important than eliminating any intra-class or interclass rate disparities, or the other competing financial or policy objectives. Gas Choice Act Section 2212(s), 66 Pa.C.S. § 2212(s), expressly acknowledged that PGW's mission might be defined somewhat differently from that of an investor owned utility and specifically provides some allowance for such differences.⁷⁷ No other provision of the Public Utility Code protects the right of an investor owned public utility to determine its own mission. As City Solicitor Nelson A. Diaz states in his December 19, 2003 letter to ALJ Turner, the proposed modified SCD represents a "collective determination that a means-based discount represented an important and appropriate social benefit that should be available to Philadelphia seniors." In other words, the provision of this type of social benefit to seniors has been and continues to be part of the mission that the City has chosen for PGW.

In creating the Means-Tested Senior Citizen Discount program, the City's Governing Body weighed the legally relevant interests and factors and struck an appropriate balance consistent with PGW's mission. In her Recommended Decision, ALJ Turner summarized the evidence supporting the need of Philadelphia's low and lower income senior of the SCD.⁷⁸ The

⁷⁷ Gas Choice Act Section 2212(s) states in pertinent part: "Nothing contained in this title shall be construed to abrogate or limit the executive or legislative powers of a city that owns a city natural gas distribution operation to legislate or otherwise determine the powers, functions, budgets, activities and mission of the city natural gas distribution operation" 66 Pa. C.S. § 2212(s) (emphasis added).

⁷⁸ Pennsylvania Public Utility Commission v. Philadelphia Gas Works, Petition for Rescission and Amendment of Philadelphia Gas Works; Edward Morrison v. Philadelphia Gas Works, M - 00021612, P-00032061, C-20030297, Recommended Decision (February 6, 2004) at 15-20. See also Statement of CEPA et al. in Support of Unopposed Stipulation and Settlement Regarding the Philadelphia Gas Works' Petition for Rescission and Amendment Seeking Approval of a Means-Tested Senior Citizen Discount Program, at 10-13.

record supports the balance of interests and factors struck by the City's governing body in designing a means-tested SCD.

Against the obvious and pressing need on the part of Philadelphia seniors, the "just and reasonable" test requires that the Commission balance PGW's interest in maintaining general competitiveness with alternative fuels, and in providing reasonably affordable rates for its non-senior residential customers and large and small businesses customers. It is this balancing that the governing body of the City performed in the process of developing PGW's proposed means-tested SCD. Because it is composed of democratically elected representatives of the Philadelphia population, this governing body may be deemed to have specialized knowledge of how this balance should be struck, and at what point a Senior Citizen Discount may become unreasonably burdensome on other customers, causing unreasonable discrimination in rates, and negatively impacting the financial viability of the utility.⁷⁹

While recognizing that the Gas Choice Act designates the Commission, not the City's governing body, as the ultimate judge, Action Alliance submits that the fact that the City's governing body through its legislative process formulated the proposed modified SCD is itself strong evidence that the modified SCD is "just and reasonable." In addressing this issue, the

⁷⁹ In striking the balance represented by the proposed SCD, the relative costs were not ignored. As PGW testified, combined with attrition of the non-means tested grandfathered Senior Citizen Discount participants, the costs of the modified SCD will over time significantly reduce the overall amount of the discounts provided to PGW senior citizens. Accordingly, non-senior citizen customers over time will pay significantly less to subsidize senior discount recipients. PGW St. 1 at 7. Moreover, over time, most residential customers benefit from the SCD. As reflected in the testimony of Mrs. Edward Morrison at the evidentiary hearing, non-senior residential Philadelphia customers have for years paid a small amount more in current rates, as insurance for the time when they reach age 65, when they too will benefit from the discount.

City's governing body was exercising powers to modify the SCD specifically recognized by the General Assembly in Section 2212(r) of the Gas Choice Act, subject to review by the Commission.⁸⁰ It also acted with full knowledge that its proposed modified SCD should represent a determination weighing all the interests both on the side of the utility and on the side of customers in determining a "just and reasonable" design for the SCD.⁸¹

The modified SCD reflects a consensus achieved among representatives of all Philadelphians, with representatives of customers and of PGW and its municipal owner all involved in the process. That consensus, which is opposed by no party representing actual Philadelphia customers or the utilities' ownership, is also reflected in the Settlement.

In reviewing this record, the Commission should also be mindful that it is the owner of the utility, not the Commission or an advocacy group, which has requested the Commission to approve the modified SCD. This is not a case in which the Commission is called to impose a SCD upon an unwilling utility, either municipally or investor owned. In other jurisdictions, there is precedent that a utility proposing a senior citizen discount should be afforded some latitude in

⁸⁰ Bill No. 030138 Section 19-2001(12) contains a legislative finding that the "Natural Gas Choice and Competition Act, at Section 2212(r) recognized City Council's power to create a Senior Citizen Discount Program, subject to review by the Pennsylvania Public Utility Commission"; Bill No. 030123 in the third "Whereas clause" contains a similar acknowledgment of the Commission's statutory authority to review the City's proposed SCD modifications. See PGW's SCD Petition, Attachment A.

⁸¹ For instance, Bill No. 030138 Section 19-2001(11) contains a legislative finding that "Senior Citizen Discounts are common for public utilities that are publicly owned by municipalities or other such public authorities, and have been recognized by courts to be just and reasonable..." (emphases added); Bill No. 030123 Section 1(k) contains the identical Legislative Finding. In addition, the third "Whereas clause" contains express recognition that the applicable standard in this case is the "just and reasonable" standard. See PGW's SCD Petition, Attachment A.

determining the eligibility standards.⁸² Because PGW and its owner the City of Philadelphia are proposing this modified SCD, and because the proposal reflects a democratic legislative process, the Commission should afford greater deference to their judgment than might be appropriate in other circumstances.

In sum, in designing the modified SCD, the democratically elected representatives of all Philadelphians conducted a well considered and well informed balancing of precisely those factors which must be weighed under the “just and reasonable” standard in designing a public utility rate. The Gas Choice Act charges the Commission with the duty to review that work under the “just and reasonable” standard. For the foregoing reasons, Action Alliance respectfully submits that the City’s governing body performed its duties effectively, that the Settlement sets forth a “just and reasonable” modified SCD, that it is in the public interest and the interest of PGW’s ratepayers, and that it should be approved without delay. As to those senior citizen PGW customers who have applied for the discount since September 1, 2003, Action Alliance requests that they be granted the discount retroactive to the date of application.

D. ADEQUACY OF COLLECTIONS PRACTICES/UNIVERSAL SERVICE COSTS

1. Adequacy, Cost Effectiveness and Management of PGW’s Collection Practices

In the time between June 2, 2004 and evidentiary hearings on July 6, 2004, there was not time for the parties to conduct an investigation of the adequacy, cost effectiveness and management of PGW’s collection programs. By its own admission, PGW’s collection practices

⁸² Am. Hoechst Corp. v. Dep’t of Pub. Util., 379 Mass. 408, 399 N.E. 2d 1 (1980); Rhode Island Consumers’ Council v. Smith, 111 R.I. 271, 302 A.2d 757 (1973).

have been traditionally subpar, resulting in an 87% collections ratio in FY2003. PGW St. CP-1, at 3-4. They have been the subject of a very recent Collections Renewal Initiative, which, without the necessity for a single Chapter 56 waiver, has likely assisted PGW to restore its collections ratio to the current 92% historical level. PGW St. CP-1, at 5; PGW St. CP-1R, at 6. As PGW continues with this Initiative, and devotes increased attention to collections, PGW's collections ratio can be expected to improve further. PGW has recently begun to report customers to credit reporting agencies, which if properly publicized, is likely to result in more prompt payment from many Level 3 and Level 4 customers. PGW is altering its systems to permit it to place a customer who breaches a payment agreement on a collections path (termination notice) after one missed payment, rather than two. PGW St. CP-1R, at 18; Action Alliance, et al. St. No. 1 at 24. It is also altering its information systems to enable it to demand deposits as permitted by Chapter 56 from customers who pay late two months in a row, or three times in any one year. PGW St. CP-1, at 10. Although at the present time, it has not initiated a credit scoring system, based on a limited Chapter 56 waiver, it should be encouraged to pursue this practice, subject to appropriate consumer protections. PGW St. CP-1R at 18.

2. Level of Universal Service Costs, Cost Effectiveness, and Program Management

In the time between June 2, 2004 and the evidentiary hearings on July 6, 2004, there was not adequate time for the parties to investigate these issues. However, in the recent Restructuring Proceeding, the parties did have the opportunity to review PGW's Customer Responsibility Program (CRP), the low income Conservation Works Program (CWP) and the Senior Citizen Discount program. PGW's CRP program and the CWP program were approved by the

Commission as consistent with the Commission's universal service guidelines and standards.

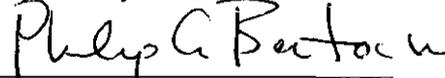
Action Alliance does not see the need for further review of CRP and CWP at this time. PGW St. CP-2, at 12-17.

IV. CONCLUSION

For all the foregoing reasons, Action Alliance respectfully requests that the Commission:

- (a) deny PGW's Chapter 56 Waiver Petition;
- (b) allow PGW to condition granting an application for service upon payment or arrangement to pay an outstanding lien or judgment, subject to the condition that Section 2.4.C.6 of its Tariff be amended to specify that PGW may require only payment or arrangement to pay that portion of the sum subject to a lien or judgment which arises from service provided within the four years prior to the application date;
- (c) reaffirm its disallowance of the Field Charge;
- (d) approve the modified Senior Citizen Discount as "just and reasonable" and grant the discount to senior citizen customers who have applied for service since September 1, 2003; and
- (e) grant such other relief as is just and proper.

Respectfully submitted,



PHILIP A. BERTOCCI, ESQUIRE
LAURA MOSKOWITZ, ESQUIRE

July 16, 2004

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

Proposed Findings of Fact

1. Waiver of the Chapter 56 provisions set forth in PGW's Petition will have a dramatic and adverse effect on lower income and low-income consumers who are either targeted directly by these proposals or adversely affected by measures ostensibly aimed at customers with greater financial resources. Action Alliance, et al. St. No. 1 at 3.
2. Many customers and applicants with household incomes up to 250% of the Federal Poverty Level, who fall into Level 3 of the BCS Income Guidelines, do not always have the ability to pay the flat deposits and total outstanding balances required by the proposed Chapter 56 waivers. Action Alliance, et al. St. No. 1 at 3,10.
3. PGW has not, to date, undertaken the following practices which would increase collections under existing regulations: requiring late payers to submit deposits, requesting BCS authorization to terminate service during the winter, placing customers on the termination path after one missed payment on a payment agreement. Action Alliance, et al. St. No. 1 at 5-6, 24. 26.
4. Waiver request C would require all applicants to pay deposits regardless of credit risk. Action Alliance, et al. St. No. 1, at 4, 14-16.
5. Waiver request D would require applicants who have no contractual liability for service at an account premises to pay or agree to pay for service in the account of another person, before they can receive service. Action Alliance, et al. St. No. 1, at 4, 17-21.
6. The harm to customers that would be caused by implementing Waiver A, concerning full, upfront payment of outstanding balances prior to service restoration, outweighs the undemonstrated benefits to collections claimed by PGW. Action Alliance, et al. St. No. 1 at 9-13.
7. The harm to customers that would be caused by implementing Waiver B, concerning eliminating winter termination procedures, outweighs the undemonstrated benefits to collections claimed by PGW. Action Alliance, et al. St. No. 1 at 25-27.
8. The harm to customers and applicants that would be caused by implementing Waiver C, concerning flat turn-on deposits for all applicants regardless of credit risk, and for all customers terminated for non-payment, even Level 1 and 2 non-CRP participants, outweighs the undemonstrated benefits to collections claimed by PGW. Action Alliance, et al. St. No. 1 at 14-17.
9. The harm to customers and applicants that would be caused by implementing Waiver D, concerning holding applicants responsible for arrearages in others' names, outweighs the undemonstrated benefits to collections claimed by PGW. Action Alliance, et al. St. No. 1 at 17-21.
10. The harm to customers that would be caused by implementing Waiver E, restricting

customers to one payment arrangement unless there is a change in circumstances related to income level placing the customer in a lower income level, outweighs the undemonstrated benefits to collections claimed by PGW. Action Alliance, et al. St. No. 1 at 21-24.

11. The harm to customers that would be caused by implementing Waiver F, allowing Friday terminations, outweighs the undemonstrated benefits to collections claimed by PGW. Action Alliance, et al. St. No. 1 at 30-31.

12. The harm to customers that would be caused by implementing Waiver G, eliminating 48-hour notice and contact requirements during the termination process, outweighs the undemonstrated benefits to collections claimed by PGW. Action Alliance, et al. St. No. 1 at 28-30.

13. The harm to customers that would be caused by implementing Waiver H, extending the 30-day maximum for termination notices to 60 days, outweighs the undemonstrated benefits to collections claimed by PGW. Action Alliance, et al. St. No. 1 at 27-28.

14. The harm to customers that would be caused by implementing Waiver I, concerning changing the service restoration timeline from 24 hours to seven days, outweighs the undemonstrated benefits to collections claimed by PGW. Action Alliance, et al. St. No. 1 at 31.

15. The overall harm to customers that would result from the granting of PGW's package of waiver requests vastly outweighs the undemonstrated benefits claimed by PGW. Action Alliance, et al. St. No. 1 at 3, 7.

16. The incremental cost of the Modified Senior Citizen Discount is very small over the span of the next 15 years, and would not impose undue hardship on non-Senior Citizen customers. PGW St. CP-2, at 10.

17. The incremental cost of the Modified Senior Citizen Discount in the next few years is \$0.02/Mcf in FY2005 and FY2006, \$0.03/Mcf in FY2007, and \$0.04 in FY2008. OTS Exhibit No. 1, Schedule 2; Tr. 639.

Proposed Conclusions of Law

1. In order for PGW to obtain a waiver of any provision of Chapter 56, it must show that the provision causes unreasonable hardship to the company, and it must also show that the harm caused to the company's financial integrity outweighs the harm to customer service protections caused by the waiver.
2. Compliance with the Chapter 56 provisions which PGW seeks to have waived will not result in unreasonable hardship to the utility.
3. PGW's request for Chapter 56 waivers does not adequately balance consumer protection rights with the utility's maintenance of its financial integrity.
4. The Public Utility Code does not contain any statutory provision which confers on the Commission the authority to enlarge by regulation or waiver of regulation the contractual rights of utilities acting as creditors.
5. PGW's proposed Field Collection charge is not permissible under Chapter 56.
6. Section 2..4.C.6 of PGW's Tariff is not consistent with Chapter 56 Section 56.35, because it would allow the utility to condition granting an application for service upon payment or agreement to pay for service provided more than four years prior the date of the application.
7. The modified Senior Citizen Discount is "just and reasonable."

Proposed Order

It is hereby ordered that:

(a) PGW's Chapter 56 Waiver Petition is denied.

(b) PGW shall be allowed to condition granting an application for service upon payment or arrangement to pay an outstanding lien or judgment, subject to the condition that Section 2.4.C.6 of its Tariff be amended to specify that PGW may require only payment or arrangement to pay that portion of the sum subject to a lien or judgment which arises from service provided within the four years prior to the application date.

(c) PGW's Field Charge contained in Section 5.14 of its First Compliance Tariff is disallowed.

(d) the modified Senior Citizen Discount is approved "just and reasonable." In addition, PGW shall grant the discount to senior citizen customers who have applied for service since September 1, 2003.

CERTIFICATE OF SERVICE

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 16, 2004 AND FIRST CLASS U.S. MAIL ON JULY 16, 2004

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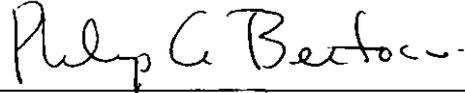
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