

COMMONWEALTH OF PENNSYLVANIA



ORIGINAL

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June 14, 2004

HAND DELIVERED

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

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

Petition to Establish a Cash Receipts
Reconciliation Clause

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,

Steven C. Gray
Assistant Small Business Advocate

Enclosures

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

Parties of Record

Robert D. Knecht

121

ORIGINAL

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
Petition to Establish a Cash :
Receipts Reconciliation Clause :

DOCKETED
JUN 16 2004

MAIN BRIEF
ON BEHALF OF THE
OFFICE OF SMALL BUSINESS ADVOCATE

**DOCUMENT
FOLDER**

Steven C. Gray
Assistant Small Business Advocate

For:

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Dated: June 14, 2004

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I. INTRODUCTION

A. The Procedural History of the Petition

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

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

The Commission referred this matter to the Office of Administrative Law Judge and on March 2, 2004, a notice was issued scheduling the prehearing conference. That prehearing conference was held by Administrative Law Judge (“ALJ”) Charles E. Rainey, Jr. on March 15, 2004, to establish the hearing and briefing schedule for this proceeding, as well as to argue PGW’s Motion to Consolidate the two cases. The ALJ granted the Motion to Consolidate.

As required by the procedural schedule, the OSBA served Direct Testimony on April 16, 2004. On May 4, 2004, the ALJ issued an Order revising the schedule for submission of rebuttal and surrebuttal testimony, as requested by the active parties to this proceeding. The OSBA, therefore, submitted rebuttal testimony on April 30, 2004, and surrebuttal testimony on May 7, 2004. Hearings were held in Philadelphia before ALJ Rainey on May 11, 2004.

On May 15, 2004, the active parties in this proceeding submitted to the ALJ a request for additional time. The request proposed to bifurcate the consolidated Section 1307(f) proceeding and the Petition, and to extend the Petition briefing schedule by three weeks so that the active parties could enter into settlement discussions on the issues raised by the cash receipts reconciliation clause ("CRRC"). Main Briefs on the CRRC mechanism were rescheduled to June 14, 2004, and Reply Briefs were rescheduled to June 22, 2004. Furthermore, the date for implementation of the PGW Tariff was also moved by three weeks to September 22, 2004. On May 21, 2004, the ALJ granted the request.

On June 2, 2004, the Commission entered an Order that consolidated a variety of PGW cases and established a new procedural schedule. For the purposes of the 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 Public Meeting on July 8, 2004. On June 3, 2004, the ALJ issued an Order certifying the record on the CRRC mechanism to the Commission.

The OSBA submits this Main Brief as required by the procedural schedule set forth by the ALJ in his May 21, 2004, Order.

B. PGW's Selection of the CRRC Mechanism

On March 1, 2004, when PGW filed its Petition to request the implementation of its proposed CRRC mechanism, the Company presented a series of reasons as to why the Petition was filed, as well as the reasons why the CRRC mechanism was selected as PGW's preferred solution to its problems.

Specifically, Mr. Bogdonavage provided a summary of the Company's financial position as of March 1, 2004. At the end of PGW's 2003 Fiscal Year (August 31, 2003):

PGW had a cash balance of \$.1 million (i.e., \$100,000) and \$5.8 million in available commercial paper with the remaining balance of \$74.0 million utilized. The \$45.0 million City of Philadelphia loan was also fully utilized at August 31, 2003. The only way the Company was able to achieve even these results was by executing a forward sale of gas inventory which produced \$15 million of additional cash at year end. The only remaining source of liquidity was PGW's restricted capital fund which, while having a balance of nearly \$94.0 million at fiscal year end 2003, and which can be used as a source of intra-fund borrowing, must be reconciled to PGW's actual capital spending on an annual fiscal period basis. In other words, PGW must either expend the 'borrowed' funds on construction or pay the money back into the fund by the end of the year or be in violation of its bond ordinances.

PGW Statement No. CRRC-1, at 7-8. Next, Mr. Bogdonavage described how the PGW financial situation would affect the remainder of Fiscal Year 2004, as well as Fiscal Year 2005:

As shown on JRB Exhibit-5 page 2, PGW is projecting a year end cash balance of negative \$5 million. All sources of liquidity, including the \$80.0 million commercial paper program and the \$45.0 million City of Philadelphia loan will be fully utilized. In addition, PGW will have to draw down on its restricted capital fund in several months to pay its current natural gas invoices and other obligations as they become due. As was previously mentioned, PGW had \$94.0 million available in its restricted capital fund at the

beginning of the 2004 Fiscal Year. By the end of the fiscal period August 31, 2004, PGW expects to have a remaining balance of just \$27.0 to \$30.0 million in the capital fund. This level will not be sufficient to fund PGW's Fiscal Year 2005 capital program and will require PGW to enter the capital market this fall (earlier than it had planned) for a new bond issue of between \$125.0 million to \$150.0 million.

PGW Statement No. CRRC-1, at 8. Mr. Bogdonavage concluded that without an improvement in the Company's "cash liquidity issues," the Company's bond issuance "at best" will have a substantially higher interest rate, or "at worst" PGW's access to funding will be impeded. Id., at 8-9.

Mr. Knudsen (two months later in his May 3, 2004, rebuttal testimony) observed that "[o]n April 9, 2004 Standard & Poors lowered its rating on PGW's senior revenue bonds to BBB-." Statement No. CRRC-5, at 6. Furthermore, "[o]n April 23rd, Fitch's followed suit, downgrading PGW's senior securities to BBB-." Id. Mr. Knudsen concluded that, among the other possible results of this downgrade, "the cost of issuance of the planned \$125 million bond issuance will be significantly higher" both in terms of the higher interest rate and insurance costs. Id., at 7-8.

If these are the financial circumstances that PGW currently faces, what has brought PGW to this impasse? The answer is that PGW is experiencing a "huge increase in the amount and percentage of non-payment by PGW customers." Petition, at 1. PGW explained:

In the last 18 months, PGW has experienced a dramatic increase in the relative level of customer non-payments. While, historically, PGW's collections percentage has averaged 92%, most recently its cash collections rate has been under 87% (86.5%) and PGW is presently projecting

collections levels which are only slightly better for the current fiscal year.

Petition, at 1-2.

Unlike other natural gas distribution companies (“NGDCs”) that operate in Pennsylvania, PGW is regulated on a cash-flow basis. See Petition, at 8-9. PGW is not a shareholder-owned utility, such as National Fuel or Columbia, and thus cannot turn to those shareholders for financial support in times of crisis, or even in times of rising commodity costs. Consequently:

As a Cash Flow regulated company, PGW receives 100% of its cash working capital from its customers in the rates it charges to them. The cash collections shortfalls that PGW is experiencing is robbing PGW of cash working capital that is crucial if it is to avoid financial crisis which, in turn, would harm PGW’s customers.

Petition, at 2. As Mr. Bogdonavage succinctly stated:

[T]his liquidity crisis is directly attributable to a dramatic decline in customer cash receipts that PGW has experienced during the past year.

PGW Statement No. CRRC-1, at 1.

In light of PGW’s explanation that the significant increase in the under-collections of its customer’s bills has led to its current financial predicament, what is the reason for this rise in the Company’s under-collections? PGW’s answer to this question is found in its Petition:

This problem is directly related to the large increases in natural gas costs that PGW, along with all natural gas distribution companies (‘NGDCs’), are continuing to experience.

Petition, at 1. PGW expanded this basic answer into a laundry list of inter-related reasons for the rise in the level of under-collections:

This drop-off [in collections levels] can be associated with historically high natural gas rates, a return to colder than normal weather and a customer base whose household and business income levels continue to drop, making it increasingly difficult for those customers to absorb such increases.

Petition, at 2.¹

The primary reason for the increase in under-collections, as cited by PGW, is the increase in the commodity price of natural gas. Natural gas prices have undergone two major price spikes in the last four years, and generally have been rising since early 2002.² As a result of this market trend, the PGW Petition observed that the Company's total billed natural gas revenues have increased from \$482.7 million in FY 1999 to \$755 million in FY 2003. See Petition, page 7.³

Therefore, PGW provided an outline of its current financial problem, pointed to the significant increase in under-collections as the cause of that problem, and identified the rise in natural gas prices as the primary factor that has driven customer bills so high

¹ As Mr. Bogdonavage stated:

Q. What is the main cause of this dramatic rise [in uncollectibles]?

A. Clearly, the increase in the absolute amount of our uncollectibles levels are principally associated with the significant rise in PGW's GCR charges which, in turn, are due to the escalating price of natural gas combined with the colder weather experienced.

PGW Statement No. CRRC-1, at 6.

² The website www.FutureSource.com provides daily and long-term charts of the NYMEX natural gas market. See also, PGW Statement No. CRRC-4, at 3, where Dr. Peach observed that there has been "a sustained upward trend in the price of natural gas."

³ Customer bills may certainly be impacted by the weather being "much warmer than normal" through 2002, and changing to "colder than normal last year." PGW Statement No. CRRC-1, at 5. However, PGW implemented a Weather Normalization Clause ("WNC") in 2002 that was supposed to provide stability for both the Company and its customers. The record is silent in this proceeding as to how the WNC has helped or hurt the Company and its customers during the winter heating season.

as to make them nearly unaffordable.⁴ The obvious question becomes what is the solution to helping get PGW out of its financial situation?

The solution that the Company put forward in its March 1, 2004, Petition was the CRRC mechanism. The CRRC mechanism is designed to increase charges on those customers who do pay their bills whenever the amount that is not collected from customers who fail to pay their bills exceeds historical norms. PGW saw the CRRC as the solution to recovering the “huge increase in the amount and percentage of non-payment by PGW customers” because the CRRC would “reconcile its projected and actual cash receipts with billed revenues on an ongoing basis.” Petition, at 1. PGW even went so far as to claim that “[s]uch a mechanism is justified and critically needed to provide sufficient cash working capital to the Company in order to stabilize PGW’s financial position and permit the Company to continue to provide adequate and reliable service to its customers.” Petition, at 4.

Furthermore, Mr. Bogdonavage explained that the Company had considered a series of options before selecting the CRRC to address its financial problem. “The first option considered was a full base rate case.” PGW Statement No. CRRC-1, at 9. “The second approach, and that adopted by PGW, is to focus on the principal variable that is causing the financial crisis – cash collection levels.” PGW Statement No. CRRC-1, at 9. PGW also considered the option of reducing the Company’s operating costs. However, the Company concluded that the total operating costs of PGW were simply too small a dollar amount to constitute a source of funds that could be used to overcome the amount of the increasing under-collections. See PGW Statement No. CRRC-1, at 10.

⁴ As both Mr. Knudsen and Mr. Knecht stated, PGW already has by far the highest gas rates in the Commonwealth. See PGW Statement CRRC-5, at 13. See also OSBA Statement No. 1, at 9.

The other solution to PGW's under-collections problem under consideration back in mid-2003 was as follows:

In June 2003 it was becoming evident to management that a formalized program had to be initiated to address the decline in collections in comparison to our 10 year historical rates of 92%. We also needed to determine how best to respond to the effect of customer payment patterns that we expected in light of the projections by industry and government that natural gas costs – already at all time highs – were expected to stay at these levels in the upcoming winter. PGW decided to conduct a study to determine what the best approach would be to try to reverse the precipitous decline in collections and then implement those measures in a timely manner.

PGW Statement No. CRRC-3, at 2. As a result of the PGW study, the Company “partnered with Accenture to develop and implement credit and collection actions.” *Id.*, at 3. The Collection Renewal Initiative (“CRI”) was placed into effect in November 2003:

PGW's time frame for completing the Collections Renewal Initiative is nine to twelve months. This period has been selected as ample time to put in place the steps needed to attempt to reverse the decline in cash receipts and at minimum try to reestablish collections to the historical rate of 92% of total billings for FY2004.

PGW Statement No. CRRC-3, at 4.

C. The Operation of the CRRC Mechanism

The purpose of the proposed CRRC mechanism is to prevent PGW from experiencing under-collections in an amount greater than the \$55.7 million allowed as an expense in the Company's base rates.⁵ The CRRC would allow the Company an automatic increase in the rates it charges to its firm service sales customers whenever PGW under-collects the gas bills for all of its customers, across all rate classes, by more than the referenced \$55.7 million amount. However, if under-collections were less than the referenced \$55.7 million, the CRRC would not credit that difference back to the firm service sales customers. See generally, Petition, at 12-14.

The specifics of the CRRC mechanism are multi-layered and best understood through a series of examples for each of the years that the CRRC would be in effect.⁶ In general, and for the purposes of this brief, a basic description of the CRRC is the one set forth by OSBA witness Robert D. Knecht in his direct testimony:

The proposed mechanism appears to have three components, a *pro forma* component, a 'prior-year' E-factor component, and an 'initial-year' E-factor amortization component.

The *pro forma* component represents the expected under-collections in the coming year. It is developed by first forecasting an under-collections rate for the coming year. PGW proposes that the forecast under-collections rate be based on the prior year actual under-collections rate. That forecast rate is then multiplied by the expected gas billings revenue for the coming year, to get total under-collection. From that total under-collection, the \$55.7 million

⁵ The \$55.7 million amount was set in PGW's base rates case docketed at R-00006042.

⁶ See OSBA Statement No. 1, at 3-9, for numerical examples of the CRRC mechanism.

uncollectible allowance is deducted, and any net amount above zero is included as the *pro forma* CRRC component.

OSBA Statement No. 1, at 3.

OSBA witness Knecht continued his review of the CRRC mechanism with a discussion of the second component:

The second component of the CRRC (which is not explicitly clear from either PGW's filing or its responses to OSBA interrogatories) is the prior-year E-factor component. This component of the CRRC is the reconciliation of the difference between expected and actual CRRC collections for the prior year.

OSBA Statement No. 1, at 4 (footnote omitted).

Mr. Knecht explained the third component of this elaborate mechanism:

The third component of the CRRC is the 'initial-year' E-factor component. It is the difference between the estimated 2003-2004 under-collection and the \$55.7 million uncollectible allowance, amortized equally over three years (without interest). Thus, under PGW's proposal, this component of the CRRC will disappear after the three-year amortization period. This value will be computed as the actual cash under-collections in 2003-2004 relative to the \$55.7 million base figure. This difference is then divided by 3 to amortize the initial year under-collection.

OSBA Statement No. 1, at 4.

Finally, OSBA witness Knecht observed:

The only reason that the CRRC has two E-factor components is because PGW proposes to treat the 2003-2004 'initial-year' under-collections differently than subsequent year under-collections. By proposing to amortize the initial-year under-collection over three years, PGW's proposal implies that ratepayers will face two E-factors for the second and third year of the amortization period.

OSBA Statement No. 1, at 5.

Thus, in light of the mathematics of the CRRC mechanism, PGW considers the CRRC to be a “make-whole” surcharge, at least to return the under-collections amount back to the \$55.7 million that is authorized in PGW’s base rates. PGW selected this methodology over the filing of a traditional base rates case under 66 Pa.C.S. § 1308(d) partly because the CRRC would provide more immediate cash flow relief to the Company. See Petition, at 11. PGW apparently did not consider the filing of a Petition for Extraordinary Rate Relief under 66 Pa.C.S. § 1308(e), a filing that the Company has made in the past.⁷

⁷ See the Company’s filing at R-00017034.

II. SUMMARY OF THE ARGUMENT

The solution to PGW's financial situation is for the Company to aggressively maximize the collection of its customers' bills. In contrast, the CRRC mechanism is nothing more than a poorly designed insurance policy on which the Company would fall back if its under-collections started to increase. As this proceeding demonstrates, and as the outside rating agencies have pointed out, the Company must raise and maintain the level of its bill collection. The CRRC mechanism does nothing to promote the Company's collections policies, and thus will not restore PGW's financial health.

Furthermore, the CRRC mechanism has a significant flaw in its mechanics. The CRRC surcharge, calculated on a cents per Mcf basis, makes the assumption that all firm service sales customers will be contributing towards that surcharge. However, in light of the customer assistance programs that PGW currently has in place, that assumption is a fallacy. In actuality, the firm service sales customers will have to pay even more than initially calculated by PGW in order to "make whole" the Company under-collections. Such a result is absurd given the already high price of delivered natural gas in PGW's service territory.

In addition, PGW witness Dr. Peach testified to the phenomenon of how PGW's rising natural gas bills are causing the Company's customers to pay less and less of what they owe. Since the CRRC mechanism would further increase the firm service customers' bills, the mechanism is precisely the wrong solution to the underlying financial problems that PGW is facing.

Finally, the proposed CRRC mechanism is prohibited under Pennsylvania law. Section § 2212(c) of 66 Pa.C.S. does not create any exception to that legal conclusion.

III. ARGUMENT

A. The CRRC is not the Solution to PGW's Financial Troubles

The *solution* to PGW's current financial predicament is abundantly clear: PGW must collect its bills. Significantly, PGW by its own statements, agrees with this premise. For example, even as early in this proceeding as March 1, 2004, PGW stated in its Petition:

In order for the Company to be able to survive this precarious financial position and access the capital markets, permitting it to continue its capital improvement plans and to pay its obligations when due, PGW must find a way to respond to the effects of persistently higher natural gas prices on its uncollectibles and to increase the percentage of actual cash receipts to billings.

Petition, at 2 (emphasis in original).

Mr. Bogdonavage (also on March 1, 2004) continued this line of reasoning when he concluded, after providing an overview of the Company's current financial position, that:

It would not appear to be the subject of serious dispute that PGW needs either to find a way to return its cash receipts collections to historical levels (and the levels assumed by the PUC in its last litigated rate proceeding) or it needs to secure revenues to replace those that it can not collect from a portion of its customer base.

PGW Statement No. CRRC-1, at 9.

The conclusion that PGW must do whatever it can to collect its bills became unassailable in the May 3, 2004, rebuttal testimony of Mr. Knudsen. In that testimony, after documenting the recent actions taken by the rating agencies (Standard & Poors and Fitch), Mr. Knudsen made it crystal clear that those agencies know exactly what must be done to improve PGW's financial position:

The message is clear from the investment community which holds the fate of PGW in its hands: extraordinary measures are essential, but do not address PGW's core issues. ***You must collect more money from your customers.***

PGW Statement No. CRRC-5, at 7 (emphasis added). Mr. Knudsen concluded his description of the rating agency analysis by stating:

What is new is the very explicit nature of the warning. Both groups indicated that they are considering additional downward revisions if PGW's collection rates and cash margins do not improve materially. The City's generous action and even ***Commission approval of the CRRC have been discounted in the actions already taken! The agencies clearly want more.***

PGW Statement No. CRRC-5, at 8 (emphasis added).

Therefore, based upon nothing more than the testimony of the officers of PGW, the solution to the Company's current financial troubles is that PGW must collect the bills of its customers. This conclusion may be so obvious as to not bear repeating, but as Mr. Bogdonavage pointed out, for every one percent decrease in the collections rate, the Company is not receiving eight million dollars in billed revenue. PGW Statement No. CRRC-1, at 5. Given PGW's nature as a cash-flow utility, multiples of eight million dollars can add up quickly with a resultant huge impact upon the Company's financial operations.

Furthermore, the rating agencies have, in effect, closed the door on the issue. First, they have made it abundantly clear that PGW simply must collect a higher percentage of its bills. As Mr. Knudsen pointed out, these rating agencies play a critical role in evaluating and maintaining the financial standing of PGW. Thus, PGW has little choice but to comply with their observations and suggested action. Second, those rating

agencies have already factored in approval of the CRRC mechanism in their analysis!⁸ Again, as Mr. Knudsen bluntly pointed out, the rating agencies continue to want more: they want PGW to collect its bills. Although this conclusion by the rating agencies may, by itself, make the CRRC irrelevant, it at least makes one fact irrefutable. That fact is that *PGW must collect its bills*.

Thus, if the *solution* to PGW's financial predicament is for PGW to collect its bills, what role does the proposed CRRC mechanism play? The first hint of the true function of the CRRC appeared early in Mr. Bogdonavage's direct testimony, where he accurately described the mechanism "as a *hedge* to assure that PGW will be able to *reconcile its cash receipts with the assumed pro forma level*." PGW Statement No. CRRC-1, at 3 (emphasis added). Mr. Bogdonavage expanded upon this explanation in his rebuttal testimony, where he observed that "[t]he principal value of the CRRC is as *back stop* or 'fail safe.'" PGW Statement No. CRRC-1R, at 5 (emphasis added). Finally, Mr. Knudsen stated:

However, the CRRC is a backstop or insurance policy that is designed to provide the financial community with an assurance that PGW will obtain cash receipts that at least reflect historic levels.

PGW Statement No. CRRC-5, at 9.

⁸ This raises a difficult issue for the Commission to adjudicate. If a rating agency has informed a Company official that a proposed remedy will not be adequate, yet that rating agency assumes that the remedy will nonetheless be put into operation, does that argue for or against the Commission's approval of the remedy? Of course, one obvious problem is that the Commission is being asked to base a decision upon self-serving hearsay of that Company official. However, the OSBA suggests that the Commission may garner more guidance from the non-testifying rating agencies by considering what they positively want, rather than what they consider inadequate. Thus, the improvement of PGW's collections is, based upon Company testimony, what the rating agencies *want*. The CRRC mechanism apparently did not make much of an impression upon the rating agencies since they did not insist that it be implemented.

Thus, the Commission has before it a clear cut solution to PGW's financial predicament (increasing the rate at which the Company collects its bills) coupled with a Petition for a backstop mechanism (the CRRC) in case PGW's collections rate drops to a level below that authorized in the Company's 2001 base rates case. In deliberating whether to award the CRRC to PGW, the words of Mr. Bogdonavage provide excellent guidance:

It is not reasonable in my view to insist that PGW impose an increase of tens of millions of dollars on its customers when an alternative approach has the potential of avoiding any increase in customer rates.

PGW Statement No. CRRC-1R, at 5 (emphasis in original). Mr. Bogdonavage has it exactly correct. The solution to guiding PGW out of its financial woes is for the Company to aggressively collect all of its bills. The solution is *not* to add a surcharge onto the monthly bills of PGW's paying customers.⁹ Since PGW's collection initiative has the "potential" of eliminating the need for the CRRC in its entirety, the Commission should assist PGW in honing its bill collection practices. In that way, PGW will be focused on the solution; Mr. Bogdonavage's unreasonable result of charging the Company's paying customers even more when a better solution exists will be avoided; and the CRRC will be dismissed as irrelevant, just as the rating agencies apparently have done.

Furthermore, PGW has already provided evidence that the solution – increasing the level of its collections – is, in fact, working. Mr. Bogdonavage provided an update in his May 3, 2004, rebuttal testimony regarding the Company's CRI that began in November 2003. He stated that the Company's under-collection of bills has dropped

⁹ The mechanism proposed by the OTS suffers this same flaw.

because “PGW’s Collections Initiative is improving those results.” PGW Statement No.

CRRC-1R, at 1. In fact:

For the 12 months ending March 2004, receipts, as a percentage of billed revenues, is 90.46% (JRB-7). Moreover, as of April 2004, PGW’s cumulative percentage receipts compared to billings is 7.0% better than PGW’s experience last year at this time (80% vs. 75.27%). If this improvement continues through this fiscal year, PGW’s collections experience could be 93% (JRB-8).

Id., at 2. Thus, if the trend reported by Mr. Bogdonavage continues, the CRRC would produce little, if any, additional revenue for the Company. Id.

In addition, if the CRRC mechanism were approved by the Commission, the mechanism would weaken the Company’s incentive to achieve or even maintain an improvement in its collections rate. As OSBA witness Knecht pointed out:

The CRRC eliminates that incentive as it relates to collections rates and uncollectibles costs. Under the proposed CRRC, poor collections rates by PGW are automatically factored into the next year’s rates in a relatively low-profile 1307(f) proceeding. In fact, under PGW’s proposal, not only will PGW automatically increase its CRRC when its collections rate falls below forecast on a going-forward basis, PGW will be able to recover prior year’s under-collections as well.

Moreover, once it is determined that cash receipts are reconcilable, it is difficult for ratepayers to contest unreasonable performance. That is, once the CRRC is in place, it will be automatically reconciled each year with only the limited review given to reconciling historical gas costs and universal service charges. Ratepayers will not get another opportunity to contest the basic reasonableness of the program, nor the disincentives created by the program for reasonable collections performance.

OSBA Statement No. 1, at 24. Thus, the Commission must keep PGW focused on the goal of improving its collections, and not allow the Company to become in any way

complacent in its collections because it has a “back stop” on which to fall back. Unfortunately, and for whatever reason – whether through outside circumstances or the performance of PGW’s management – the Company’s collections rate has recently fallen to unacceptably low levels. Because that simply can not be allowed to happen in the future (just ask the rating agencies), all of PGW’s efforts should be directed towards the goal of increasing collections. Diverting the Company’s focus from that collections’ effort to worrying about making certain its CRRC mechanism is operating properly is *not* the message that the Commission should be giving to PGW.¹⁰

Therefore, it bears repeating that the solution to PGW’s financial situation is for the Company to collect its bills. The Company officials have stated this. The rating agencies have stated this. The results of the PGW collection initiative confirmed it. The CRRC mechanism would do nothing more than act as an insurance policy for the Company. And the responsibility for that insurance policy would be placed upon the backs of PGW’s paying customers. That is a result that flies in the face of Mr. Bogdonavage’s statement of what is and is not a reasonable solution. The Commission should reject the CRRC Petition.

¹⁰ For example, Mr. Knudsen indicated that PGW is considering petitioning to modify BCS rules regarding collections to reflect the specific circumstances facing PGW (T. 365-367). PGW should focus its efforts on collecting bills from customers who do not pay, rather than automatically increasing rates for customers who do.

B. The CRRC Mechanism Will Not Perform as Advertised

The CRRC mechanism, as designed by PGW, contains a series of mathematical assumptions in its operation. These assumptions, however, do not comport with the reality of how much, in fact, the PGW customer classes pay the Company in actual dollars. There is a fatal flaw in the insurance policy's design. Because of that flaw, the CRRC insurance policy, if implemented, would come up short in total dollars delivered to the Company.

PGW has pointed out that the \$47 million estimated CRRC revenue for fiscal year 2005¹¹ is simply an example of how the mechanism could work in FY 2005 given a certain set of financial circumstances.¹² The OSBA acknowledges this point. However, this FY 2005 calculation demonstrates the fatal flaw in the CRRC insurance policy mechanism, such that the CRRC would not create the cash flow that PGW intends. This flaw does not disappear if a different set of financial circumstances obtain prior to FY 2005.

The direct testimony of Mr. Bogdonavage provided a narrative that detailed the calculation of PGW's \$47 million CRRC example for FY 2005. See PGW Statement No. CRRC-1, at 11-12. However, PGW Exhibit JRB-6 provided the final calculation that the narrative did not. Specifically, given the total projected recovery of the CRRC insurance policy of \$47 million in FY 2005, Mr. Bogdonavage calculated that the CRRC surcharge would be set at 79.47 cents per Mcf. See PGW Statement No. CRRC-1, Exhibit JRB-6. However, the calculated 79.47 per Mcf surcharge (to be paid by all of PGW's firm

¹¹ See Petition, at 13.

¹² See PGW Statement No. CRRC-1R, at 2.

service customers) would not properly “back stop” the Company’s under-collections of its bills as expected. OSBA witness Robert D. Knecht explained as follows:

Unfortunately, the impact on regular ratepayers is larger than this 79 cent per Mcf charge. When PGW determines the 79.47 cents per Mcf charge, it takes the \$47 million amount to be collected and divides by all firm gas sales volumes. *However, some firm sales customers will not pay this charge, while others will pay only part of it.* Customers who are eligible for the senior citizen discount (‘SCD’) receive a 20 percent discount on all charges, and therefore they will only pay 80 percent of that charge. The remaining 20 percent is recorded as a universal service expense and is included in PGW’s Universal Service and Energy Conservation Charge (the “USC”). In 2005, PGW’s proposed CRRC would add \$1.0 million to the USC.

In addition, customers who participate in the customer responsibility program (‘CRP’) do not pay the full tariff rates. These customers generally pay a percentage of their income as their gas bill, regardless of the overall level of tariff charges. Adding a CRRC to the bills of CRP customers will not result in any increase in revenues from these customers, since they will continue to pay only the same percentage of their income. As in the case of the SCD, the difference between the full tariff bill and the amounts that CRP customers are required to pay is added to the USC. For PGW’s CRRC in FY 2005, that cost amounts to \$6.1 million in increased USC costs.

OSBA Statement No. 1, at 5-6 (emphasis added).

Mr. Knecht concluded by calculating what would have to happen in order to recover the CRRC mechanism’s shortfall:

Therefore, in addition to the 79.47 cent per Mcf CRRC, the USC must also increase by over \$7 million or 14.2 cents per Mcf to accommodate this increase. *Thus, for 2004-2005, the net increase for full-tariff firm sales customers will be approximately 93.6 cents per Mcf.*

Id., at 6 (emphasis added, footnote omitted). In other words, the firm service customers of PGW would not merely be seeing a 79 cent per Mcf increase in their bills, they would endure a nearly *94 cent per Mcf* increase.

Thus, the burden upon PGW's paying customers would be exacerbated merely because the CRRC mechanism contains the fatal assumption that all firm service sales customers would be paying the surcharge equally. They would not. Consequently, according to the numbers in the PGW Petition, the paying customers of PGW would see their FY 2005 bills rise not by 79 cents per Mcf, but by nearly 94 cents per Mcf. Even if PGW's financial situation were to create a different numerical result for fiscal year 2005, the underlying defective assumption that exists in the CRRC mechanism would remain. This result flies in the face of Mr. Bogdonavage's "reasonableness" argument: why allow PGW to place this additional burden upon its paying customers when aggressively collecting its bills is the clear solution?

This fundamental defect in the CRRC insurance policy mechanism further demonstrates the unfairness of the Company's Petition. Therefore, the Commission should deny the CRRC petition.

C. Dr. Peach's Hypothesis

PGW has identified a generalized phenomenon: as the Company's bills go up, the collections percentage goes down. Specifically, the Company observed:

Correspondingly, as billed revenues have increased, the level of uncollected receipts has also increased and its percentage compared to billed charges has fallen.

Petition, at 7.

The Company expanded upon this observation by stating:

The effect of these persistently high prices is that PGW's customers – a large portion of which already have difficulty paying their bills – are now paying even less relative to the total amounts they are being billed. This price elasticity has not only affected historically payment-troubled customers, but can also be seen in the payment experience of virtually all customer groups, including traditionally 'good pay' residential customers and small business customers.

Petition, at 8 (emphasis in original).

PGW hired Hugh Gilbert Peach, Ph.D., to investigate and testify upon this phenomenon. Dr. Peach explained that the purpose of his testimony was to:

[E]xplain and document the effect that historically high natural gas costs have had on the ability of PGW customers to pay their bills. I will explain why customers of all types – residential and commercial alike – are not only creating greater levels of uncollectibles than ever before but are paying a smaller percentage of their total bill as well.

PGW Revised Statement CRRC-4, at 3.

Dr. Peach's research led him to the same conclusion as put forth in the PGW

Petition:

Q. How have these persistently high gas charges affected customer payment patterns?

A. They have decimated them. Customers have followed their historic patterns and failed to pay a portion of their, now much higher PGW bill. But just as important, the months of very high gas charges have caused them to pay an even smaller amount relative to their total bill.

PGW Revised Statement CRRC-4, at 10-11.

Dr. Peach concluded his analysis of this pattern of reduced payments by creating a table that shows a dramatically declining percentage of Company cash receipts as the billed amount increases to the PGW customer.¹³ See PGW Revised Statement CRRC-4, at 24. After considering the scenario where PGW's cash receipts hit the 84% to 80% levels, Dr. Peach concluded that "[t]his projection is based on a ten-year trend that has no realistic prospect of being reversed substantially." Id.

OSBA witness Robert D. Knecht took Dr. Peach's basic research and demonstrated yet another fatal defect in the CRRC insurance mechanism:

PGW's expert Dr. Peach presents an analysis that shows that PGW's collections rate will decline when rates are increased. Thus, when PGW raises its rates with the CRRC, Dr. Peach's thesis implies that PGW's overall collections rate will fall. When the collections rate is lowered, PGW will then need to increase its CRRC, which will then further lower the collections rate, and so forth. The basic implication of Dr. Peach's thesis is that the initial CRRC that PGW proposes will not produce sufficient cash to stave off financial problems absent some improvement in collections efficiency.

OSBA Statement no. 1, at 8.

Mr. Knecht provided a numerical example to demonstrate just how significant the effect of Dr. Peach's inelasticity phenomenon can be upon the CRRC mechanism:

¹³ Dr. Peach's original analysis showed only a modest negative correlation between collections and customer bills. However, once his arithmetic was corrected by Mr. Knecht, the Peach analysis suggests that PGW can expect to collect something on the order of 50 cents on every dollar of rate increase, under its present collections policies and practices. See OSBA Statement No. 1, at 18.

In the third column of Exhibit RDK-3, I show the impact of this historical collections 'elasticity' on the collections rate for 2004-2005, and the resultant 2005-2006 CRRC. Based on analysis similar to that in Dr. Peach's testimony, I estimate that a regular rate impact of about 94 cents per Mcf will reduce PGW's collections rate on the order of 2.0 percent. That is, rather than achieving collections at the historical rate of 86.6 percent, the rate increase causes the collections rate to drop to 84.6 percent.

As shown in column three of Exhibit RDK-3, reducing the actual FY 2005 collections rate to 84.6 percent increases both the *pro forma* FY 2006 CRRC costs and the FY 2005 E-factor costs, resulting in a CRRC cost of \$119 million as shown below. . .

This scenario implies a CRRC of \$2.01 per Mcf before the USC effect, and \$2.37 with the USC effect.

OSBA Statement No. 1, at 8-9.

As this analysis has demonstrated, the CRRC mechanism would operate in a way that would exacerbate the exact problem that it would be trying to correct.¹⁴ Specifically, the CRRC mechanism, if implemented, would raise the rates on all of the firm service PGW customers that are actually paying their bills. However, as Dr. Peach demonstrates, raising those bills would drive the collection rate down even further. Dr. Peach did claim that Mr. Knecht's analysis goes "far beyond appropriate limits." PGW Statement No. CRRC-4R, at 3. However, Dr. Peach never suggested any "appropriate limits" on this analysis in his direct testimony, nor did he do so in his rebuttal testimony. In fact, Dr. Peach's table contemplated a percentage of total billed receipts as low as 70.5%, a rate far below that calculated by Mr. Knecht. PGW Revised Statement No. 4, at 24.

¹⁴ The OTS mechanism also creates this result. See OSBA Statement No. 2, at 2-3.

Therefore, the CRRC mechanism may be the worst possible answer to PGW's problems. It does not address the real solution of improving PGW's under-collections. It operates on a mathematical assumption that is factually incorrect, as discussed *supra*. And, it has the potential of making a bad situation in Philadelphia radically worse.

The Commission should reject the CRRC Petition in its entirety.

D. The Proposed CRRC Mechanism would Violate Pennsylvania Law

PGW claims that the Commission has the authority to create the CRRC mechanism under 66 Pa.C.S. § 1307(a). Petition, at 15. Specifically, the Company cites Section 1307(a) for the proposition that the Commission can create a "sliding scale of rates or other method for the automatic adjustment of the rates of the public utility." *Id.* Therefore, the Company argues, the Commission can "establish automatic adjustment mechanisms for expense items over which the utility has limited control . . . or revenue neutral items for which recovery outside of a base rate case is necessary to maintenance of the utility's financial stability." *Id.* PGW misinterprets the language of Section 1307(a), and ignores the case law that has set the limits of Section 1307(a).¹⁵ The Commission has no authority to grant the CRRC mechanism.¹⁶

Any surcharge like the CRRC that involves the "making whole" of the Company's uncollectibles expense is creating a mechanism that involves exactly those types of costs to PGW that are normally claimed in a base rates proceeding under Section 1308(d) of the Public Utility Code, 66 Pa.C.S. § 1308(d). Therefore, the recovery of

¹⁵ The CRRC would not fit any of the Commission's prior precedent for allowing a Section 1307(a) surcharge. The uncollectibles problem is *not* beyond PGW's control. As proposed, the CRRC was intended to be a revenue producer, not a revenue neutral mechanism. The CRRC would not collect taxes or fees imposed by government. The CRRC would not finance capital improvements to aging infrastructure.

¹⁶ The Commission also has no authority to grant the proposed OTS mechanism.

those costs through a Section 1307(a) surcharge would constitute impermissible single-issue ratemaking and would disassemble the ratemaking process. Specifically, the Commonwealth Court in Pennsylvania Industrial Energy Coalition v. Pennsylvania Public Utility Commission, 653 A.2d 1336, 1350 (Pa. Cmwlth. 1995) (“PIEC”), stated that “[s]ingle issue ratemaking is similar to retroactive ratemaking and, in general, is prohibited if it impacts on a matter that is normally considered in a base rate case.” The adjustment to PGW’s uncollectibles expense is precisely the type of expense that has and would be considered in a base rate case.¹⁷ Consequently, no surcharge mechanism to alter that uncollectibles expense should be singled out for separate treatment in this or any other proceeding.

Furthermore, there is no language in Section 1307(a) that expressly authorizes the recovery of uncollectibles costs through a surcharge such as the CRRC mechanism. Therefore, PGW’s legal opinion that the Commission has the authority to approve the CRRC mechanism conflicts with the holding of the Commonwealth Court in PIEC. In that case, the Court held that certain demand side management (“DSM”) costs could be recovered under Section 1307(a). However, the Court emphasized that the recovery of those costs was expressly authorized by Section 1319 of the Public Utility Code, 66 Pa.C.S. § 1319:

Because Section 1319 directs the PUC to allow recovery of all prudent and reasonable costs for developing, managing, financing and operating DSM programs and because Section 1307 gives the PUC the discretion to establish by either regulation or order the manner in which automatic adjustment recovery may be instituted and when such automatic adjustment of rates should be mandated, the surcharge method is permitted.

¹⁷ See, e.g., the Commission Order at Docket R-00017034 (Order entered August 8, 2002).

PEIC, at 1349. In contrast, no section of the Public Utility Code gives special emphasis to uncollectible costs or singles out such costs for special ratemaking treatment.

In addition, PGW's reliance upon 66 Pa.C.S. § 2212(c) is misplaced. PGW believes that the language of Section 2212(c) (“[U]pon request of a city natural gas distribution operation, the commission may suspend or waive the application to a city natural gas distribution operation of any provision of this title, including any provision of this chapter other than this section.”) would allow the Commission to “‘customize’ a mechanism to respond to the unique needs of PGW.” Petition, at 15. Specifically, PGW believes that Section 2212(c) would allow the Commission to remove the Section 1307(a) restriction that prohibits a surcharge mechanism from providing a utility with an excess of a “fair rate of return.” Petition, at 15, footnote 30. However, even assuming *arguendo* that Section 2212(c) allows the Commission to waive certain statutory provisions, Section 2212(c) does not create within the Commission the legal ability to approve a surcharge that it otherwise has no authority to approve. Furthermore, even assuming that Section 2212(c) allows the waiver of statutory language, it does not allow the Commission to waive the holding of the Commonwealth Court in PIEC.

Therefore, PGW's proposed CRRC mechanism is not a mechanism that is authorized under Pennsylvania law.¹⁸ The Commission must, therefore, reject the CRRC Petition.

¹⁸ The OTS presented an alternative surcharge mechanism in response to the CRRC proposed by PGW:

Mr. Weakley proposes that PGW be allowed to establish an automatic adjustment mechanism that will change the distribution base rates on PGW's tariff on a quarterly basis (the "OTS Surcharge"). The essence of Mr. Weakley's proposal is that this adjustment will reflect the changes in PGW's uncollectibles costs that result from changes in the gas supply charge (or PGC) compared to the base period when the uncollectibles provision was established.

OSBA Statement No. 2, at 1.

Specifically, OSBA witness Knecht explained the operation of the OTS mechanism:

As an example, consider the case when a utility litigates or settles a base rates case in, say, 2002. At that time, the uncollectibles provision in the rates either implicitly or explicitly reflects the expectations for gas prices at the time. If, however, gas prices rise subsequent to that date, the absolute dollar value of a utility's uncollectibles costs may increase even if the utility's overall collections rate does not change. Suppose that at the time the base rates case is settled, the PGC charge is \$4.00 per Mcf and the utility reasonably expects to collect 98 percent. Its uncollectibles cost would be \$.08 per Mcf (the 2 percent uncollectibles provision multiplied by \$4.00 per Mcf). If the PGC charge rises to \$8.00 per Mcf, however, even if the utility continues to collect 98 percent, it will face uncollectibles costs of \$0.16 per Mcf.

Id.

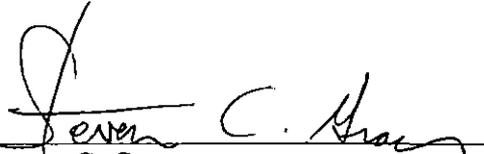
Specifically, the proposed OTS mechanism would create a surcharge that is equal to 7.616 percent of the difference between the most recent GCR quarterly charge and a reference GCR charge that was in effect at the time that the uncollectibles percentage was established in the Company's most recent base rates proceeding.

The OTS mechanism suffers from the same defects as the Company's CRRC mechanism. First, the OTS mechanism does nothing to increase the collections rate of the Company. Second, PGW's firm service customers are still asked to shoulder the burden of higher bills if the Company's under-collections increase. Third, the OTS mechanism is subject to the same effect identified by Dr. Peach. This mechanism would increase the bills of PGW's paying customers, which Dr. Peach has demonstrated will drive the Company's collection rate down. Any such surcharge mechanism is completely antithetical to resolving PGW's current financial predicament. Fourth, approval of the OTS mechanism would result in the prohibited "single issue ratemaking." See OSBA Statement No. 2.

IV. CONCLUSION

For the reasons set forth in this *Main Brief*, the OSBA respectfully requests that the Commission deny the PGW CRRC Petition.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Steven C. Gray", written over a horizontal line.

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Dated: June 14, 2004

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Investigation into Financial and Collection Issues Regarding the Philadelphia Gas Works	:	Docket Nos. P-00042090 R-00049157 M-00021612 P-00032061
Petition to Establish a Cash Receipts Reconciliation Clause	:	

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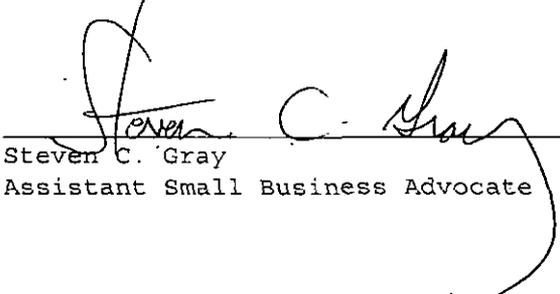
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June 16, 2004

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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

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SECRETARY'S BUREAU

Dear Secretary McNulty:

On behalf of Philadelphia Gas Works, enclosed for filing in the above-captioned matter, please find an original and three copies of the following document:

- Answer to the Office of Consumer Advocate's Motion to Dispense With Preparation of a Recommended Decision.

A copy has been served on the parties in accordance with the attached Certificate of Service.

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

DOCKETED
JUN 21 2004

Very truly yours,

Daniel Clearfield

Daniel Clearfield

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

DC/lww

cc: Hon. Charles Rainey, Jr., w/enc.
Attached Certificate of Service w/enc.

DSH:41419.1/PHI211-217982

CERTIFICATE OF SERVICE

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

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Dated: June 16, 2004

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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**PHILADELPHIA GAS WORKS' ANSWER
TO THE OFFICE OF CONSUMER ADVOCATE'S
MOTION TO DISPENSE WITH PREPARATION OF
A RECOMMENDED DECISION**

Philadelphia Gas Works ("PGW" or "Company") respectfully submits this Answer to the Office of Consumer Advocate's ("OCA") Motion to Dispense with Preparation of a Recommended Decision in the above-captioned matter. In responding to OCA's Motion, PGW's primary observation is that it does nothing to address the Company's need for timely relief that will enable it to achieve material improvement in its collections and cash receipts by this fall. The Motion retains the same September 30 Commission decision date, and is largely aimed at furthering the convenience of the other parties in regard to the procedural schedule.

PGW's main answer to the OCA's Motion is that it misses the mark. The real need is for this proceeding to be bifurcated, with PGW's Petition for Waiver of Chapter 56 Regulations taking a separate track and joining the CRRC for decision at the July 8 Public Meeting. A decision on both of those issues at that time is necessary in order for PGW to meet the demands of the bond rating agencies and stave off a downgrade of its debt to junk status. As to the remaining issues in this consolidated investigation, PGW can see pros and cons to dispensing with the Recommended Decision, does not oppose the Motion, and defers to the Commission on the issue, as it initiated the matter.

In further answer to the OCA's Motion, PGW responds as follows:

1. As the Commission is aware, by an Order entered June 2, 2004, this investigation was initiated *sue sponte* to consider a number of matters: 1) PGW's 2004-05 GCR adjustment; 2) the proposed Cash Receipts Reconciliation Clause ("CRRC"); 3) a petition for waiver or modification of Chapter 56 regulations; 4) Restructuring Proceeding compliance tariff issues; 5) a means tested Senior Citizen Discount; and 6) a review of the Company's collections practices and universal service programs and costs. As to issues 3-6, the Commission directed that the investigation be completed in time for action at the September 30 Public Meeting.

2. On June 16, 2004, PGW filed a Petition for Limited Waiver or Modification of certain Commission regulations consistent with the June 2nd Order. Importantly, PGW also filed a Motion requesting that the Commission certify the Petition for Waiver for direct disposition concurrent with PGW's CRRC Petition on July 8, 2004. As set forth in the Motion, these two Petitions are *inextricably linked substantively, and represent a package of relief necessary to assure the financial community that the Company will achieve material improvement in its collections and cash receipts levels in the near term; i.e., this fall.*

3. The OCA's Motion calls for the elimination of the Administrative Law Judge's ("ALJ") Recommended Decision, as well as the exceptions phase of this proceeding. The proposal retains the September 30, 2004, decision date for all issues identified above except the CRRC. As such, the Motion does absolutely nothing to alleviate the need for material collections and cash receipts improvement by this fall. Rather, it is merely a matter of convenience for the parties as to the schedule. While the pace of the proceeding is certainly

brisk, the Commission and many of the parties have previously dealt with more complex issues on similarly condensed schedules, if not more so, than are present, here.¹

4. The most reasonable, effective and best course is for the Commission to create two tracks for the issues in this matter, considering the CRRC and Waiver Petitions together at the July 8 Public Meeting and the remainder of the matters on September 30, with or without a Recommended Decision. The Commission may find that, with the Petition for Waiver removed from the calculus, the schedule for the remaining issues affords adequate time for investigation in order to permit the drafting of a recommended decision, usually helpful to the Commission. As such, the Commission would receive the benefit of the ALJ's analysis and recommendations. On the other hand, if the Commission believes it would be helpful, it could grant the OCA the additional time it purportedly desires to conduct this proceeding, and certify the record on the remaining issues directly to the Commission for decision on September 30. PGW does not oppose this course, and defers to the Commission.

5. The absolute necessity is the separate decision date for the Waiver and CRRC Petitions. As explained in detail in PGW's Motion for Concurrent Disposition, September 30 is simply too late for a decision on either of those Petitions if severe harm to the Company and its customers is to be avoided. PGW respectfully urges the Commission to favorably rule on PGW's Motion before considering the OCA request.

¹ See, e.g., *Petition of Duquesne Light Company Requesting Modification to POLR II Plan to Permit Participation in PJM West*, Docket No. P-00021969

WHEREFORE, PGW respectfully requests that the Commission set the CRRC and Waiver Petitions for joint disposition on July 8, and dispose of the OCA's Motion in accordance with its discretion.

Respectfully submitted,



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

Of Counsel:
Abby Pozefsky, Esq.
Senior Vice President and
General Counsel
Gregory Stunder, Esq.
Philadelphia Gas Works
800 West Montgomery Ave
Philadelphia, PA 19122

Date: June 16, 2004

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Tel: (717) 237-7160 ■ Fax: (717) 237-7161 ■ www.WolfBlock.com

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ORIGINAL

June 16, 2004

RECEIVED

JUN 21 2004

VIA HAND DELIVERY

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

**DOCUMENT
FOLDER**

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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

Dear Secretary McNulty:

On behalf of Philadelphia Gas Works, enclosed for filing in the above-captioned matter, please find an original and three copies of the following document:

- Answer to the Office of Consumer Advocate's Motion to Dispense With Preparation of a Recommended Decision.

A copy has been served on the parties in accordance with the attached Certificate of Service.

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

Very truly yours,



Daniel Clearfield

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

DC/lww

cc: Hon. Charles Rainey, Jr., w/enc.
Attached Certificate of Service w/enc.

DSH:41419.1/PHI211-217982

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BEFORE THE

RECEIVED

JUN 21 2004

PENNSYLVANIA PUBLIC UTILITY COMMISSION
PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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

**PHILADELPHIA GAS WORKS' ANSWER
TO THE OFFICE OF CONSUMER ADVOCATE'S
MOTION TO DISPENSE WITH PREPARATION OF
A RECOMMENDED DECISION**

DOCKETED
OCT 12 2004

Philadelphia Gas Works ("PGW" or "Company") respectfully submits this Answer to the Office of Consumer Advocate's ("OCA") Motion to Dispense with Preparation of a Recommended Decision in the above-captioned matter. In responding to OCA's Motion, PGW's primary observation is that it does nothing to address the Company's need for timely relief that will enable it to achieve material improvement in its collections and cash receipts by this fall. The Motion retains the same September 30 Commission decision date, and is largely aimed at furthering the convenience of the other parties in regard to the procedural schedule.

PGW's main answer to the OCA's Motion is that it misses the mark. The real need is for this proceeding to be bifurcated, with PGW's Petition for Waiver of Chapter 56 Regulations taking a separate track and joining the CRRC for decision at the July 8 Public Meeting. A decision on both of those issues at that time is necessary in order for PGW to meet the demands of the bond rating agencies and stave off a downgrade of its debt to junk status. As to the remaining issues in this consolidated investigation, PGW can see pros and cons to dispensing with the Recommended Decision, does not oppose the Motion, and defers to the Commission on the issue, as it initiated the matter.

In further answer to the OCA's Motion, PGW responds as follows:

**DOCUMENT
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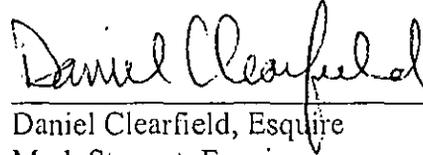
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5. The absolute necessity is the separate decision date for the Waiver and CRRC Petitions. As explained in detail in PGW's Motion for Concurrent Disposition, September 30 is simply too late for a decision on either of those Petitions if severe harm to the Company and its customers is to be avoided. PGW respectfully urges the Commission to favorably rule on PGW's Motion before considering the OCA request.

¹ See, e.g., *Petition of Duquesne Light Company Requesting Modification to POLR II Plan to Permit Participation in PJM West*, Docket No. P-00021969

WHEREFORE, PGW respectfully requests that the Commission set the CRRC and Waiver Petitions for joint disposition on July 8, and dispose of the OCA's Motion in accordance with its discretion.

Respectfully submitted,



Daniel Clearfield, Esquire
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Of Counsel:

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Date: June 16, 2004

RECEIVED

JUN 21 2004

ORIGINAL

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document of

Philadelphia Gas Works' upon the participants listed below in accordance with the requirements

of § 1.54 (relating to service by a participant).

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Daniel Clearfield, Esq.

Dated: June 16, 2004

DOCKETED

JUL 06 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

DOCUMENT

**OFFICE OF SMALL BUSINESS ADVOCATE
PREHEARING MEMORANDUM**

SECRETARY'S BUREAU

2004 JUN 16 AM 10: 01

RECEIVED

I. **INTRODUCTION**

The Office of Small Business Advocate (OSBA) is authorized to represent the interests of small business consumers of utility services before the Pennsylvania Public Utility Commission pursuant to the provisions of the Small Business Advocate Act, Act 181 of 1988, 73 P.S. §§399.41 - 399.50 ("the Act"). In order to discharge this statutory duty, the Small Business Advocate deems it necessary to participate as a party to this proceeding. Representing the OSBA in this matter is Assistant Small Business Advocate Steven C. Gray. Please address all correspondence as follows:

Steven C. Gray, Esquire
Office of Small Business Advocate
Suite 1102, Commerce Building
300 North Second Street
Harrisburg, Pennsylvania 17101
(717) 783-2525
(717) 783-2831 (fax)
E-mail: sgray@state.pa.us

II. **FILING BACKGROUND**

On May 27, 2004, on Motion of Chairman Fitzpatrick, the Pennsylvania Public Utility Commission voted to open an investigation into Philadelphia Gas Works ("PGW") financial and collection issues. This new investigation consolidates several open proceedings involving PGW.

III. **RESPONSES TO JUDGE RAINEY'S PREHEARING CONFERENCE ORDER**

(1) Recent settlement discussions have considered modified versions of the proposed CRRC mechanism as well as possible modifications to a variety of Chapter 56 regulations. No agreement has been reached on any issue currently under discussion. The OSBA does not know whether those settlement discussions will continue in light of the proposed expedited procedural schedule, nor is the OSBA sanguine regarding the potential for any such settlement. Regarding the means-tested senior citizen discount (SCD) program, a settlement agreement was previously submitted to ALJ Turner, to which the OSBA was a signatory. No further settlement discussions have occurred on that issue. The OSBA is not aware of any other settlement discussions presently taking place regarding the remaining issues to be addressed in this consolidated proceeding.

(2) The OSBA has no outstanding discovery requests submitted to any party. The OSBA currently does not owe any party any discovery response.

(3) Given the highly expedited nature of this proceeding, the OSBA recommends that all discovery responses be due within three (3) calendar days of service. No special exemption should be given for Friday service.

(4) Discovery should continue through the close of the record.

(5) The OSBA has no proposed admissions or stipulations at this time.

(6) and (7) Generally speaking, the issues to be addressed in this consolidated proceeding include:

The means-tested senior citizen discount Petition and the subsequent settlement agreement;

The two issues addressed by the May 14th Secretarial Letter (the \$10.00 residential field visit charge and the requirement of payment arrangements under certain circumstances);

The potential modification of Chapter 56 and other Commission regulations that may impede PGW's ability to achieve adequate bill collections rates, including a possible PGW Chapter 56 Waiver Petition to be filed by July 2, 2004;

The investigation into PGW's collection practices; and

The investigation into PGW's universal service costs.

(8) Mr. Robert D. Knecht
Industrial Economics Incorporated
2067 Massachusetts Avenue
Cambridge, MA 02140
(617) 354-0074
(617) 354-0463 - Fax
rdk@indecon.com

(9) Mr. Knecht may address:

The issues surrounding the senior citizen discount program and the resulting settlement agreement;

Issues involving PGW's collection practices; and

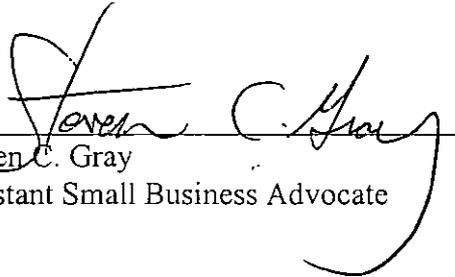
Issues involving PGW's universal service costs.

(10) No second prehearing conference should be necessary.

(11), (12), and (13) At the time of this writing, the OSBA is working with the OCA to create a procedural schedule for this case. It is anticipated that this proposed schedule will be provided at the Prehearing Conference.

(14) The OSBA suggests that e-mail service of documents be accepted as in-hand service, with a hardcopy to follow via overnight delivery. The OSBA strongly recommends that all attachments to discovery be provided in electronic file format with e-mail submission; subsequent delivery of attachments by first class mail should *not* be acceptable.

Respectfully submitted,



Steven C. Gray
Assistant Small Business Advocate

For:
William R. Lloyd, Jr.
Small Business Advocate

Office of Small Business Advocate
Suite 1102, Commerce Building
300 North Second Street
Harrisburg, PA 17101
(717) 783-2525
(717) 783-2831

Dated: June 8, 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

CERTIFICATE OF SERVICE

I certify that I am serving a copy of Prehearing Memorandum on behalf of the Office of Small Business Advocate by FAX and first class mail upon the persons addressed below:

Hon. Charles E. Rainey, Jr.
Administrative Law Judge
Pa. Public Utility Commission
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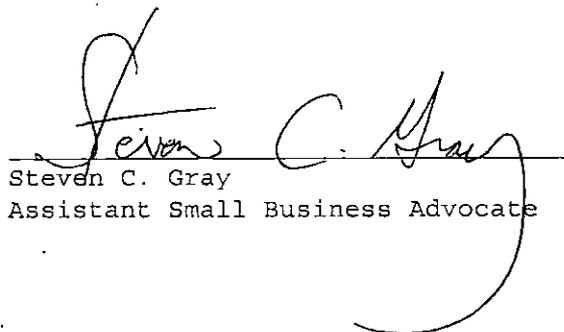
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Committee
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Steven C. Gray
Assistant Small Business Advocate

Date: June 8, 2004

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June 17, 2004

James McNulty, Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg., 2nd Floor,
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DOCUMENT

RECEIVED
2004 JUN 17 PM 3:04
SECRETARY'S BUREAU

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

Dear Secretary McNulty:

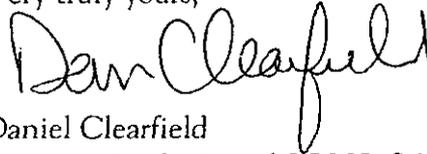
On behalf of Philadelphia Gas Works, enclosed please find an original and three copies of its Corrected Certificate of Service for the filing that included:

- Petition of Philadelphia Gas Works For Limited Waiver or Modification of PUC Chapter 56 Rules and Administrative Interpretations; and
- Motion of Philadelphia Gas Works to Certify Petition for Limited Waiver or Modification of Chapter 56 Rules and Administrative Interpretations to the PUC For Concurrent Disposition With Petition For a Cash Receipts Reconciliation Clause.

James McNulty
June 17, 2004
Page 2

This Corrected Certificate of Service is correcting the method of service. The filing was served via E-mail and Federal Express delivery.

Very truly yours,



Daniel Clearfield

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

DC/lww

cc: Hon. Charles Rainey, Jr., w/enc.
Parties of Record w/enc.

CERTIFICATE OF SERVICE

I hereby certify that I have on June 16, 2004, served a true copy of the foregoing document of Philadelphia Gas Works' upon the participants listed below in accordance with the requirements of § 1.54 (relating to service by a participant).

VIA FEDERAL EXPRESS AND E-MAIL

DOCKETED
JUL 27 2004

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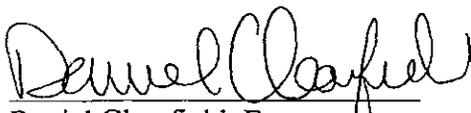
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Dated: June 16, 2004

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ORIGINAL

June 21, 2004

SECRETARY'S BUREAU

06 JUN 22 AM 9:07

VIA HAND DELIVERY

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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 Johnnie:

On behalf of Philadelphia Gas Works, enclosed please find its responses to Office of Trial Staff Interrogatories OTS-US-1 – US-5; and LIURP-1 – LIURP-30 with regard to the above referenced matter.

Very truly yours,



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

DC/lww
Enclosures

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

BTL

DSH:41494.2/PHI211-220875

ORIGINAL

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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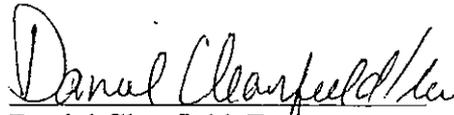
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Dated: June 21, 2004


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COMMONWEALTH OF PENNSYLVANIA

ORIGINAL



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June 22, 2004

HAND DELIVERED

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Pa. Public Utility Commission
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DOCUMENT

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

Petition to Establish a Cash Receipts
Reconciliation Clause

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 Reply 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,

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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ORIGINAL

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
Petition to Establish a Cash :
Receipts Reconciliation Clause :

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REPLY BRIEF
ON BEHALF OF THE
OFFICE OF SMALL BUSINESS ADVOCATE

DOCUMENT

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Dated: June 22, 2004

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I. INTRODUCTION

A. Procedural History

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

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

The Commission referred this matter to the Office of Administrative Law Judge and on March 2, 2004, a notice was issued scheduling the prehearing conference. That prehearing conference was held by Administrative Law Judge (“ALJ”) Charles E. Rainey, Jr. on March 15, 2004, to establish the hearing and briefing schedule for this proceeding, as well as to argue PGW’s Motion to Consolidate the two cases. The ALJ granted the Motion.

As required by the procedural schedule, the OSBA served direct testimony on April 16, 2004. On May 4, 2004, the ALJ issued an Order revising the schedule for submission of rebuttal and surrebuttal testimony, as requested by the active parties to this proceeding. The OSBA, therefore, submitted rebuttal testimony on April 30, 2004, and surrebuttal testimony on May 7, 2004. Hearings were held in Philadelphia before the ALJ on May 11, 2004.

On May 15, 2004, the active parties in this proceeding submitted to the ALJ a request for additional time. The request proposed to bifurcate the consolidated Section 1307(f) proceeding and the Petition, and to extend the Petition briefing schedule by three weeks so that the active parties could enter into settlement discussions on the issues raised by the cash receipts reconciliation clause (“CRRC”). Due dates for the Main Briefs on the CRRC mechanism were rescheduled to June 14, 2004, and the Reply Brief due dates were rescheduled to June 22, 2004. Furthermore, the date for implementation of the PGW Tariff was also moved by three weeks to September 22, 2004. On May 21, 2004, the ALJ granted the request.

On June 2, 2004, the Commission entered an Order that consolidated a variety of PGW cases and established a new procedural schedule. For the purposes of the 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 Public Meeting on July 8, 2004. On June 3, 2004, the ALJ issued an Order certifying the record on the CRRC mechanism to the Commission.

On June 14, 2004, Main Briefs were filed by the OSBA, PGW, the Office of Trial Staff (“OTS”), the Office of Consumer Advocate (“OCA”), the Philadelphia Industrial and Commercial Gas Users Group (“PICGUG”), Action Alliance et al. (“Action Alliance”), the Philadelphia Public Officials (“Public Officials”), and the Philadelphia Housing Authority (“PHA”).

The OSBA submits this Reply Brief as required by the procedural schedule set forth by the ALJ in his May 21, 2004, Order.

II. SUMMARY OF THE ARGUMENT

In summary, the OSBA is replying as follows to arguments set forth in the Main Brief of PGW, and the Main Brief of OTS.

1. The rating agencies have publicly stated that PGW must collect its bills in order for the Company to maintain its financial rating. The rating agencies have not expressly deemed the CRRC mechanism to be necessary to the Company's financial operation.

2. The CRRC mechanism is defective in its operation, and will cause PGW's firm service sales customers' bills to increase if the Company's under-collections increase. As PGW witness Hugh Gilbert Peach has demonstrated, and OSBA witness Robert D. Knecht has confirmed, raising the customers' bills will further drive down the Company's collection rate, further imperiling PGW's financial health.

3. The CRRC mechanism provides no additional incentive for the Company to continue to aggressively attempt to collect its bills, and in fact, may serve to reduce that incentive. At collection rates above historical levels, the Company has the exact same incentives that it has had in place since late 2001 for its collections, and PGW's performance dropped to historically low levels. Approval of the CRRC could give the Company the illusion that it has insurance for poor collections, thereby reducing the incentive for PGW to aggressively collect its bills.

4. The proposed OTS surcharge does not solve the problem of PGW's under-collections, and merely adds another financial burden upon the firm service sales customers of the Company. Furthermore, the OTS surcharge operates such that it has the

potential of further reducing the Company's cash working capital. This is not a result that would meet with approval by the rating agencies.

5. The Commission does not have the authority to approve the CRRC mechanism. PGW's interpretation of 66 Pa.C.S. § 2212(c) would render the statute unconstitutional.

III. ARGUMENT

A. The Rating Agencies agree that PGW must Collect Its Bills

PGW, in the rebuttal testimony of Thomas Knudsen, included the recent public statements of rating agencies Standard & Poors and Fitch on the Company's financial condition. See PGW Statement No. CRRC-5, Exhibits TEK-1 and TEK-2. On June 8, 2004, the rating agency Moody's also issued a public statement on the financial health of PGW.¹ Using these public statements, as well as the testimony of PGW witnesses who have met with officials from the various rating agencies, the Company has argued that:

- The CRRC mechanism must be approved by the Commission in order to satisfy the cash liquidity requirements of the rating agencies², and
- The Company must have \$60 million in end of year cash.³

The PGW arguments on these issues are undermined by the fact that not one of the rating agencies' public statements contains either a requirement for the enactment of the CRRC mechanism, or a requirement that the Company hold \$60 million in cash at fiscal year's end. See PGW Statement No. CRRC-5, Exhibits TEK-1 and TEK-2. In fact, the statements of the rating agencies support the argument that the OSBA made in its Main Brief, that the solution to PGW's financial predicament is for the Company to collect its bills. See, e.g., OSBA Main Brief, at 13. The rating agencies' documents speak of concerns about the Company's under-collections and the resulting lack of liquidity.

¹ PGW's Main Brief provides the world wide web address to the Moody's public statement. See PGW Main Brief, at 5, footnote 3. The OSBA is unable to access this public statement since the OSBA is not a subscriber to the Moody's service.

² See, e.g., PGW Main Brief, at 24.

³ See PGW Main Brief, at 12.

For example, the Standard & Poors' analysis states:

The ratings downgrade reflects a weakened liquidity position and declining credit measures fueled by collection rates that deteriorated appreciably in the last year.

To deal with the current liquidity strain, PGW ... is seeking cash receipts-related rate relief from the Pennsylvania Public Utility Commission...

Moreover, while the outcome of the cash receipts-related rate filing remains uncertain, even if such relief were granted, it is unclear that collections and cash-basis coverage of fixed charges would improve.

PGW Statement No. CRRC-5, Exhibit TEK-1 (emphasis added). In fact, Standard & Poors specifically does *not* list the denial of the CRRC mechanism by the PUC as an “event” that would result in the lowering of PGW’s rating. *Id.*, at page 2. This omission entirely undermines PGW’s argument that the CRRC is in any way considered an essential mechanism as far as the rating agencies are concerned.

The Fitch public statement is a shorter document than that published by Standard & Poors, but it echoes essentially the same sentiments. Fitch, apparently misunderstanding the operation of the CRRC, simply notes that the “[a]doption of the surcharge” could “improve PGW’s collections” and observed that the “required PUC approval is not expected until this summer at the earliest.” PGW Statement No. CRRC-5, Exhibit TEK-2, at 1.

The Moody’s analysis, which is summarized in a footnote of the Company’s Main Brief, provides an excellent overview of this entire CRRC proceeding:

PGW has faced a significant cash flow crunch due to slowed payment by customers of record high gas bills.

PGW Main Brief, at 5, footnote 3.

In view of the foregoing, the Company has little upon which to rely in the rating agencies' public statements to support its proposed CRRC mechanism. In fact, it is readily apparent that the CRRC mechanism did not generate a large degree of enthusiasm from the rating agencies. Instead, the rating agencies simply observed the fact that PGW has requested the CRRC, did not consider the possible denial of the CRRC to be a significant event, and certainly did not advocate that approval would bolster the Company's financial rating. However, the rating agencies are clear that they want PGW to collect its bills. The rating agencies have not, in any way, requested that PGW implement the CRRC mechanism. Transcript, page 384, line 24 – page 385, line 4. As Mr. Knudsen stated in his rebuttal testimony:

The message is clear from the investment community ...
You must collect more money from your customers.

PGW Statement CRRC-5, at 7.

Consequently, since the Company can not rely upon any specific language put forth by any of the rating agencies, PGW is left with having to infer that the CRRC mechanism would "reassure" those rating agencies that the Company would remain fiscally sound if PGW again experienced significant undercollections. However, as the OSBA observed in its Main Brief, inferring the demands and desires of the rating agencies is a difficult exercise unless one is in attendance at the private meetings between the Company and the agencies. See OSBA Main Brief, at 15, footnote 8. For example, no witness of any rating agency has appeared in the proceeding. No rating agency witness has submitted written testimony, or provided oral testimony. No rating agency witness has submitted to cross examination by the active parties. Consequently, there is comparatively little evidence of the opinion of the rating agencies in this proceeding.

What evidence there is, however, does not support PGW's contention that the CRRC mechanism is in any way required or advocated by the rating agencies themselves.

Furthermore, the Company's claim that it must have \$60 million in cash at the end of its fiscal year does not fare any better when the public statements of the rating agencies are examined. Mr. Bogdonavage stated in his rebuttal testimony:

I believe that the rating agencies are looking for PGW [to] maintain liquidity that represents about 30 days average revenue to be able to maintain an investment grade rating. For PGW, this translates to about \$60 million in end of year liquidity.

PGW Statement No. CRRC-1R, at 4 (emphasis in original). However, one will examine the public statements of the rating agencies in vain for any reference whatsoever to either this cash amount, or the analytical basis for ascertaining this amount. See, e.g., PGW Statement No. CRRC-5, Exhibits TEK-1 and TEK-2. Consequently, any suggestion by the Company that \$60 million is a cash working capital amount "required" by the rating agencies is speculation on the part of PGW.

It is self evident that the rating agencies are, of course, concerned about the liquidity of the Company. It is just as self evident that the rating agencies are primarily focused on PGW's collecting its bills. Furthermore, the public statements of the rating agencies provide no specific, detailed guidance upon which the Company can rely. No solutions are suggested, advocated, or required. No specific dollar figures are mentioned. The rating agencies simply want an improvement in PGW's bill collection, and an improvement in the Company's overall liquidity.

As a result, the Company is faced with a lack of rating agency guidance, no explicit request for the implementation of the CRRC mechanism, and no specific

requirement that PGW obtain a certain level of cash working capital. Consequently, it is not surprising that the Company's Main Brief fails to cite any evidence from which the Commission could conclude that the rating agencies would be favorably influenced by the approval of the CRRC.

The solution to PGW's financial woes is for the Company to aggressively collect its bills. The rating agencies have made this clear. The Company's officers have made this clear. The Commission has recognized that PGW must collect its bills, and has instituted an investigation into the Company's collection practices.⁴

The Commission should deny PGW's CRRC Petition.

⁴ See Commission Opinion and Order, Docket P-00042090, R-00049157, M-00021612, P-00032061 (entered June 2, 2004).

B. The CRRC will only exacerbate PGW's Financial Problems

PGW claims that the CRRC is a “just and reasonable” solution that will effectively backstop the Company’s collections. See, e.g., PGW Main Brief, at 33. The Company’s contention is belied by the fact that the CRRC will not collect the full amount of the under-collections that PGW assumes it will. Furthermore, the CRRC acts to do the one thing that the Company’s firm service sales customers can not easily withstand: it raises the billed charges to those customers in times when under-collections are increasing. Given the fragile condition of PGW’s financial health, the last thing that the struggling Company needs is the addition of this poorly designed mechanism to wreak further havoc upon its struggling, but paying, firm service sales customers.

In this proceeding, the OSBA has used the Company’s own analysis of both the operation of the CRRC mechanism and the behavior of its firm service sales customers to conclude that the CRRC could make PGW’s bad financial situation much worse. Instead of responding to the OSBA’s arguments with reasoned analysis, PGW attacked the OSBA by claiming that this office indulges in the “luxury of blindly focusing on the advocacy of their special interests.” PGW Main Brief, at 13. PGW also charged that the OSBA is in a “state of denial.” Id., at 6, footnote 7. Further, PGW claimed that the OSBA refuses to “deal with ... reality.” Id., at 6. While these *ad hominem* attacks provide for entertaining reading, they do not serve to refute the basic conclusions that the OSBA has set forth in this case.

First, as the OSBA noted in its Main Brief⁵, the CRRC mechanism contains a significant defect. The Company designed the CRRC volumetric charge based upon a

⁵ See OSBA Main Brief, at 19-22.

simple equation. That equation takes the Company's actual under-collections, subtracts out the reference *pro forma* uncollectibles amount of \$55.7 million, and divides the remainder by total firm service sales.⁶ However, as OSBA witness Robert D. Knecht pointed out in his direct testimony, this calculation does not take into account the operation of various PGW customer assistance programs.⁷ Thus, using the example set forth in the OSBA Main Brief, at the amount filed in PGW's original March 1, 2004, Petition, the calculated 79 cents per Mcf charge would actually have to be nearly 94 cents per Mcf. See OSBA Main Brief, at 20-21. The Company has produced no evidence to refute the OSBA on this issue.

Therefore, the undisputed defect in this mechanism should alone be sufficient for the Commission to deny the CRRC Petition, simply because the inherent design of the CRRC prevents it from operating as claimed by the Company: any under-collections amount will *not* be fully backstopped.

Second, the Company suggests that the OSBA is constructing a "doomsday scenario" by exaggerating an effect that Dr. Peach identified in his revised direct testimony.⁸ Actually, Thomas Knudsen gave the following rough summary of Dr. Peach's hypothesis:

Well, there is something called elasticity, where now you add onto something beyond people's reach, the more they will not pay.

Transcript, page 391, lines 20-22. The Company provides a slightly more detailed encapsulation of Dr. Peach's hypothesis in its Main Brief:

⁶ See PGW Statement No. CRRC-1, at 11-12.

⁷ See OSBA Statement No. 1, at 5-6.

Moreover, high wholesale natural gas prices and, correspondingly, high average bills for customers have devastated PGW's collections and, in turn, its cash working capital. The following chart proves that, as PGW's billings have spiraled upward, its receipts as a percentage of these billings have tended to decrease. Correspondingly, in years in which billings have dropped, the percentage of those billings collected by PGW has tended to increase...

PGW Main Brief, at 16.

In his revised direct testimony, Dr. Peach examined this effect, and illustrated the effect with a table. See PGW Revised Statement No. CRRC-4, at 24. In fact, Dr. Peach examined this effect down to a level of bill collection that would no doubt signal total financial catastrophe for the Company: 70.5 percent. Id.

Mr. Knecht supported the testimony of Dr. Peach, and fully examined the statistical analysis upon which Dr. Peach formed his hypothesis. See, e.g., OSBA Statement No. 1, at 17. Mr. Knecht agreed with the analysis and conclusions of Dr. Peach, and simply observed that anything that would cause PGW's bills to increase would, in fact, bring into play the effect that Dr. Peach identified. Id.

The Company in its Main Brief (as did Dr. Peach in his rebuttal testimony) took great umbrage with Mr. Knecht's analysis. See, PGW Main Brief, at 45. See also PGW Statement No. CRRC-4R, at 2-3. Nonetheless, the Company did not produce even a shred of evidence to refute Mr. Knecht's conclusions. Claiming that the analysis is "nonsensical" does not exactly strengthen PGW's arguments. See PGW Main Brief, at 45. In fact, Dr. Peach himself did not even attempt to refute Mr. Knecht's conclusions, other than to claim that Mr. Knecht was overstating Dr. Peach's results. See PGW Statement No. CRRC-4R, at 3. Dr. Peach presented no additional analysis to disprove

⁸ See PGW Main Brief, at 45.

any conclusion presented by Mr. Knecht. Id. In fact, Dr. Peach's own analysis served to confirm Mr. Knecht's conclusions. In his Revised Statement CRRC-4 (corrected for several serious arithmetic errors), Dr. Peach concluded that PGW's collections rate would likely fall to 80 to 84 percent, with "no realistic prospect of being reversed substantially." The only difference between the OSBA and Dr. Peach is that OSBA believes that aggressive efforts by PGW to collect its bills can reverse the historical pattern. See PGW Revised Statement No. CRRC-4, at 24.

Thus, the Company should not be allowed to have it both ways. PGW claims, at nearly every opportunity, that "rising natural gas costs" have driven its customers' bills up, and have resulted in a drop in collections. See, e.g., PGW Main Brief, at 13. However, the CRRC mechanism could cause the Company's customer bills to rise just as readily as would the commodity cost of natural gas.

For this reason alone, the Commission should deny the PGW CRRC Petition. The implementation of any mechanism that would potentially increase the bills of PGW's already over-burdened firm service sales is not a reasonable, responsible reaction.⁹

⁹ This should particularly give the Commission pause, given the fact that PGW considers the millions of dollars previously awarded to the Company by the Commission as "illusory." See PGW Main Brief, at 7, footnote 12.

C. PGW has proven that it needs more than incentive to collect its bills

PGW has bristled at the contention that the Company will not have any incentive to collect its bills if the CRRC mechanism were to be approved by the Commission.¹⁰ PGW expands this argument to now conclude that the CRRC mechanism is, essentially, ideal for the Company since it will provide the incentive for PGW to maximize its collections.¹¹ However, PGW's past performance proves that "incentive" will not cause the Company to collect more of its bills.

PGW argues that the CRRC mechanism provides the incentive to drive the Company to continue to collect its bills.

PGW will still retain its incentive [with the CRRC in place] to improve its collections for the coming year since this improvement is absolutely essential to enable PGW to generate additional the [sic] cash working capital it needs to maintain its investment grade bond rating, access the capital markets in the fall, pay down short and long-term debt, repay the City Loan, make its annual City payment, etc.

PGW Main Brief, at 44.

In other words, the Company contends that under the CRRC mechanism, the Company is highly motivated to collect its bills at a rate above the CRRC "breakeven point" of 93.01 percent.¹² Above that collection percentage, so the Company's argument goes, PGW gets to keep every dollar of the collected cash. This cash, in turn, is precisely what the Company wants and needs – another source of income to bolster its cash

¹⁰ See PGW Main Brief, at 42-43.

¹¹ See PGW Main Brief, at 25.

¹² See PGW Main Brief, at 24.

working capital accounts. Therefore, according to the Company, approving the CRRC will not diminish the Company's incentive to improve its collections.

However, what the Company fails to note is that this is the *exact same position* in which the Company has been operating since its litigated base rates case in 2001. If, at any time since the Commission entered its Order in Docket R-00006042 on October 4, 2001, the Company collected more than its uncollectibles amount of \$55.7 million, PGW could have *kept* that money, regardless of the overall collections level. See, for example:

PGW currently has an uncollectibles expense allowance of \$55.7 million, which was established by this Commission in PGW's last fully litigated base rate case. Under current regulatory procedure, to the extent PGW reduces its uncollectible expenses below \$55.7 million, it retains the difference and uses this money for cash working capital. There is an excellent policy reason for this rule: it incents PGW (or any other utility) constantly to improve its collections in order to generate working capital.

PGW Main Brief, at 43 (footnotes omitted).

Thus, the Company had the exact same incentive since 2001 for all collections that it claims will be sufficient to assure collection above the historical average if the CRRC mechanism is approved. However, it is a matter of record how PGW's under-collections have performed since October 2001.

As always, human nature is what it is. Sometimes, the carrot is necessary for motivation. Sometimes, the stick is needed. In PGW's case, it is clear from the Company's own actions that the carrot simply does not spur the Company to collect its bills. Consequently, the Commission must keep PGW's feet to the fire and not allow the Company the luxury of the CRRC "insurance policy." The Company's collections initiative, in concert with Accenture, appears to be working. The Commission should

direct PGW to concentrate its efforts in that area, granting waivers to the Chapter 56 requirements as necessary.

The Commission should deny PGW's CRRC Petition.

D. The OTS Surcharge suffers from the same defects as the CRRC

The OTS has proposed a surcharge mechanism of its own design as an alternative to the CRRC proposed by the Company. The OTS surcharge is an automatic adjustment mechanism that will vary “upward or downward with each change in the 1307(f) rate.” OTS Main Brief, at 10. Even though the OTS surcharge may contain fewer problems than the CRRC mechanism¹³, the OTS surcharge will wrongly focus on charging the Company’s firm service sales customers even larger bills while not addressing PGW’s main problem – collecting its bills.

The OTS calculation advanced in its Main Brief demonstrates that the proposed surcharge will raise the bills of PGW’s firm service sales customers. Specifically, using the March 1, 2004, GCR quarterly filing, the OTS calculates that its proposed surcharge will add nearly 18 cents per Mcf to the bills already paid by the Company’s firm service sales customers. See OTS Main Brief, at 12-13. Regardless of PGW’s success in improving its collections, the OTS surcharge will produce an overall annual revenue increase to the Company of \$10.7 million. Id. The OTS proposal is a base rates increase designed to address a single issue, pure and simple.

Much of the laundry list of problems that plague the CRRC mechanism is present in the OTS surcharge proposal. First, no rating agency has demanded that PGW implement *any* surcharge mechanism to “true up” or “make whole” the Company’s under-collections. The rating agencies simply want the Company to collect its bills, and they are likely cognizant that raising rates has not solved PGW’s financial problems.

¹³ See OSBA Statement No. 2, at 2-3.

Second, the \$10.7 million that results from the OTS surcharge is a number without a reference point in the PGW filing. In other words, it is not been demonstrated that the \$10.7 million will, in fact, help PGW's financial predicament in a material way. In fact, if the \$60 million in end-of-year working capital is precisely what the Company needs, there is no record evidence to demonstrate how this \$10.7 piece would fit into the Company's overall financial picture.

Furthermore, Dr. Peach's hypothesis (that raising the customers' bills will reduce the Company's collections) remains unrefuted in this proceeding. Consequently, the addition of the OTS surcharge mechanism is going to create the worst possible result for PGW: it will raise its firm service sales customers' bills, thereby driving down the Company's overall collections rate.

Finally, the OTS has opted to abandon its historical principled position that single-issue ratemaking is improper. The OTS has recognized that it has indeed abandoned this principle. See OTS Statement No. 1, at 9. The OTS appears to justify this departure from sound ratemaking on the basis that PGW is regulated on a cash flow basis, PGW is obligated to provide the \$18 million fee to the City, and bond rating agencies have lowered PGW's bond ratings. Id., at 9-10. None of these conditions justify such a radical departure from OTS's normal position. PGW's cash flow problems are better rectified by bill collections, rather than by raising rates that customers do not pay. The City has indicated its willingness to waive the fee, and the bond rating agencies have clearly stated that the need is for better collections, not higher rates.

Therefore, the Commission should reject the OTS surcharge mechanism.

E. PGW argues for an Unconstitutional Interpretation of Section 2212(c)

PGW argues that under Pennsylvania law, the Commission has the authority to approve the CRRC mechanism. See PGW Main Brief, at 29-30. PGW bases its legal theory upon the interplay between two separate sections of 66 Pa.C.S.

First, PGW claims that the Commission is permitted to fashion a “sliding scale of rates” under 66 Pa.C.S. § 1307(a). The OSBA addressed this argument in its Main Brief. See OSBA Main Brief, at 25-28. PGW may utilize the statutory language of 66 Pa.C.S. § 1307 on the same basis as any other natural gas distribution company (“NGDC”).

However, other NGDCs do not have authority to impose a CRRC (or any other surcharge) to “make whole” the costs embedded in the uncollectible expense that was set forth in the NGDC’s last base rate case. Thus, the Commission does not have the authority to approve the CRRC mechanism based upon Section 1307(a).

Second, PGW claims that 66 Pa.C.S. § 2212(c) grants the Commission the power to waive statutory language in order to create a “customized” solution for the Company:

[T]he PUC has been given the authority, upon request by PGW, to alter or revise any aspect of the Public Utility Code (or regulations established pursuant thereto) to customize the regulatory approach to accommodate the special and unique issues and problems raised by PUC regulation of PGW.

PGW Main Brief, at 30.

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. At most, Section 2212(c) allows the suspension or waiver of a statutory provision that would otherwise *impede* the implementation of the CRRC or the OTS surcharge by PGW but that would not impede the implementation of those mechanisms by another NGDC. Furthermore, Section 2212(c) does not authorize the PUC to suspend or waive an appellate court decision (e.g., *Pennsylvania Industrial Energy Coalition v. Pennsylvania Public Utility Commission*, 653 A.2d 1336, 1350 (Pa. Cmwlth. 1995)).

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. No such standards are provided in Section 2212(c).

Consequently, the Commission does not have the authority to approve PGW's CRRC Petition. The Petition must be denied.

IV. CONCLUSION

For the reasons set forth in this Reply Brief, as well as the reasons set forth in the OSBA Main Brief, the OSBA respectfully requests that the Commission deny the PGW CRRC Petition.

Respectfully submitted,



Steven C. Gray
Assistant Small Business Advocate

For:

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Dated: June 22, 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
Petition to Establish a Cash :
Receipts Reconciliation Clause :

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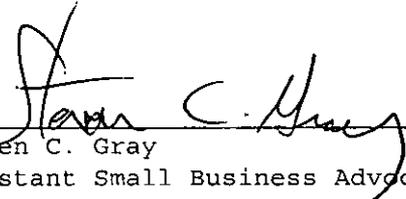
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Re: Investigation into Financial and Collection Issues
Regarding the Philadelphia Gas Works
Docket Nos. P-00042090, R-00049157, M-00021612 &
P-00032061

Dear Johnnie:

On behalf of Philadelphia Gas Works, enclosed please find its responses to Office of Trial Staff Interrogatories OTS-CD-19 – CD-21 with regard to the above referenced matter.

Very truly yours,

Daniel Clearfield/lw

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

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Enclosures

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

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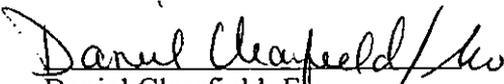
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Re: Investigation into Financial and Collection Issues
Regarding the Philadelphia Gas Works
Docket Nos. P-00042090, R-00049157, M-00021612 &
P-00032061

Dear Steve:

On behalf of Philadelphia Gas Works, enclosed please find its response to OSBA Set 3-3 with regard to the above referenced matter.

Very truly yours,

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For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

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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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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:

Please remove the following individual on behalf of Francioso & Francioso from the service list in the foregoing proceedings:

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Thank you for your attention to this matter.

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

Dear Secretary McNulty:

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

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

Sincerely,

Stephen J. Keene
 Senior Assistant Consumer Advocate

Enclosures

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**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

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**OFFICE OF CONSUMER ADVOCATE'S ANSWER TO THE
MOTION OF PHILADELPHIA GAS WORKS TO CERTIFY
PETITION FOR LIMITED WAIVER OR MODIFICATION OF
CHAPTER 56 RULES AND ADMINISTRATIVE INTERPRETATIONS
TO THE PUC FOR CONCURRENT DISPOSITION WITH PETITION
FOR A CASH RECEIPTS RECONCILIATION CLAUSE**

I. INTRODUCTION

On June 16, 2004, Philadelphia Gas Works ("PGW") filed its Petition for Limited Waiver or Modification of PUC Chapter 56 Rules and Administrative Interpretations. ("Chapter 56 Waiver Petition"). Through this Petition, PGW seeks to have nine (9) modifications or waivers of existing Chapter 56 requirements and the Public Utility Code. A quick review of the requested waivers indicates that these waivers, if granted, would affect substantial public protections that have been provided for many years by the Commission and even by PGW when it was under the jurisdiction of the Philadelphia Gas Commission. These Chapter 56 protections have evolved over the years and provide basic, fundamental protections to consumers to ensure that the health and safety of the public are not placed in jeopardy and that utilities are dealing fairly with consumers.

The OCA will file a timely Answer to PGW's Chapter 56 Waiver Petition. Therefore, it is not necessary to provide a detailed response here to each of PGW's requested waivers. Instead,

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this Answer only addresses PGW's request that the Commission grant the waivers sought by PGW in an expedited fashion, without hearings, and without substantial input from any of the parties of interest. The OCA strongly opposes PGW's request to fast-track the Commission's consideration of PGW's Chapter 56 Waiver Petition without providing those parties that will be most affected by these changes with an opportunity to be heard and an opportunity to examine the basis of the Company's claims. There is no reason why the proposed waiver requests and the CRRC need to be resolved at the same time. PGW's Chapter 56 Waiver Petition raises important issues and must be thoroughly examined. The costs and benefits must be carefully weighed. The OCA submits that the Commission should not decide such an important matter with only the benefit of PGW's side of the argument. A Commission decision on the Chapter 56 Waiver Petition, along with its decision regarding PGW's financial condition and collections practices, will provide the Company with adequate opportunity to implement any changes that may result from this Petition prior to the commencement of the winter heating season.

Therefore, the OCA submits that PGW's Motion to Certify Petition for Limited Waiver or Modification of Chapter 56 Rules and Administrative Interpretations to the PUC for Concurrent Disposition with Petition For a Cash Receipts Reconciliation Clause must be denied.

II. ANSWER

Through this Motion, PGW comes to the Commission seeking an extraordinary remedy – waiver of key provisions of Chapter 56 – and asks that the Commission decide these issues in an expedited manner with little or no input from interested parties. The OCA submits that the waivers sought by PGW may have an impact upon some of the most important protections afforded

by Chapter 56. Many of these protections, which have evolved over many years of Commission regulation of public utilities and were in operation when PGW was under the jurisdiction of the Philadelphia Gas Commission, are in place to ensure that the public health and safety is not harmed when a utility terminates service to a customer and to ensure that customers have fair access to public utility service.

In support of its request to expedite the Commission's consideration of its Chapter 56 Waive Petition, the Company claims that its waiver requests are "inextricably linked" to the Company's Cash Receipts Reconciliation Clause ("CRRC") Petition. Chapter 56 Waiver Petition at 1. In support of this contention, the Company cites the Commission's June 2 Order at Investigation into Financial and Collections Issues Regarding the Philadelphia Gas Works, Docket Nos. P-00042090, R-00049157, M-000021612 and P-00032061 (Order entered June 2, 2004)("June 2 Order"). However, that is a mischaracterization of what the Commission stated in its June 2 Order. In that Order, the Commission simply noted:

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

June 2 Order at 5 (emphasis added). In a footnote the Commission noted:

In the event PGW files a waiver petition, it should propose the duration of the waiver, as well as an alternative standard or procedure that would apply in place of those contained in the regulations. ***It would be PGW's responsibility to explain in such a petition how the alternative standard or procedure adequately balances consumer***

protection rights with PGW's financial integrity. See 52 Pa.Code §§5.43 and 56.222.

June 2 Order, n.2 (emphasis added).

Therefore, it is clear that the June 2 Order does not explicitly or implicitly endorse PGW's contention that the Chapter 56 waivers are "inextricably linked" to PGW's proposed CRRC. In fact, PGW's request to expedite consideration of its Chapter 56 Waiver request is clearly contradictory with the Commission's June 2 Order. In that Order, the Commission opened an investigation into financial and collections issues involving PGW. That investigation is to conclude by September 30, 2004. The Order specifically stated that if PGW filed a petition for waiver of Chapter 56 requirements that "the Commission will consolidate that petition with this investigation." June 2 Order at 4-5. Therefore, it is clear that the Commission intends that any Chapter 56 waiver requests would be considered as part of the overall investigation into PGW financial and collections issues.

Furthermore, in its investigation into PGW's financial and collections problems, the Commission seeks to take a "comprehensive approach" to these problems. June 2 Order at 4. PGW's attempt to fast-track consideration of its waiver requests would hinder the ability of the parties and the Commission to take such a "comprehensive approach" toward the collections problems that PGW has experienced. The OCA submits that it is imperative that those parties that will be most affected by the proposed waiver of Chapter 56 requirements have an opportunity to be heard, an opportunity to examine the basis of the Company's claims, and an opportunity to determine if there are other measures that can be pursued. PGW's Chapter 56 Waiver Petition raises important issues and must be thoroughly examined. PGW's proposal could expose customers to significant

hardships and create serious public health and safety issues. Furthermore, as the Commission noted in its June 2 Order, the costs and benefits resulting from such waivers must be carefully weighed. The Commission should not decide such an important matter relying solely on representations made by PGW.

The Company also claims that expedited treatment of its Chapter 56 Waiver Petition is necessary in order to prevent the rating agencies from further downgrading PGW's bonds. The OCA submits that there is no evidence that the rating agencies are looking for Chapter 56 waivers in order to keep PGW's bonds at investment grade. Certainly the rating agencies want to see improved collection performance from PGW. And, in fact, PGW's collections have improved since the April downgrade by Standard & Poor's ("S&P"). But there simply is no way that one can read the April report from S&P and conclude that the Company must have *immediate* waivers of Chapter 56 requirements. The June 2 Order calls for a decision in the investigation by September 30, 2004, which is well in advance of the winter heating season.

Therefore, the OCA submits that the Company has provided no valid justification for expediting consideration of PGW's Chapter 56 Waiver Petition to be decided along with the CRRC Petition on July 8, 2004.

III. CONCLUSION

WHEREFORE, for the reasons set forth above, the Office of Consumer Advocate respectfully requests that The Philadelphia Gas Works' Motion to Certify Petition for Limited Waiver or Modification of Chapter 56 Rules and Administrative Interpretations to the PUC for Concurrent Disposition with Petition For a Cash Receipts Reconciliation Clause be **DENIED**.



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*79815

CERTIFICATE OF SERVICE

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

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

Dated this 22nd day of June, 2004.

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June ~~21~~²², 2004

HAND DELIVERED

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RECEIVED
2004 JUN 22 11:10:32
SECRETARY'S BUREAU
DOCKETED
JUL 27 2004

Re: Investigation into Financial and Collection Issues Regarding the Philadelphia Gas Works,
Docket Nos. P-00042090, R-00049157, M - 0021612 & P-00032061

Motion of Philadelphia Gas Works to Certify Petition for Limited Waiver or
Modification of Chapter 56 Rules and Administrative Interpretations to the PUC for
Concurrent Disposition with Petition for a Cash Receipts Reconciliation Clause

Dear Secretary McNulty:

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

This letter is to express our support for the Answer of the Office of Consumer Advocate to the Motion of Philadelphia Gas Works to Certify Petition for Limited Waiver or Modification of Chapter 56 Rules and Administrative Interpretations to the PUC for Concurrent Disposition with Petition for a Cash Receipts Reconciliation Clause (hereinafter "OCA Answer").

PGW's Petition for Limited Waiver or Modification of Chapter 56 Rules and Administrative Interpretations is anything but limited – but rather requests the Commission on intolerably short notice to overturn the longstanding balance of utility interests and customer interests represented by Chapter 56 without the benefit of an appropriate evidentiary record documenting either the weight of the customer interests at stake or those of the utility.

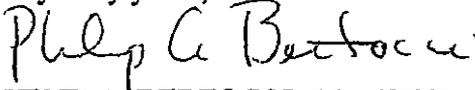
- PGW's proposals concerning deposit requirements would permit the imposition of insurmountable hurdles to access to utility service on many working poor Philadelphia households.
- PGW's proposals concerning lifting of the winter moratorium for Level 3 and Level 4 customers has the potential to cause tragic loss of life.
- PGW's proposals concerning payment arrangement terms without regard to

affordability will deprive many households of a basic necessity of life, with little or no benefit to PGW or other PGW customers.

●PGW's proposals to shorten the time between service of a termination notice and actual termination, to increase the number of days on which termination may take place, and simultaneously to lengthen the time allowed for restoration of service after a customer has met the Company's financial requirements is a material departure from existing standards of reasonable service.

Action Alliance et al. incorporate OCA's Answer by reference in this letter of support and respectfully request that the Commission deny PGW Motion to Certify.

Very truly yours,



PHILIP A. BERTOCCHI, ESQUIRE
LAURA MOSKOWITZ, ESQUIRE

cc: Terence J. Fitzpatrick, Chairman
Robert K. Bloom, Vice Chairman
Glen R. Thomas, Commissioner
Kim Pizzingrilli, Commissioner
Cheryl W. Davis, Director, Office of Special Assistants
Bohdan R. Pankiw, Chief Law Bureau
Certificate of Service

CERTIFICATE OF SERVICE

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

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2004 JUN 22 AM 10:32

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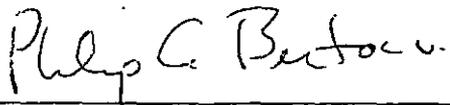
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June 22, 2004

James J. McNulty, Secretary
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VIA HAND DELIVERY

DOCKETED
JUL 27 2004

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

DOCUMENT
FOLDER

Dear Secretary McNulty:

On June 14, 2004, the Philadelphia Industrial and Commercial Gas Users Group ("PICGUG") filed a Main Brief in the above-referenced proceeding in order to oppose the Philadelphia Gas Works ("PGW" or "Company") requested Cash Receipts Reconciliation Clause ("CRRC"). PICGUG received Main Briefs from various entities, including PGW, the Office of Consumer Advocate ("OCA") and the Office of Small Business Advocate ("OSBA").

Based upon review of PGW's Main Brief, PICGUG believes that all of the arguments presented by the Company have been addressed and refuted by PICGUG in its Main Brief. For that reason, PICGUG has chosen not to submit a Reply Brief in this proceeding. PICGUG, however, submits this Letter in Lieu of a Reply Brief in order to offer continued support to the arguments raised in the Main Briefs of the OCA and OSBA, which, similar to PICGUG's Main Brief, oppose PGW's request for the implementation of a CRRC.

If you have any questions regarding this Letter, please contact the undersigned. Please date stamp and return the attached copy of this letter to our messenger for our files.

Respectfully submitted,

MCNEES WALLACE & NURICK LLC

By *Charis Mincavage*
Charis Mincavage

Counsel to the Philadelphia Industrial and
Commercial Gas Users Group

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SECRETARY'S BUREAU

Enclosures

c: Administrative Law Judge Charles E. Rainey (via federal express)
Certificate of Service

24

CERTIFICATE OF SERVICE

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

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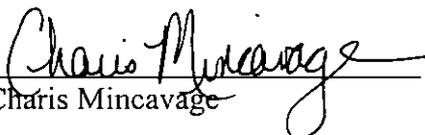
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Charis Mincavage

Dated this 22nd day of June, 2004, in Harrisburg, Pennsylvania.

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June 23, 2004

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DOCUMENT

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2004 JUN 24 AM 8:19

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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 Phil:

On behalf of Philadelphia Gas Works, enclosed please find its responses to Action Alliance Set I-1, 2, 4, 14, 15, 16, 24 & 25 with regard to the above referenced matter.

Very truly yours,



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

DC/lww
Enclosures

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

DSH:41557.1/PHI211-220875

CERTIFICATE OF SERVICE

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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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Dated: June 23, 2004


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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 Steve:

On behalf of Philadelphia Gas Works, enclosed please find its **supplemental** response to OSBA Set 3-3 with regard to the above referenced matter.

Very truly yours,



Daniel Clearfield

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

DC/lww
Enclosures

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

DSH:41463.3/PHI211-220875

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WolfBlock Government Relations: Harrisburg, PA and Washington, DC

Wolf, Block, Schorr and Solis-Cohen LLP, a Pennsylvania Limited Liability Partnership

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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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Dated: June 23, 2004



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June 24, 2004

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DOCUMENT

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2004 JUN 24 PM 3:21

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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:

On behalf of Philadelphia Gas Works, enclosed for filing in the above-captioned matter, please find an original and three copies of the Reply of Philadelphia Gas Works to Answers of OCA and Action Alliance to Motion for Joint Disposition of CRRC and Waiver Petitions.

A copy of each has been served on the parties in accordance with the attached Certificate of Service.

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

Sincerely,



Mark S. Stewart

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

MSS/tlu

cc: Attached Certificate of Service w/enc.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Re: Petition of Philadelphia Gas Works for
Waiver of Public Utility Commission
Customer Service Rules

DOCUMENT

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

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SECRETARIAT BUREAU

REPLY OF PHILADELPHIA GAS WORKS TO
ANSWERS OF OCA AND ACTION ALLIANCE TO MOTION FOR
JOINT DISPOSITION OF CRRC AND WAIVER PETITIONS

Philadelphia Gas Works ("PGW" or "Company") respectfully submits this Reply to the answers of the Office of Consumer Advocate ("OCA") and Action Alliance of Senior Citizens of Southeastern Pennsylvania *et al.* ("Action Alliance") to the Company's Motion for joint disposition of its Petition to Establish a Cash Receipts Reconciliation Charge ("CRRC") and its Petition for Limited Waiver of Modification of Commission regulations and administrative interpretations. In both answers, the parties offer little more than policy arguments going to the merits of PGW's waiver requests, and fail to assert any legal basis requiring the Commission to hold evidentiary hearings prior to considering the Petition for Waiver. Indeed, neither party even makes an express demand for such hearings with cross examination, which the Company interprets as an admission that they are not due the same.

Based on the answers of the OCA and Action Alliance, there is no reason for the Commission not to grant PGW's Motion and consider its CRRC and Waiver Petitions concurrently. The parties' repeated claims that they will have "no input" on the requested waivers or that the PUC should not rule on the Petition with "only . . . PGW's side of the

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argument,”¹ are pure hyperbole, at best. Every interested party to this proceeding will be afforded an opportunity to be heard by filing an answer or substantive response to PGW’s Waiver Petition. In their response, the parties are free to argue any issue, attack the PUC’s legal authority to grant the waivers, set forth countervailing policy arguments, suggest alternative approaches or modifications of the identified regulations, etc. Indeed, both the OCA and Action Alliance have already begun to do so in their answers to the Company’s procedural Motion. However, despite their claims to the contrary, the parties’ complete failure to even attempt to identify the presence of disputed facts that are material to PGW’s Petition results in the conclusion that, as a matter of law, their opportunity to be heard via answer is sufficient.²

In further reply to the parties, PGW states as follows:

1. Both OCA and Action Alliance make vociferous defenses of the Chapter 56 regulations at issue in PGW’s Petition, citing to their long evolution and balance of customer/utility interests, and suggesting that fairness and public health and safety will be the victims of any waivers or modifications of the rules. In so doing, the parties prove the very point of PGW’s Motion to which they respond in opposition: the only matters at issue in deciding the

¹ OCA Answer at 2. Action Alliance adopted the OCA’s Answer.

² *Lehigh Valley Power Committee v. Pa. PUC*, 563 A.2d 548, 556 (Pa. Cmwlth. 1989). As declared by the Commonwealth Court:

Finally, we turn to the issue of whether LVPC had a full and fair opportunity to litigate the issue in question in the Joint Petition proceeding. LVPC submits that because its *opportunity to litigate the issues was limited to its filing of an answer*, that it was not afforded a meaningful opportunity to be heard. We disagree. The issue presented in LVPC’s answer was a legal one. . . . It is a fundamental proposition of law that a hearing . . . is not required to decide questions of law, policy, or discretion.

Id. (emphasis added).

Company's Waiver Petition are policy issues. Accordingly, no evidentiary hearing is required, and the Commission is free to act on the Waiver Petition simultaneously with the CRRC Petition at the July 8 Public Meeting, with the benefit of the parties' policy arguments offered through their answers.

2. Beyond the policy arguments, the OCA offers a lengthy explication of the Commission's June 2, 2004, consolidation Order, arguing that PGW's Motion for joint disposition is contrary to the process outlined in the Order.³ Obviously, the Company does not deny that its Motion requests a different treatment of the Waiver Petition than was prescribed in the June 2nd Order – thus, the need for the Motion. But, the fact that the Commission did not initially contemplate deciding the Waiver Petition jointly with the CRRC Petition is not a reason to deny such a request, particularly in the face of the linkage of the issues, timeliness concerns, and the compelling reasons supporting concurrent disposition set forth in the Company's Motion.

3. Finally, in a quintessential illustration of the phrase “a distinction without a difference,” the OCA suggests there is no pressing need for PGW's requested relief, claiming that “there is no evidence that the rating agencies are looking for Chapter 56 waivers in order to

³ OCA Answer at 3-4. PGW strongly protests the OCA's allegation that it mischaracterized the PUC's June 2nd Order in its Motion. Indeed, to make such a claim, the OCA was forced to mischaracterize PGW's Motion. What the Motion stated was this: “As the Commission itself has noted, the issues involved in both petitions are inextricably linked, and a *comprehensive approach to the collections and cash working capital problems* that plague the Company is needed to adequately address them.” Motion at 1 (emphasis added). The portion of the June 2nd Order referenced by the Motion states that the PUC “believes it necessary to take a *comprehensive approach to PGW's financial and collections problems.*” Order at 4 (emphasis added). The PUC then proceeded to state that it was, therefore, consolidating into the CRRC proceeding these other matters, including any waiver petition that was to be filed. While the OCA apparently objects to the claim that these issues are “intricately linked,” the PUC clearly would not have consolidated them for a “comprehensive approach” if it did not think they were linked are related. There was no mischaracterization by the Company.

keep PGW's bonds at investment grade."⁴ The OCA then asserts that, furthermore, there is no immediate need for the waivers.⁵ In fact, the evidence in this proceeding includes Standard and Poor's clear statement that PGW will be downgraded to junk status if in the "near term" its "collections and cash margins" are not "materially" improved.⁶ Moody's has been even more clear: PGW has 90 days in which to improve its cash flow.⁷ OCA has the luxury to attempt to split hairs between material improvement in collections and a waiver request, as well as immediate and near term. But, as the Company has set forth, the main, and perhaps only, way for it to achieve material improvement in its collections (i.e., above historic standards)⁸ is via the requested waivers, and in order for it to do so in the near term, the Commission must decide the Waiver Petition at the July 8 Public Meeting.

⁴ OCA Answer at 5.

⁵ *Id.*

⁶ CRRC Proceeding, PGW St. CRRC-5, Exh. TEK-1.

⁷ PGW CRRC RB at Attachment A; *see* Moody's Investors Services Global Credit Research Rating Update – PGW (June 8, 2004) www.moody.com/moodys/cust/research/genoa/report/rating%20Update8062.

⁸ OCA also suggests that PGW's collections improvements since Standard & Poor's (S&P) pronouncement is sufficient. Answer at 5. Given that the improvement will, at best, reach the historic collections percentages and more likely fall just short of those levels (*see* PGW St. CRRC-1R), the claim that this improvement satisfies S&P's demands is baseless.

WHEREFORE, PGW respectfully requests that the Commission grant its Motion for
Concurrent Disposition of the CRRC and Waiver Petitions.

Respectfully submitted,



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Date: June 24, 2004

CERTIFICATE OF SERVICE

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

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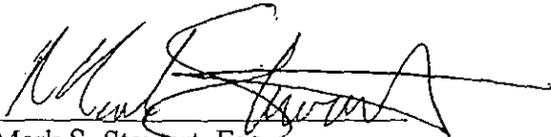
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COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
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IN REPLY PLEASE
REFER TO OUR FILE

June 24, 2004

DOCUMENT

In Re: ~~P-00042090/R-00049157~~
~~M-00021612/P-00032061~~

(TO ALL PARTIES)

R-00049157

Investigation Into Financial And Collections Issues Regarding
The Philadelphia Gas Works

Hearing Notice

This is to inform you that hearings on the above-captioned case will be held as follows:

Type: Initial and Further Hearings

Date: July 6, 2004 - Initial Hearing
July 7, 2004 - Further Hearing

Time: 10:00 AM

Location: Hearing Room 1
Philadelphia State Office Building
Broad and Spring Garden Streets
Philadelphia, Pennsylvania

Presiding: Administrative Law Judge Charles E. Rainey, Jr.
1302 Philadelphia State Office Building
1400 West Spring Garden Street
Philadelphia, PA 19130
Telephone: (215) 560-2105
Fax: (215) 560-3133

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JUL 13 2004

Attention: You may lose the case if you do not come to this hearing and present facts on the issues raised.

If you intend to file exhibits, 2 copies of all hearing exhibits to be presented into evidence must be submitted to the reporter. An additional copy must be furnished to the Presiding Officer. A copy must also be provided to each party of record.

Individuals representing themselves do not need to be represented by an attorney. All others (corporation, partnership, association, trust or governmental agency or subdivision) must be represented by an attorney. An attorney representing you should file a Notice of Appearance before the scheduled hearing date.

If you are a person with a disability, and you wish to attend the hearing, we may be able to make arrangements for your special needs. Please call the scheduling office at the Public Utility Commission:

- Scheduling Office: (717) 787-1399.
- AT&T Relay Service number for persons who are deaf or hearing-impaired: 1-800-654-5988.

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Eric Levis - BPL, Keystone 3NE
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Elizabeth L. Plantz, Scheduling Officer
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ORIGINAL

June 25, 2004

James McNulty, Secretary
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2004 JUN 25 PM 3:21
SECRETARY'S BUREAU

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

Dear Secretary McNulty:

On June 16, 2004, Philadelphia Gas Works ("PGW") filed a Petition for Limited Waiver on Modification of PUC Chapter 56 Rules and Administrative Interpretations. The Petition seeks waiver or modification of various sections of Chapter 56 of the Public Utility Commission's regulations, including the "Friday Shut-Off Rule" in 52 Pa. Code § 56.82. This Rule is also contained in the Public Utility Code, 66 Pa. C.S. § 1503(a). Though the Petition implicitly addressed the statutory provision it failed to explicitly reference the citation to the applicable Public Utility Code section.

Accordingly, enclosed please find 3 errata sheets clarifying and/or amending PGW's Petition. If you have any questions, please contact me at your convenience.

Sincerely,

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

DC/jls

cc: Certificate of Service

DSH:41600.1/PHI211-220875

justified because of the large volume of PGW broken payment agreements and PGW's need to increase collections, in order to produce the cash working capital to survive. Customers are adequately protected because PGW is not removing a customer's ability to avoid termination by agreeing to a payment agreement, or (for upper income customers) by paying their bill in full, despite the customer's failure to live up to his/her obligation to pay for the service they have received.⁴¹

(f) Allow Friday shut-offs. Estimated value: \$2.5 million.⁴² The Friday shut-off rule⁴³ was established at a time when banks were not open on weekends and there were no ATMs. In today's environment, PGW's customers have multiple channels available to pay their bills on Fridays and Saturdays, and indeed even on a seven day basis. PGW will stay open on Saturday and be available to restore service on Saturday as well. No other business of which PGW is aware in the Philadelphia area is limited to just a few days on which it can terminate service for non-payment.

(g) Eliminate 48 hour notice periods. Estimated value: \$1 million. This proposal would allow PGW to eliminate one of the several steps now required before termination is possible. This proposal would reduce from two to one, the number of on-site service visits that is required before service can be turned off. Currently, the termination process is relatively long and costly. Simply eliminating the need to make an additional visit to a customer's home, and to allow termination upon one visit, will help PGW reduce its costs by a minimum of \$1 million per year. PGW would still provide the standard 10 day notice and 72 hour phone call that are currently required by Chapter 56.⁴⁴

(h) Waive the 30 day maximum period to complete a termination (during non CWIP period). Estimated Value: \$1 million. Currently, BCS requires

⁴¹ Gyory Appendix at ¶ 11(E).

⁴² *Id.* at ¶ 11(F).

⁴³ 52 Pa. Code § 56.82. This rule is also stated in 66 Pa. C.S. § 1503(a). PGW requests that the Commission likewise waive the requirements of that section.

⁴⁴ Gyory Appendix at ¶ 11(G).

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24. 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.”⁴⁷ 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.

25. Second, the Commission has instituted its *Investigation into Financial and Collections Issues Regarding PGW* as an extension of the Company’s restructuring proceeding.⁴⁸ 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 costs and benefits of such compliance.⁴⁹ 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.

26. Accordingly, under Section 2212(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

⁴⁷ 66 Pa. C.S. § 2212(c). This section plainly empowers the PUC to waive 66 Pa. C.S. § 1503(a), as requested by PGW.

⁴⁸ See June 2, 2004 Order at 4 (consolidating the restructuring docket, Docket No. M-00021612, with this investigation).

⁴⁹ 66 Pa. C.S. § 2212(h)(1).

in the name of a person other than the applicant unless a court, district justice or administrative agency has determined that the applicant is legally obligated to pay for the service previously furnished. Examples of situations include a separated spouse or a cotenant. This section does not affect the creditor rights and remedies of a utility otherwise permitted by law.

(b) Notwithstanding (a), a city natural gas distribution operation may require, as a condition of the furnishing of residential service to an applicant, the presentation of positive identification in a form to be determined by the city natural gas distribution operation and the payment of any outstanding residential account with the utility which accrued within the past 4 years for which the applicant is legally responsible. A city natural gas distribution operation may not require, as a condition of the furnishing of residential service, payment for residential service previously furnished under an account in the name of a person other than the applicant unless the applicant's positive identification reveals that the applicant lived at the service address during the period of the prior customer's arrearage or a court, district justice or administrative agency has determined that the applicant is legally obligated to pay for the service previously furnished. The applicant will only be responsible for the arrearage during which time the applicant resided at the service address. This section does not affect the creditor rights and remedies of a utility otherwise permitted by law.

4. Allow city natural gas distribution operations to require deposits to be paid in full before providing service.³

§ 56.38. Payment period for deposits by applicants.

(a) An applicant may elect to pay any required deposits in three installments: 50% payable upon the determination by the utility that the deposit is required, 25% payable 30 days after the determination, and 25% payable 60 days after the determination, except as provided in (b) (pertaining to city natural gas distribution operations).

(b) An applicant for service from a city natural gas distribution operation may not elect to pay required deposits in installments. Service will not be provided until a deposit is paid in full.

5. Add a provision to allow city natural gas distribution operations to terminate service on Friday.⁴

§ 56.82. Days termination of service is prohibited.

Except in emergencies—which include unauthorized use of utility service—service shall not be terminated, for nonpayment of charges or for any other reason, during the following periods:

³ See Gyory Appendix at ¶ 11(A) and (C).

⁴ See Gyory Appendix at ¶ 11(F). PGW also requests a waiver of 66 Pa. C.S. § 1503(a).

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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Dated: June 25, 2004

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June 25, 2004

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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 Tanya :

On behalf of Philadelphia Gas Works, enclosed please find its responses to OCA Set I Nos. 1-29 with regard to the above referenced matter.

Very truly yours,


Daniel Clearfield

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

DC/lww
Enclosures

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

DSH:41617.1/PHI211-220875

CERTIFICATE OF SERVICE

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

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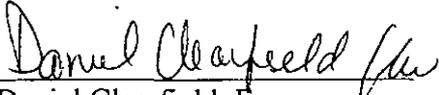
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2004 JUN 28 AM 9:48
SECRETARY'S BUREAU

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

Dear Steve:

On behalf of Philadelphia Gas Works, enclosed please find its responses to OSBA Set II-
Nos. 1, 2, 4, 5, 6, and 7(b) with regard to the above referenced matter.

Very truly yours,


Daniel Clearfield

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

DC/lww
Enclosures

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

DSH:41463.4/PHI211-220875

CERTIFICATE OF SERVICE

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

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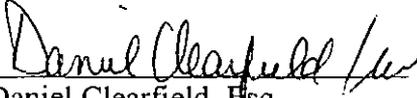
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June 25, 2004

VIA HAND DELIVERY

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SECRETARY'S BUREAU

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

Dear Johnnie:

On behalf of Philadelphia Gas Works, enclosed please find its Supplemental/Corrected responses to Office of Trial Staff Interrogatories Nos. OTS-CD-4 and CD-22 with regard to the above referenced matter.

Very truly yours,


Daniel Clearfield

For WOLF, BLOCK, SCHORR and SOLIS-COHEN LLP

DC/lww
Enclosures

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

DSH:41494.5/PHI211-220875

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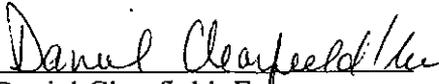
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